

IN THE COURT OF THE SPECIAL JUDGE(VIGILANCE),
BHUBANESWAR.

P R E S E N T : Shri N.Sahu, LL.B.,
Special Judge(Vigilance),
Bhubaneswar.

T.R.Case No.123/2006

(Arising out of VGR Case No.38/2003 corresponding to
Bhubaneswar Vigilance P.S.Case No.38/2003).

S T A T E Prosecution.

-Versus-

Jatadhari Majhi, aged about 69 years,
S/o.Somanath Majhi, At-Tarangira,
PS-Gop, Dist.Puri.

.... Accused .

For the Prosecution : Sri D.K.Chhotray,
Spl.P.P.Vig.

Sri S.K.Barik, Addl.P.P.

For the Defence : Sri M.Barik &
Associates, Advocates.

Date of argument : 22.04.2014.

Date of judgment : 05.05.2014.

Offences u/s.13(2) read with 13(1)(d) of P.C.Act, 1988 and
468,471/34 read with 120(B) of I.P.C.

J U D G M E N T

1. The aforesaid accused stood charged u/s.13(2) read with 13(1)(d) of P.C.Act,1988 and 468,471/34 read with 120(B) of I.P.C.

2. Briefly stated the prosecution case is that in the year 1999 settlement operation was conducted in Gadakana Mouza of District-Khurda and by then one Maheswar Mohanty, Jatadhari Majhi and Bhaskar Swain were functioning as Asst. Settlement Officer, Amin and R.I. respectively. Plot No.4619 measuring Ac.1.80 decimals under Khata No.1076 and plot No.4620 measuring Ac.1.85 decimals under Khata No.1074 totalling to Ac.3.65 decimals were recorded in the names of Uchhaba Sahoo and others of Village-Gadakana. Government plot Nos.4612 and 4705 were adjacent to plot nos.4619 and 4620. During settlement operation, the Asst. Settlement Officer connived with the above land owners and recorded Ac.4.135 decimals in favour of the family members of the above land owners instead of Ac.3.65 decimals as per previous record by adding government land from plot nos.4612 and 4705 enhancing the area to the extent of Ac.0.485 decimals after making necessary correction and published the area map in favour of the above recorded owners. After such recording the government land measuring Ac.0.485 decimals fraudulently by changing the boundary line of the Govt.plots Sri Mohanty purchased Ac.0.080 decimals of land in the name of his sons vide RSD No.6144, dt.26.11.99. The accused-Amin and the RI assisted the ASO in the operation, manipulated the map and Sri Mohanty became a party to it as a result of which Govt. land measuring Ac.0.485 decimals was recorded in the

name of Uchhaba Sahoo, Khetrabasi Sahoo, Damei Sahoo, Natabar Sahoo, Kinei Sahoo and Dhruba Ch. Patra putting the Govt. in huge loss and causing pecuniary gain to themselves.

Basing on the report of the informant a case was registered and investigation commenced and after completion of investigation, charge-sheet under the aforesaid sections was submitted against three accused persons and cognizance was taken. Thereafter, the case against accused Maheswar Mohanty, ASO and accused Bhaskar Swain, RI was abated on 29.8.08 and 6.10.10 respectively. Hence, charge under the aforesaid sections was framed on 27.1.11 against the aforesaid accused Jatadhari Majhi only.

3. The plea of the accused is one of complete denial and false implication. His further plea is that during Khanapuri, office had supplied map to him and accordingly he prepared Yadast in respect of Ac.3.650 decimals after comparing the sabik and hal area. Further, he has pleaded that his work starts in Khanapuri stage which is the second stage of settlement and his work is to prepare plots with pencil and to write Yadast and to send the same to the office where the same is checked in recess section and thereafter area is passed and then the draftsman makes inking in the drawing section. His specific case is that he had not enhanced any area.

