

IN THE COURT OF THE ADDL.C.J.M, B H U B A N E S W A R.

Present:

Sri P.L.Satpathy,LL.B.,
Addl.C.J.M.,Bhubaneswar.

G.R. CASE NO.638-07
(Arising out of Capital P.S. Case No.75/07)

S T A T E

.....

Prosecution.

.....Versus.....

1. Trailokya Charan Routray, aged about 60 years.
s/o Late Gangadhar Routray,
Vill.Chandiprasad,P.S.Baranga, Dist. Cuttack.
2. Surendra Kumar Sahoo. Aged about 57 years.
s/oBidyadhar Sahoo,
Jadapada P.O. Haripur Sasan P.S. Bolagarh, Dist. Khurda.
3. Aintha Pradhan, aged about 60 years,
s/o.Panchu Pradhan,
Vill Kanri Patana P.O, Rajsunakhala P.S.,Bolagarh,
At /Pre. Plot No. 1357 Sreeram nagar Samantarapur
P.S, Lingaraj,Dist.Khurda..
4. Biswanath Mohapatra. Aged about 55 years
s/o Ramakrishan Mohapatra.
Vill.Pubasasan P.O. Kausalya ganga P.S. Pipili
Dist.Puri.
5. Satyanarayan Mohapatra,aged about 55 years.
s/o Late Parsuram Mohapatra,
vill. Ayatpur P.S.,Sadar Cuttack Dist.Cuttack
A/p plot no.26 Bapujinagar, P.S.Capital,
Dist. Khuurda.

..... Accused persons

OFFENCE U/S.420,468,471,/34I.P.C.

Counsel for the prosecution : Sri Bidyut Ranjan Mishra. A.P.P, BBSR

Counsel for the defence : Sri A.B.Pattanik, B.K. Singh, & Asso . Advs,BBSR.

Date of argument: 11.3.14

Date of judgment: 15.3.14

J U D G M E N T

1. In this case five accused persons named above jointly stand charged for the offences punishable U/s.420,468,471 read with section 34 of the Indian Penal Code, 1860(IPC).

2. The prosecution case is that:

Accused persons, namely Trailokya Charan Routaroy, Ainthra Pradhan, Biswanath Mohapatra and Surendra Ku. Sahoo who were the staffs of the Directorate of Town Planning, Orissa, BBSR and Town Planning unit, BBSR had filed cases in Orissa Administrative Tribunals, Cuttack Bench, Cuttack relating to their service matters against the Director, Town Planning, Orissa, Bhubaneswar and others. The office of the Directorate, Town Planning, Orissa, Bhubaneswar received the orders of the Orissa Administrative Tribunals, Cuttack Bench, Cuttack (Ext.6/(a), b/(b), 6/(c), 6/(d) & 6/(c)) on different dates prior to 19.2.07 for further action by the Directorate. As the office for some reasons created doubt about the genuineness of the aforesaid orders sent letters, Exts.2,3,4 & 5 to the Deputy Registrar, Orissa, Administrative Tribunals, Cuttack Bench, Cuttack for confirmation about the orders (Ext.6/(a), 6/(b), 6/(c), 6/(d) & 6/(e)). After receipt of Exts/ 2 to 5, the Deputy Registrar, O.A.T, Cuttack Bench, Cuttack vide his office letter no. 415/OAT dtd. 19.1.07(Ext.6) intimated the office of the Directorate, Town Planning, Orissa, BBSR that the aforesaid orders had not been passed by the OAT, Cuttack Bench, Cuttack in the O.A.Cases in question (OA No.297(c)/2005, Biswanath Mohapatra Vrs. State of Orissa & another, OA No.1310 (c)/2006, Surendra Ku. Sahoo Vrs. State of Orissa & 3 other, OA No.72 (c)/2006, Trailokya Charan Routaroy Vrs. State of Orissa and another, OA 54 (c)/2005, Ainthra Pradhan Vrs. State of Orissa and others). Therefore, in this regard, the office of the Directorate, Town Planning, Orissa, Bhubaneswar sought legal opinion from the Govt. Advocate, OAT, Orissa, Cuttack with respect to further course of action to be taken by the office against the individual in each cases by sending it's officeletter no. 819 dtd. 6.2.07 (Ext.7). Sri H.N.Kanungo, Govt. Advocate, OAT, Orissa, Cuttack after receipt Ext.7 verified the concerned case records and vide his letter no.432/G.A.(c) dtd. 9.2.07 (Ext.8) intimated to the Directorate that the order -sheets of OAT, Cuttack Bench, Cuttack (Ext.6/(a), 6/(b), 6/(c), 6/(d) & 6/(e)) received by the Directorate were not genuine and were forged and advised the Directorate to start Departmental Proceeding as well as criminal case in