4. The prosecution has examined 12 witnesses in support of its case whereas the accused has examined none.

5. Points for determination in this case are :-

(i) Whether the accused (along with the ASO and RI) during settlement operation of 1999 by corrupt and illegal means or otherwise abusing his position as a public servant had recorded Ac.4.135 decimals of land in favour of the family members of the sabik recorded owners by adding Ac.0.485 decimals of land from govt. plot nos.4612 and 4705 in Gadakana mouza ?

(ii) Whether during aforesaid period the accused along with ASO and RI in furtherance of their common intention forged the settlement ROR and the map intending that it shall be used for the purpose of cheating ?

(iii) Whether during the aforesaid period the accused and the ASO and RI in furtherance of their common intention fraudulently used as genuine a document i.e. settlement ROR and map which they knew at the time when used to be a forged document ?

(iv) Whether the accused and the ASO and RI conspired and agreed to do any illegal act i.e to record Ac.4.135 decimals of land instead of Ac.3.65 decimals by adding Govt. land measuring Ac.0.485 decimals of Govt. plot nos.4612 and 4705 in favour of Uchhaba Sahoo and others and besides such agreement the accused had obtained pecuniary advantage without any public interest and forged the settlement ROR and the map for the purpose of cheating and fraudulently used the same as genuine ?

6. PW-1 the-then Settlement Officer of Major Settlement, Cuttack stated that after receiving requisition from Vigilance Office, he perused the report of Recess Section, Office of the Charge Officer, the report of ASO, Gadakana, Yadast, map, sabik and hal comparison map and after discussion with the vigilance police and being satisfied about the existence of a prima facie case, he accorded sanction for prosecution of Bhaskar Swain(dead) and Jatadhari Majhi and he proved his sanction order vide Ext.1. In cross-examination he denied the suggestion that the vigilance police

has supplied the draft sanction order and without applying his mind, he has simply filled up the same and has put his signature. He further stated that the role of Amin is to prepare a draft map which is checked by the Inspector and then it goes to Recess Section for inking and area pass by the Head Area Estimator who passes the area of a particular plot. He further stated that it was detected by the Recess Section that the area of the disputed plot had been increased, but he does not remember the year when the Recess Office detected the increased area. No official of the Recess Section who detected the so called increase of the area has been examined.

7. PW-2 the-then ASO, Gadakana stated that on 12.9.03 on his production the vigilance police seized Yadast Nos.238 to 432 and the sabik and not final Hal map and prepared seizure list Ext.2. PW-2 proved his report Ext.3 and stated that he compared the sabik and hal map and found the total area was Ac.4.135 decimals, but as per sabik plots, the area should be Ac.3.65 decimals. As such, Ac.0.485 decimals of land was excess recorded in Khanapuri. In Sub-para-1 of para-2 of his evidence, he stated as follows :-

TABLE-I

Plot No.	Area shown	Plot No.	Area should have been
370	Ac.1.000 decimals	370	Ac.0.920 decimals
371	Ac.0.890 decimals	371	Ac.0.820 decimals
372	Ac.150 decimals	372	Ac.0.090 decimals
374	Ac.0.080 decimals	374	Ac.0.110 decimals
375	Ac.0.450 decimals	375	Ac.0.360 decimals
376	Ac.0.150 decimals	376	Ac.0.130 decimals

377	Ac.0.250 decimals	377	Ac.0.320 decimals
379	Ac.1.165 decimals	379	Ac.1.000 decimals

He further stated that during rent camp, the ASO, Bhagaban Panda(not examined) was dealing with the matter but did not raise any objection and did not correct the area. So, the excess area remained as it was in the above hal plots in Khanapuri. He proved the Yadast Book Ext.4 and the Yadast Nos. with area and the writings of accused as follows :-

TABLE-II

Exhibits	Yadast No.	Area	Writings of accused
4/1	370	Ac.0.892 decs.	4/2
4/4	371	Ac.0.892 decs.	4/5
4/7	372	Ac.0.150 decs.	4/8
4/10	374	Ac.0.080 decs.	4/11
4/13	375	Ac.0.446 decs.	4/14
4/16	376	Ac.0.149 decs.	4/17
4/19	377	Ac.0.298 decs.	4/20
4/22	379	Ac.0.892 decs.	4/23

8. PW-2 further stated that in Yadast No.370 the accused Amin had noted that two sons of accused Maheswar Mohanty had filed objection to record the said plot in their names as they have purchased the same vide RSD No.6144, dt.22.11.99 for Rs.1,20,000/- from Basant Kumar Patra. He also stated that plot nos.4612, 4621 and 4705 under sabik khata No.1074 with area Ac.0.485 decimals was added in Stitiban Khata No.98 bearing plot Nos.4619 and 4620, area- Ac.3.650 decimals. So, the total area was enhanced. But the

Sabik ROR 98 and 1074 has not been filed or proved. He also stated that comparison of sabik and hal ROR was done by Survey Munsarim-Raghunath Khatua (not examined) who reported to exclude Ac.0.485 decimals from Hal ROR vide rent case no.2338 and he(PW-2) verified the said report, found the same correct and basing on their report, the Additional Settlement Officer Artatrana Mallick (not examined) passed order to exclude Ac.0.485 decimals of land and to include the same in Govt. land. He proved rent case record No.2338 vide Ext.5 and stated that rent case no.2339 was attached to rent case no.2338 as it was analogous. He proved his report vide Ext.5/1 and the order, dt.3.6.04 of Artatrana Mallick vide Ext.5/2 containing seven pages. Both these rent objection cases were initiated on 14.8.02. He specifically stated that at present hal map has been corrected and the Govt. land has been returned to the Govt. Surprisingly, he stated that he has no idea about survey.

9. PW-3 the-then Charge Officer stated that he was not dealing with files relating to Gadakana mouza, but the same was being dealt by Raj Kishore Senapati, Charge Officer(not examined). PW-3 was declared hostile by prosecution, but nothing substantial was elicited in his evidence in support of prosecution. PW-4 stated that he had one anna share in plot nos.4619 and 4620 in Khata No.98 of Gadakana Mouza and during the tenure of accused Maheswar Mohanty(dead) he had been to the Settlement Camp and applied for his separate land and he proved his signature on the Yadast vide Ext.4/25. He stated in cross-examination that

Basant Patra had interest to the extent of Ac.0.460 decimals of land in that property and he had sold Ac.0.080 decimals out of his undivided share. PW-5 Basant Patra stated that he had got 2 anna interest in Sabik Khata No.98 and during last settlement operation being called by the accused Maheswar Mohanty he had been to Settlement Camp and as asked by him, he sold two gunths of land in the name of his sons, but he did not pay any consideration amount nor anyone had paid the consideration amount on behalf of the accused and at the instance of accused Maheswar Mohanty he put his signatures on different papers at the Settlement Office. In cross-examination he stated that he had not filed any suit for cancellation of the sale deed.

10. PW-6 stated that he was having land at Gadakana mouza which was jointly recorded in the names of others including his father and he had been to the Settlement Office and being asked by accused Maheswar Mohanty he had signed on a blank paper and their lands were measured by accused Amin Majhi Babu, but in cross-examination he could not say the extent of their land at Gadakana. PW-7 stated that he owned his ancestral land at Gadakana mouza and being asked by accused Maheswar Mohanty he had put his signature on a register on the impression that his share of land was to be recorded in his name and accused Majhi had measured that land.

11. PW-8 the-then Amin of the Charge Office, Puri stated that on 6.4.02 as per the direction of the Charge Officer he compared the sabik and hal maps of sabik plot

nos.4619 and 4620 under Khata No.98 and furnished his report. He further stated that sabik plot nos.4612,4621 and 4705(Part) mixed with sabik plot nos.4619 and 4620 for which the area was increased to the extent of Ac.0.485 decimals. In cross-examination he stated that he had not gone to the field for the above purpose. He could not say the date of publication of hal map. No report of PW-5 has been proved by prosecution. It may be reiterated here that the map if any prepared by this present accused has not been proved. The draftsman who prepared the ink map has not been examined.