the appropriate court of law against the person concerned. It is the further case of the prosecution that on 20.7.06 the office of the Directorate Town Planning, Orissa, BBSR received a letter from the Office of the Deputy Registrar, OAT, Cuttack Bench, Cuttack in connection with OA NO.1310(c)/20056 (Surendra Ku. Sahoo Vrs. State of Orissa & others) for submitting para wise comments. Accordingly parawise comments was prepared by the office in the said case and the same was sent to the OAT, Cuttack Bench, Cuttack vide office letter no. 6477/DTP dtd. 20.10.06 through accused Satyanarayan Mohapatra who was then dealing with court cases on 15.1.07 the office of the Directorate received a letter from the Deputy Registrar, OAT, Cuttack Bench, Cuttack vide his office memo no. 9859 dtd/ 9.11.06 where in it was mentioned that the OA No. 1310 (c)/2005(Surendra Ku. Sahoo Vrs. State of Orissa & others) has dismissed for defendant owing to non-appearance on behalf of the applicant when the case was called for admission, therefore, it was the reason for creating doubt about the authenticity of the orders received by the Directorate from the OAT, Cuttack Bench, Cuttack.

It is the further case of the prosecution that as per the direction of the office on 3.2.07 while accused Sri Satyanarayan Mohapatra, the senior Asst. of the office was handing over the charge of his seat to Sri Sudhakar Mallick another Senior Assistant (PW.4) a rubber seal " Court of First Civil Judge, Sr. Division, Cuttack was physically recovered from accused Satyanarayan Mohapatra which was in the File No. PG III-12/03, CMC, Case No.61/00,, DSR Ganjam, in presence of official staff including Establishment officer and the said recovered court seal was kept in a sealed cover (Ext.12) showing signatures of Sudhakar Mallick (PW.4). Susil Ku. Mishra (PW.3), Kirtan Bihari Nayak (PW.6) and Smt. Anjana Panda, Establishment Officer (PW.15). The aforesaid surprise inventory the above court seal recovered from the file intensified the doubt over Sri S.N. Mohapatra (Accused) of doing forgery not only in OAT cases but also in other court cases as well.

On receipt of the FIR (Ext.1) lodged by Sri Minaketan Das, the then Director, Town Planning, Orissa, BBSR (PW.2) Capital PS Case No.75 of the year 2007 was registered on 19.2.07 U/s.468,471,420/34 IPC against all the accused persons. Sri Ramachandra Dwibedy, SI of police (PW.16) started investigation in to the matter. After completion of usual investigation as there was a prima facie case against the accused persons for using as genuine the forged orders of OAT, Cuttack Bench, Cuttack in the above mentioned

OA cases purported to have sent by OAT, Cuttack Bench, Cuttack which were known to be forged for getting their service benefit as well as for their personal gain thereby inducing the Director, Town Planning, Orissa, BBSR to provide their service benefit, while Directorate, Town Planning would not do if it will not so deceived, pretending themselves as successful party in the service cases, thereby cheating their authority by forgery. Besides that, with the help of accused Satyanarayan Mohapatra, the rest accused persons in this case, in furtherance of their common intention had prepared the aforesaid forged orders for the purpose of cheating the IO (PW.16) submitted CS U/s.468,471,420,120(B)/34 PC against all the above noted accused persons to stand their trial in the court of law showing accused Satya Narayan Mohapatra as absconder who subsequently surrendered in the court of SDJM, BBSR on 25.3.10.

On receipt of charge sheet in court cognizance of commission of offence as alleged there in was taken by the Ld. SDJM, BBSR Sri P.K.Pradhan, Ld. J.M.F.C, BBSR received the case on transfer on 21.12.11 for disposal according to law, who framed the charge and after examining Pws. 1 & 2 transferred this case to this court for disposal according to law.