12. PW-9 stated that on 12.9.03 he was the Addl. A.S.O., Bhubaneswar Settlement Camp and on that day ASO Sridhar Mishra produced Yadast Book, sabik and not final ROR of plot nos.370 to 372, 375 to 377 and 379 which were seized vide Ext.2. But Ext.2 shows that no not final ROR was seized thereunder. However, neither the Sabik ROR nor the Not Final ROR has been proved by the prosecution. PW-9 also stated that the area and extent under sabik plot cannot be increased or decreased by the Settlement Officer in any manner. In cross-examination he stated that the Inspector attached to their office is the custodian of the documents. PW-10 stated that he with others had a joint property in Gadakana mouza having extent of Ac.3.065 decimals and in the year 1999 some of the settlement staff requested his co-sharers to record their land by amalgamating a portion of Govt. land and they told that in lieu thereof their co-sharers will alienate by way of transfer but this negotiation was made without his knowledge. He also stated that during Khanapuri

state accused Mohanty ASO called them to take their signatures in the Yadast. In cross-examination he stated that the settlement operation is yet to be completed and he was not examined by police in connection with this case. PW-11 son of accused Maheswar Mohanty stated that he and his brother had purchased some lands vide RSD No.6144, dt.26.11.99 and he has no knowledge about the service affairs of his father.

13. PW-12 the informant-cum-I.O. stated that the present case was registered on his FIR (Ext.6) and being directed by the SP, he took up investigation. He stated that two sabik plots under Khata No.1076, plot no.4619 and Khata No.1074, plot no.4620 having an area of Ac.1.80 decimals and Ac.1.85 decimals were recorded in the name of Uchhaba Sahoo and others of Village-Gadakana. Govt. plot nos.4612 and 4705 were adjacent to those plots and accused Maheswar Mohanty in connivance with the recorded owners recorded Ac.4.135 decimals of land in the name of the family members of the recorded owners enhancing total area to Ac.0.485 decimals by carving out the same from govt. plots and thereafter accused Mohanty purchased some land out of the aforesaid land in the name of his sons vide RSD No.6144, dt.26.11.99 and the two other accused persons had assisted Sri Mohanty in operation of manipulating the maps and other records. He further stated that he seized the Yadast(Ext.4) and the sabik and not final hal map of Plot Nos.370 to 372, 375 to 377 and 379 under seizure list Ext.2 and released the same in zima vide Ext.2/2. The seized sabik and not final hal maps have not been proved

by the prosecution. PW-12 proved the Letter No.3089, dt.13.10.03 of the Charge Officer, Puri vide Ext.7 and information sheets Ext.7/1 and the sketch maps Exts.7/2 to 7/5 attached to Ext.7. The author of the letter(Ext.7) has not been examined. Likewise, the person who wrote the information sheets(Ext.7/1) has not been examined. It may be noted here that at the first page of Ext.7/1 there is a mention that Hal plot No.370 extends to an area of one acre and Hal plot no.371 extends to an area of Ac.0.890 decimals and so on. But it is not in consonance with the entry in the Yadast. No explanation has been adduced by the prosecution in this regard. PW-12 proved the certified copy of RSD No.6144, dt.26.11.99 vide Ext.8 and the statements of present accused and accused Bhaskar(dead) recorded u/s.164 Cr.P.C. vide Exts.9 and 10. PW-12 stated that on 2.1.04 he had pre-sanction discussion with Sanctioning Authority and produced the copies of FIR, case record, seizure lists and documents collected during investigation and on 21.1.04 after completion of investigation he submitted charge-sheet against the three accused persons.

PW-12 stated that PW-3 Badrikant Mohanty had stated to him that on the requisition of Vigilance Department he had ASO Maheswar Mohanty(deceased) and he had submitted a report to him(PW-3) wherein he found that sabik plot nos. 4619 and 4620 were divided into 8 plots enhancing the area from Ac.3.650 decimals to Ac.4.135 decimals and it was finalized 3 days before retirement of Sri Mohanty. He also stated that PW-3 had stated to him that note was prepared

by Jatadhari and the map was traced by RI and Amin and Govt. plot nos.4612 and 4621 were mixed with plot no.4619 and Govt. plot no.4705 was mixed with plot no.4620. The so called report submitted by accused Maheswar Mohanty to PW-3 has not been proved. Similarly, the map traced by the RI and Amin has not been proved. No explanation has been adduced by prosecution in this regard.