3. The statement of the accused persons U/s.313 of the Criminal Procedure Code, 1973 (For short, the Code) was recorded. The accused persons took the plea of complete denial and alleged false implication.

4. The charges against the accused persons were framed on three heads i.e:

- i) That you all in furtherance of your common intention on dtd. 19.2.07 forged the orders of the Orissa Administrative Tribunal intending that it shall be used for the purpose of cheating and that you thereby committed an offence punishable U/s.468/34 IPC
- ii) That you on the aforesaid date, time and place, in furtherance of your common intention fraudulently or dishonestly used as genuine the aforesaid orders of the Orissa Administrative Tribunal which you know or had reason to believe at the time you used it to be a forged document and that you thereby committed an offence punishable U/s.471/34 IPC.
- iii) That you on the aforesaid date, time and place in furtherance of your common intention, cheated the Directorate of Town Planning, Orissa, BBSR by dishonestly inducing it to make, alter or destroy the whole or any part of valuable security or anything which is signed or sealed and which is capable of being converted in to valuable security and that you thereby committed an offence punishable U/s.420/34 IPC.

5. To arrive a just decision of the case the following points are necessary for

consideration and determination.

I) whether the accused persons, in furtherance of their common intention, fraudulently or dishonestly induced the Director, Town Planning of Orissa, BBSR for obtaining their service benefit, promotional and financial benefit which the Directorate of Town Planning, Orissas, BBSR would not do if it will not so deceived ?

II) Whether the documents (Ext.s.6/a, 6/b, 6/C, 6/d & 6/e) are forged ?

III) Whether , in furtherance of their common intention, the accused persons had forged the documents in question intending that the forged documents in question would be used for cheating ?

iv) Whether the accused persons in furtherance of their common intention, had fraudulently or dishonestly used the documents in question as genuine knowing or having reason to believe that those were forged one ?

6. The prosecution to prove the above charges against the accused persons has tendered oral as well as documentary evidence. In all, 16 witnesses namely Bijaya Ku. Mohapatra (PW.1), Minaketan Das (PW.2), Sushila Ku. Mishra (PW.3), Sudhakar Mallick (PW.4), Brajamohan Sahoo (PW.5) , Kirtan Bihari Nayak (PW.6), G.Allikhan (PW.7) Ananda Ch. Sahoo (PW.8) , Raghabananda Mishra(pw.9), Pradeep Ku. Bhanja (PW.10), Manohar Soren (PW.11), Dambarudhara Nayak (PW.12), Prafulla Ch. Das (PW.13), Bichitrananda Das (PW.14), Anjana Panda (PW.15) and Ramachandra Dwidebedy (PW.16) were examined . FIR, Office copy of Letter no.448,446,444, dtd. 18.1.2007 (Ext.s 2 to 5 respectively) addressed to Deputy Registrar, OAT, CTC, bench. Letter No.415 dtd. 19.1.07 issued by Deputy Registrar, Cuttack, Bench to Director, Town Planning, Orissa, BBSR (Ext.6) . Copy of order no.3 dtd. 17.2.05 in OA No.297(c)/2005 sent by Deputy Registrar, Orissa Administrative Tribunal, Cuttack Bench vide his office memo no.1369 dtd. 17.2.05 to Director of Town Planning Orissa, Bhubaneswar(Ext.6/a), copy of order no.3 dtd. 14.7.2006 in OA No.1310(c)/2006 sent by DR, OAT, CTC, Bench vide this office memo no.4005 dtd. 4.7.2006 to Director, Town Planning, BBSR (Ext.6/b), copy of order no.2 dtd. 24.2.06 in OA 72(c) of 2006 sent by DR, OAT , CTC, Bench vide his office memo no.1745 dtd. 24.2.06 (Ext.6/c) to Director, Town Planning, Orissa, BBSR, Copy of office order no.3 dtd. 12.1.05 in OA No.54 (c)/2005 sent by DR , OAT , CTC, Bench vide his office memo no. 485 dtd. 12.1.05 to Director, Town Planning, BBSR (Ext.6/d) , copy of office order no.7 dtd. 8.11.05 in OA 54 (c)/2005 sent by DR , OAT, CTC Bench vide his office memo no.

10765 dtd. 17.11.05 to Director, Town Planning, Orissa, BBSR (Ext.6/e), office copy of letter no. 819/DTP, BBSR dtd. 6.2.07 sent by Director, Town Planning, Orissa, BBSR vide his office memo no. 820/DTP, BBSR dtd. 6.2.07 to Govt. Advocate, OAT, Orissa, Cuttack (Ext.7), Letter no. 432 dtd. 9.2.07 sent by H.N.Kanungo, Govt. Advocate, OAT, Cuttack to Director, Town Planning Orissa, BBSR (Ext.8), seizure list dtd. 22.3.07 at 11.30 am in capital PS cases no. 75 dtd.19.2.07 (Ext.9), seizure list dtd.22.3.07 at 11 am in capital PS case no. 75 dtd. 19.2.07 (Ext.10), Seizure list dtd. 26.2.07 at 1 pm in capital PS case 75 dtd. 19.2.07 (Ext.11) sealed packet containing original said to have contained original rubber seal of the court of Civil Judge (Sr.Divn), Cuttack seized from accused S.N.Mohapatra at the time of handing over of his seat in 3.2.07 to Sudhakar Mallick (PW.4) . (Ext.12) seizure list dtd. 13.3.08 at 11 am in Capital PS case no. 75 dtd. 19.2.07 (Ext.13), spot map (Ext.14), zimanama dtd. 22.3..07 in capital PS case no.75 dtd. 19.2.07 (Ext.15). On the other hand accused Trailokya Charan Mohanty was examined U/s.315 CrPC . As DW.1, besides his oral testimony DW.1 also proved Exts. A,A/1 to A/3 & B

7. The facts which are not disputed in this case are that , the accused persons were the staffs of the Director, Town Planning, BBSR during the relevant period. The accused persons namely, Trilokya Charan Routroy, Surrendra Ku. Sahoo, Ainthia Pradhan and Biswanath Mohapatra had filed cases against the Director, Town Planning, Orissa, BBSR and others in the state Administrative Tribunal, Cuttack Bench, Cuttack for their Service benefit. The office of the Directorate, Town Planning, Orissa, BBSR had received orders (Exts.6/a to 6/c) relating to the cases filed by the above named four accused persons from Orissa Administrative Tribunal, Cuttack Bench, Cuttack said to have been forged orders.

8. The Ld. Counsel appearing for the accused persons, namely, Trailokya Charan Routray, Surendra Ku. Sahoo, Ainthia Pradhan and Biswanath Mohapatra contended that on a bare perusal of the FIR (Ext.1) it does not contain allegation of commission of any of the alleged offence by the aforesaid four accused persons. Rather the FIR (Ext.1) reveals that the aforesaid four accused persons had filed separate cases in Orissa Administrative Tribunal, Cuttack Bench, Cuttack against the Govt. of Orissa including the Director of Town Planning, Orissa, BBSR for their service benefit. Ext.1 further reveals that the office of the Director, Town planning, Orissa,BBSR had received forged orders (Ext.6/a, 6/b,6/c,6/d & 6/e) from O.A.T, Cuttack Bench, Cuttack in which cases

the accused persons named above were the petitioners. It has not been alleged in the FIR (Ext.1) that either the accused persons named above themselves had committed forgery of the orders in question of OAT, Cuttack Bench, Cuttack or they had knowledge that the orders in question were not genuine. Referring to statutory provisions under the IPC the Ld. Counsel submitted that fraudulent or dishonest intention being the most essential ingredients to constitute offences of cheating and forgery; it is incumbent upon the prosecution to place materials before the court to prima-facie satisfy that the above named four accused persons who had committed such offences with the requisite intention or mensrea . It was strenuously argued that no materials has been placed in the court by the prosecution to remotely suggest that the above named four accused persons had forged orders of the OAT, Cuttack Bench, Cuttack in their respective cases and had used the said forged orders as genuine intentionally with the Knowledge that the orders in question are not genuine . It is further submitted by defence that there is no evidence worth the name against the above named four accused persons to connect in commission of alleged offences. Lastly it is submitted by the Ld. defence Counsel that, in absence of any material on record that the above named four accused persons had any role in forging the orders in question, criminal proceeding against them for alleged commission of offences of cheating, forgery and using of forged orders as genuine would amount to act on the basis of presumptions not available in Law. For the sake of argument if it is accepted that the orders in question are forged orders, materials on record do not justify subjecting the above named four accused persons to a criminal proceeding. Even FIR , Charge sheet and entire materials on record are taken on their face value , no case is made out against the above named four accused persons to have committed any of the alleged offences, Therefore, the above named four accused persons are liable to be acquitted from the charges leveled against them.