14. Law is well settled that it is difficult to support the charge of conspiracy with direct evidence but if prosecution relies on circumstantial evidence a clear link has to be established and the chain has to be completed and with incomplete evidence the allegation of conspiracy cannot be accepted. **(AIR 1987, Supreme Court, 955 Paramhans Jayad & Sadananda Tripathy-Vs.-State of Bihar & others)**.

Learned counsel for the accused during course of argument relied on a decision of our own Hon'ble High Court reported in **1988(II) OLR 254, Ramesh Chandra Das-Vs.-Smt. Premalata Patra and others** wherein it was held that the essential ingredients constituting the offence u/s.468 IPC are that the document in question is a forged document, that the accused forged the same and in forging he intended that it shall be used for the purpose of cheating.

The learned defence counsel contended that the investigation of the case by PW-12 who is the informant himself is fatal for prosecution. Learned Special P.P. placing reliance on a decision of the Hon'ble Supreme Court reported in **AIR 2004 SC 2684 State Rep.by Inspector of Police-Vs.-Jayapaul** submitted that merely because PW-12 was the

informant of the case, on that ground the investigation of the case by PW-12 is not fatal for prosecution.

15. PW-2 Asst. Settlement Officer has stated that there are four stages in settlement operation namely, Kistwar, Khanapuri, Rent and Appeal. He also stated that he was not the ASO at the time of Kistwar of the hal settlement and he also stated that he cannot say how many Amins were engaged in Kistwar. So also, he could not say anything about Khanapuri. He further stated that he had not seen the Kistwar and inking made by the draftsman of the hal settlement. Specifically he stated that the Amin had no work in it. Further he stated that the draft map inked by the draftsman is followed for Khanapuri. He stated that he had no personal knowledge about the exhibited documents or about the allegations made in the FIR. PW-2 stated that at the stage of Khanapuri the Inspector is the authority and at the stage of rent the Peskar is the authority and on the strength of the objections filed, rent cases are registered. He denied the suggestion that the Amin has rightly given his note in the Yadast as per field position and the draftsman at the time of inking had extended the area of plots. Specifically PW-2 stated that at present the hal map has been corrected and the Govt. land has been returned to the Government. As regards Yadast, he stated that Amin will go to the field and whatever the person will state, he will note down the same and he will submit his report to the Inspector who will check the same and put up before the ASO.

16. PW-8 has stated that in settlement operation the first stage was Kistwar and then Khanapuri and Bhujarat were taken place after Kistwar. During Kistwar stage, the map is prepared as per field position. Kistwar is prepared by pencil. He stated that he does not remember who was the Amin engaged to prepare the map during Kistwar stage. He stated that during Khanapuri Amin concerned is required to visit the spot, compare the plot numbers and also to find out in whose name both the hal and sabik plot stand recorded and to submit a report to the competent authority and it is known as Yadast. He stated that he cannot say if the Yadast Report was prepared correctly by this accused. He also stated that he cannot say if the map prepared by the accused Jatadhari was correct and during the final stage the draftsman prepared inked map increasing the extent of land.

17. PW-12 the IO stated that he has little knowledge about the settlement operation and he has no idea about preparation and publication of settlement map and the measurement of land. He stated that he had seen the sabik map of the case land but had not seized the same. He also could not say as to which hal plots were carved out and correspond to sabik plot no.4619. He stated that he had conducted an enquiry before the FIR but had neither sent or enclosed enquiry files in the present case. He also could not say as to the stage of operation during the investigation of this case i.e. from the FIR till charge-sheet. He also admitted that during investigation he ascertained that in the settlement operation the duty of an Amin is to work and take

measurement as per the direction of the Assistant Settlement Officer. He proved the report of one Amin namely, Raghunath Khatua vide Ext.A which he had received along with Ext.3. He also stated that he has not seized the field book of the Amin who had carved out the hal plots. So also, he had not seen the measurement book.