9. The Ld. Counsel appearing for the accused Satyanarayan Mohapatra contended that there is no positive material on record to conclude that the accused Satyanarayan Mohapatra had any nexus with the commission of alleged offences.

10. In reply, Ld. Counsel for the State submitted that it is overwhelming evident from the evidence of the prosecution witnesses including the materials available on record that the five accused persons in this case, in furtherance of their common intention, have committed the offence of cheating , forgery and used the forged orders in

question as genuine intentionally with the knowledge that the questioned orders are forged one. Therefore, commission of offences under Section 420, 468 and 471 R/w. Section 34 IPC are well made out against all the five accused persons in this case.

11. In order to appreciate the rival submissions it is necessary to examine the nature of offences alleged against the accused persons.

Section 420 of the IPC provides:

" Cheating and dishonestly inducing delivery of property,- whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, , or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine"

Thus, offence under Section 420 of IPC constitutes of the following ingredients:

- (1) Deception of any person,
- (2) Fraudulently or dishonestly inducing such person
 - (i) to deliver any property to any person, or
 - 9ii) to consent tht any person shall retain any property,
- (3) (i) Intentionally inducing the person to do or omit to do anything which he would not do or omit, if he were not so deceived; and
 - (ii) Such act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

In order to bring a case within the four corners of Section 420 of the IPC, prosecution is required to prima facie satisfy commission of offence of 'cheating' as defined in Section 415 of the IPC.

Section 468 of the IPC provides

"Forgery for purpose of cheating-whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The following ingredients constitute offence under Section 468 of the IPC:-

- (1) The document in question is forged,
- (2) Accused forged the document and
- (3) Accused forged the document intending that the forged document would be used for

purpose of cheating.

Thus, offence Under Section 468 of the IPC is an aggravated form of forgery for the purpose of cheating a person.

Offence of cheating has been defined under Section 415 of the IPC which reads:

"Cheating- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Thus, the essential ingredients for offence of cheating are:-

- (1) Deception of any person, and
- (2) Fraudulently or dishonestly inducing that person-
 - (a) to deliver any property to any person, or
 - (b) to consent that any person shall retain any property or intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or likely to cause damage or harm to that person in body, mind, reputation or property.

Section 471 of the IPC provides:-

"Using as genuine a forged document or electronic record:- Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record"

Offence Under Section 471 of the IPC constitutes of the following ingredients:-

- (1) The document is a forged one
- (2) Accused used the document as genuine.
- (3) Accused knew or had reason to believe that it was a forged document and
- (4) Accused used it fraudulently or dishonestly, knowing or having reason to believe that it was a forged document.

Offence of forgery has been defined under Section 463 of the IPC which reads:

"Forgery.- Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property,

or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery"

The expression 'making a false document' has been defined under Section 464 of the IPC . It reads:

"Making a false document.- A person is said to make a false document or false electronic record-

First-Who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or art of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature,

With the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly- Who, without lawful authority dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part there of, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person believing or dead at the time of such alternation; or

Thirdly- who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration"

Thus, fraudulent or dishonest intention is an essential ingredient for commission of offences of cheating and forgery.

Section 24 of the IPC defines the expression 'dishonestly' as follows:

"Dishonestly":- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly"

18. Section 25 of the IPC defines the expression 'fraudulently' as follows

"Fraudulently":-A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise".

12. The present case, the gravamen of allegation is forgery of orders of OAT, Cuttack Bench, Cuttack purported to have been sent to the office of the Director, Town Planning, Orissa, BBSR for the purpose of cheating . Therefore, under the facts in order to attract implication of the accused persons for commission of under Section 468 IPC, it has to be prima-facie shown that it were the accused persons who had forged the orders of OAT, Cuttack Bench, Cuttack in the case which the accused persons excluding accused Satyanarayan Mohapatra had filed intending that the said forged orders would be used for the purpose of cheating the Govt. of Orissa including the office of the Directorate, Orissa, BBSR. Prosecution has to place materials before the court to indicate that the accused persons had forged the questioned orders with the intention to cheat. Offence of cheating as defined U/s.415 IPC requires essential element of deception as well as fraudulent or dishonest inducement by the accused persons. While analyzing the provisions under Section 420 and 415 IPC it has been held by the Hon'ble Supreme Court in the case of Inder Mohan Goswami and another Vs. State of Uttaranchal & 12 others, AIR 2008, Supreme Court, Page 251 that it is the intention which is gist of offence of cheating , similarly it has been pointed out by our Hon'ble High Court, Orissa in the case of Muralidhar Satpathy Vs. State of Orissssa, 2007(1) OLR 611 that guilty intention is an essential ingredient of the offence of cheating. In order to constitute offence punishable U/s.420 IPC, intention to deceive should be in existence at the time when inducement was offered. Forgery as defined U/s.463 IPC requires tht making of any false document must be with intent to cause damage or injury or with intent to commit fraud. As provided U/s.464 IPC making a false document for the purpose of forgery must be with dishonest or fraudulent intention. Section 471 of the IPC providing for punishment for the offence of using of forged document/order as genuine postulates that accused persons/(s) knew or had reason to believe that document/ order was forged one and also that the accused person/(s) used it fraudulently shall arise only when the accused person /(s) uses/use the said document/order with intention of causing wrongful gain or wrongful loss of the froad.

13. In the present case merely because the forged order had been received by the office of Directorate, Town Planning, Orissa, BBSR from OAT, Cuttack Bench, Cuttack in the cases filed by the accused persons except accused Satyanarayan Mohapatra, accused Satyanarayan Mohapatra did not file the show cause prepared by the Directorate, Town planning in OAT and a rubber seal of the court of Civil Judge (Sr.

Division) Cuttack was recovered from the file handled by Satyanarayan Mohapatra . It can be said that unless cogent, consistent, reliable and positive evidence led by the prosecution in this regard, the accused persons were actually involved with the commission of alleged offences . Now it is high time to examine as to how far the prosecution with the help of the materials available on record has able to bring home the charges against the accused persons.

14. In this case prosecution has examined 16 witness, in all, in its side to substantiate the case against the accused persons. PW.1 denied to have any knowledge about the occurrence. Pws. 4 to 15 have stated nothing regarding receipt of any forged orders by the office of the Directorate, town Planning Orissa, BBSR from OAT, Cuttack Bench, Cuttack in this case filed by the accused persons except accused Satyanarayan Mohapatra. The evidence of Pws.4 to 15 do not disclose that the office directed the accused to file show cause prepared by the office in OAT, Cuttack Bench, Cuttack, but the accused Satyanarayan Mohapatra had not done so, PW.2 Was the director of Town Planning , Orissa, BBSR during the relevant period. He was also the informant of this case. PW.3 was the Head Clerk of the office by the relevant period. Though their evidence discloses that Ext.6/a, 6/b, 6/c,6/d and 6/e (Forged Orders) were received by the office from OAT, Cuttack Bench, Cuttack but their evidence does not disclose that the accused persons had given the aforesaid forged orders in the office. No staff of receive section of the office was exasmined in this case to say as to the mode of receipt of the alleged forged orders , Pws 2 and 3 nowhere in their evidence have stated that the persons those had made the orders of the OAT, cuttack Bench, Cuttack forged were none-the else but were the present accused persons. It is not their evidence that the accused persons had forged the alleged orders of the OAT, Cuttack bench, Cuttack or at their active instance the orders in question were forged by other persons. Apart to that the evidence of Pws. 2 and 3 do not disclose that by virtue of the alleged forged orders the accused persons have taken some of their service benefit which they were not legally entitled to get or had dishonestly & fraudulently induced to the office to give them some service benefit which the office was not bound to do.. After going through the evidence of Pws.2 and 3 , further not discloses that the accused persons had knew or had reason to believe that the orders in question received by the office in their case were forged orders and were not genuine. Allegation in this case can not be appreciated in isolation. None of the Pws has alleged that the accused persons had prepared the order

of OAT, Cuttack Bench, Cuttack forged and there by committed the offence of forgery but also there is no material to indicate that the accused persons themselves had produced the alleged forged orders in the office.