18. As stated by PW-2 Amin had no work in Kistwari. PW-8 in his cross-examination has stated that he does not remember as to who was the Amin engaged to prepare the map during Kistwari stage. It may be reiterated here that PW-2 in his cross-examination while proving the writings of the accused Amin in the Yadast has also stated about the area of those plots as shown in Table-II. The total area under 8 plots comes to Ac.3.799 decimals. Admittedly, plot no.372 having an area of Ac.0.150 decimals was noted to be recorded in the name of G.A. Department. Hence, deducting the said area the total extent of rest 7 plots comes to Ac.3.649 decimals. Admittedly, sabik plot nos.4619 and 4620 had an area of Ac.3.650 decimals. As such, it is apparent that the present accused had not noted to enhance the total area of those 7 plots more than the area recorded in the sabik plots amalgamating any government land in the name of the private sabik recorded tenants. Of course, PW-2 has proved some writings of the deceased accused-ASO in respect of these not final plots. The entries in Yadast in respect of those plots also show that the other deceased-accused Bhaskar had signed in these Yadasts. But both of them are dead. So, I do not think it just and proper to give any finding on the so called

writings of both these deceased accused persons. Here, though PW-8 stated that he compared the sabik and hal map and furnished his report, but his report has not been proved. He further stated that sabik khata no.98 corresponded to not final hal khata nos.1055 and 1056 and the extent of hal khata was found to be excess by Ac.0.485 decimals. Those not final hal khata and maps have not been proved.

19. The learned Special P.P. during course of argument while conceding that this accused in the Yadasts Exts.4/1 to 4/22 though has not enhanced the total area of Ac.3.650 decimals, submitted that the noting to record Ac.0.446 decimals of land in the name of Basant Patra in respect of hal plot no.375 is an illegal act being the result of criminal conspiracy between this accused and the deceased accused persons. In other words, he submitted that when Basant Patra had sold Ac.0.080 decimals of land in favour of sons of the deceased accused Maheswar Mohanty, there was no scope to recommend for recording Ac.0.446 decimals of land in his name after the sale. Learned counsel for the accused during course of argument vehemently opposed such contention and submitted that Basant Patra had 2 annas share in both the sabik plots Nos.4619 and 4620 which stood recorded in the name of his father and other private persons. What was his share on those lands after the sale is a question in between the recorded owners. The sole question to be decided in this case is whether the present accused was a party to the conspiracy for grabbing and amalgamating any

Government land in favour of any private sabik recorded tenant.

20. It is quite unfortunate that no document relating to Kistwari stage is forthcoming. The Yadast containing the writings and notings of the present accused which has been proved by the prosecution does not indicate that the present accused had recommended for recording any Government land in favour of any private person. So, at this juncture it remains doubtful as to how the areas of the plots were enhanced and at which stage. The so called trace map prepared by this accused is a vital document which could have thrown light to resolve such controversy. Likewise, the draftsman who prepared ink map is a most vital witness who could have testified as to how and on what basis he had traced the ink map. But the prosecution has failed to examine that draftsman or to exhibit the trace map. Apart from that, if in fact some portion of government land was amalgamated with these private lands, then obviously the area of the government lands would have decreased to that extent. There is no evidence on record as to what was the corresponding not final hal ROR of those government lands with its area after the so called amalgamation. Had the same brought to the record, it could have facilitated to appreciate the materials in proper prospective.