15. It is the admitted fact that the accused Satyanarayan Mohapatra was dealing all the case file (legal matters) of the office. It is the prosecution allegation against him that the said accused despite direction, had not produced the show cause prepared by the office in the OAT, Cuttack Bench Cuttck,. Prosecution has not produced a scrap of paper before the Court stating that the accused Satyanarayan Mohapatra was directed to produce the show cause/para wise comment prepared by the office before the OAT, Cuttack Bench, Cuttack.

16. In the absence of legal evidence I place no implicitly reliance on the aforesaid allegations of the prosecutions against accused Satyanarayan Mohapatra. Apart to that the prosecution has tried to connect the accused Satyanarayan Mohapatra with the commission of the alleged offences relying upon the evidence of Pws.2, 4 to 15 with regard to the recovery of a robber seal of the Court of Civil Judge (Sr. Division), Cuttack from the possession of the accused Satya Narayana Mohapatra On perusal of the evidence of Pws. 2 and 4 to 14 it reveals that on the direction of the office on 3.2.07 while accused Satyanarayana Mohapatra was handing over the charge of his seat to Sudhakar Mallick (PW.4) a rubber seal " Court of First Civil Judge (Sr.Division), Cuttack" was recovered from the file No. PG-III-12/13 (MC Case No.61/00, DSR, Ganjam dealt by accused Satyanarayan Mohapatra. It is further reveals that while accused Satyanarayan Mohapatra was trying to conceal the same rubber seal, Susil Ku. Misra the then Section Officer (PW.3) made toussle with Satyanarayan Mohapatra for snatching away the said rubber seal from the possession of the accused Satyanarayan and was able to bring the rubber seal from his. Had the aforesaid incident been actually occurred PW.3 would not have forgotten to state about it before the court. After close scrutiny of the evidence of PW.3 it is seen that PW.3 nowhere in his evidence has spelt out anything about this fact. The silence of PW.3 with regard to the matter creates a serious doubt about the bonafideness of the aforesaid factum recovery of rubber seal. PW.15 was the establishment officer of the Director of Town Planning, BBSR. Her evidence reveals that the alleged rubber seal was recovered from accused Satyanarayan Mohapatra on 15.1.07 while he was handing over the charge of his seat to PW.4. Hence regarding the date of handing over charge of his seat by accused Satyanarayan

Mohapatra to PW.4 and the date of recovery of the seal in question is found to be inconsistent. As per the evidence of Pws.2 ,4 to 14 it was on 3.2.07 whereas per the evidence of PW.15 it was on 15.1.07. In view of the aforesaid inconsistent evidence I am of the considered view that the prosecution has also failed to establish the factum of recovery of rubber seal of the court of First Civil Judge (Sr. Division), Cuttack from the possession of the accused. Besides these two allegations against the accused Satya Narayan Mohapatra prosecution has no other allegation against him to connect him with the commission of the alleged offences.

17. In such view of the matter no inference can be made on the basis of surmise and conjunctures in criminal case that the accused persons did nothing towards the commission of alleged offences with dishonest or fraudulent intention as defined U/s.24 and 25 of the IPC. In absence of any material indicating the required intention or knowledge on the part of the accused persons making forgery orders/ documents or using the same with required knowledge, it cannot be said that the prosecution has been able to establish its case against the accused persons. Materials on record placed by the investigating agency and materials on record placed by the prosecution in shape of evidence even if taken at their face value and accepted in entirety do not implicate the accused persons with the commission of any of the alleged offences in view of absence of any material to indicate existence of essential ingredients of required knowledge or intention.

18. Thus on analysis of evidence of witnesses on which prosecution places reliance to establish the charges against the accused persons it is found that there is no positive evidence to implicate the accused persons with the commission of the alleged offences and as such prosecution has failed to bring its case beyond all reasonable doubt against the accused persons. Hence the accused persons are entitled to be acquitted.

In the result, I hold the accused persons not guilty of the offences U/s.420/468/471/34 IPC and acquit them therefrom U/s.248(1) Cr.P.C. The accused persons are on court bail and as such they be discharged from their bail bonds .

Enter this case as "Mistake of Fact"

AC.J.M,BBSR

The judgment is dictated,corrected and pronounced by me in the open court today

i.e. on 15th March, 2014 under my hand and seal of this court.

AC.J.M,BBSR

List of P.ws. examined for prosecution.

- P.w.1 Bijaya Kumar Mohapatra.
 p.w.2. Minaketan Das
 p.w. 3 Susil Kumar Mishra,
 p.w. 4. Sudhakar Mallick
 p.w.5. Brajamohan Sahoo
 p.w. 6 Kirtan Bihari Nayak
 p.w. 7 Gazafir Alli Khan
 p.w.8. AnandaChandra Sahoo.
 p.w.9 Raghabananda Mishra.
 p.w.10 Pradeep Ku.Bhanja,
 p.w. 11. Manohar Soren
 p..w.12. Dambarudhar Nayak.
 p.w.13. Prafulla Chadra Das.
 p.w. 14. Bichitrananda Das.
 p.w.15 Smt Anjana Panda.
 p.w.16 Rama chandra Dwibedi

List of D. W.s.examined for defence.

None.

List of exhibits marked for prosecution.

- Ext.1 Written FIR dtd 19.2.07 with endorsement .
 Ext.1/1 Signature of PW.2 in Ext.1
 Ext.2 Office copy of L-N .448 dtd. 18.1.07
 Ext.2/1 Signature of PW.2 in Ext.1
 Ext.3 Office copy of L-N .446 dtd. 18.1.07
 Ext.3/1 Signature of p.w. 2 in Ext. 3
 Ext.4. Office copy of L-N .446 dtd. 18.1.07
 Ext.4/1 Signature of p.w. 2 in Ext. 4.
 Ext.5 Office copy of L-N .440 dtd. 18.1.07
 Ext.5/1 Signature of p.w. 2. in Ext.5
 Ext.6 L.No.415 dt.19.1.07
 Ext.6/a Copy of order dt. 17.2.05 on O.A No. 297 (c) 2005 send by D.R.along with Ext. 6(3 sheets)sent by DR. along with Ext.6
 Ext. 6/b Copy of order dt.14.7.06 on O.A No. 1310 (c) sent by DR. along with Ext.6
 Ext.6/c. Copy of order dt. 24.2.06 on OA no.72 (c)/04 sent by DR. along with Ext.6
 Ext.6/d Copy of order dt. 12.1.05 on OA no.54 (c)/05 sent by DR. along with Ext.6(2 sheets)
 Ext.6/e Copy of order dtd. 8.11.05 in OA no. 54 (c) 2005 sent by DR along with
 Ext.6 (2 sheets)
 Ext.7 Office Copy of L.N 819 dtd. 6.2.07 addressed to Govt. Adv., OAT, Cuttack by Director.
 Ext.8 L.N 432 dtd/ 9.2.07 addressed to Director by the Govt. Advocate, OAT , Cuttack.
 Ext.2/2,3/2,
 4/2and 5/2 Signature of PW.8 in Ext.2 to 5 respectively.

Ext.9 Seizure list dtd. 22.3.07
Ext.10 Seizure list dtd. 14.3.07
Ext.9/1 & 10/1 Signature of PW.3 in Ext.9 and 10 respectively.
Ext.11 Seizure list dtd. 26.2.07 at 1 pm
Ext.11/1 Signature of PW 4 in Ext.11
Ext/12 Sealed packet
Ext.12/1 Signature of PW.4 on Ext.12
Ext.12/2 Signature of PW.6 in Ext.12
Ext.10/2 Signature of PW.7 on Ext.10
Ext.11/2 Signature of PW.8 in Ext.11
Ext.11/3 Signature of PW.9 in Ext.11
Ext.9/2 & 10/3 Signature of PW.10 in Ext.9 and 10

List of exhibits marked for defence.

Nil.

List of M.Os.

Nil

AC.J.M-BBSR