21. Considering from another angle, if the area of the hal not final plots were increased during Kistwari stage, then the Amin who was engaged to prepare the map in that stage, so also the present accused Amin who used the same in

Khanapuri stage would have been jointly liable. But PW-2 could not say how many Amins were engaged during Kistwari. PW-8 stated that he does not remember as to who was the Amin engaged to prepare the map during Kistwari. Moreover, if the area of the plots was increased by this accused while tracing the maps in Khanapuri stage, then this present accused would have been liable. On the other hand, if the area of the plots was increased during inking in the Drawing Section by the draftsman, then the draftsman would have been liable. But barring the sketch maps vide Exts.7/2 to 7/5, no other map has been filed or proved. In other words, the maps prepared by the Amin in Kistwari stage or by the present accused Amin in Khanapuri stage has not been proved. The draftsman who made the inking has not been examined. No Amin engaged during Kistwari stage has been examined. No official of Recess Section where the increase of the area was detected(as stated by PW-1) has been examined.

22. Ext.A report of Raghunath Khatua shows that being directed by his authority, he had been to the Charge Office, Puri and the Charge Officer had provided the trace map and he prepared the sabik map with scale @ 32" = 1 mile and then compared both the maps and found that the area of the hal plots were increased from Ac.3.650 decimals to Ac.4.135 decimals. Learned counsel for the accused during course of argument submitted that in Ext.A the said Amin had suggested to verify(Janch) about accuracy of Hal plot area and comparison of Sabik and Hal plots in the Drawing Section and Area Section of Head Office, Puri. But there is no evidence if

the accuracy of the area as stated in Ext.A was checked/verified in the Drawing/Area Section.

23. Here, in this case, PW-12 himself is the informant and he had investigated into the case. The act of lodging the FIR, dt.9.6.03 was preceded by an enquiry taken up by the Vigilance Organization. Not a single scrap of paper has been filed or proved by the prosecution regarding that enquiry. It is pertinent to note that PW-8 stated that on 6.4.02 as per the direction of the Charge Officer, he had compared the sabik and hal maps and furnished his report. Obviously, it was during the so called enquiry prior to lodging of FIR. But as discussed above, the report furnished by PW-8 has not been proved. In Ext.A, the-then Amin Raghunath Khatua had mentioned that trace map was provided to him from Puri Sadar Office. The IO has proved the sketch maps Exts.7/2 to 7/5 stating that those were attached to the letter of Charge Officer vide Ext.7. As stated earlier the said Charge Officer has not been examined. Exts.7/2 to 7/5 show that those sketch maps were prepared by one Raghunath Khatua who has not been examined in this case. Anyhow, the vital question that arises for consideration is as to who had prepared the Not Final Hal maps containing the disputed plot numbers with enhanced area particularly when the notings of this accused in the Yadast(Ext.4) does not show about enhancement of the area amalgamating government land. But the said maps have not been proved. Except the notings in Yadast, no other document prepared or written by this accused has been proved by the prosecution. Though PW-2

states that at present the hal map has been corrected and the government land has been returned to Government, but at any rate the not final hal map of the disputed plots having the enhanced area is the vital document. No explanation has been adduced by the prosecution for non-production of such vital document. Likewise, non-examination of the vital witnesses, such as, the draftsman who inked the maps and the concerned official of the Recess Section who detected the enhancement of the area are additional factors creating doubt about the prosecution case. Adding to this, no settlement official engaged during Kistiwari stage has been examined. The report submitted by deceased accused ASO Maheswar Mohanty to PW-3 as stated by the IO has not been proved. For withholding such material evidence both documentary and oral, adverse inference should be drawn against prosecution.

24. Therefore, after analysing the evidence on record and for the reasons discussed above, I am inclined to hold that the prosecution has not been able to prove its case against the accused for commission of the offences punishable u/s.13(2) read with 13(1)(d) of P.C.Act, 1988 and 468,471/34 read with 120(B) of I.P.C. beyond all reasonable doubt and the benefit of such doubt should be extended in favour of the accused.

In the result, the accused is found not guilty of the offences u/s.13(2) read with 13(1)(d) of P.C.Act, 1988 and 468,471/34 read with 120(B) of I.P.C. and acquitted u/s.248(1) of Cr.P.C. His bail bond be cancelled and surety discharged.

Zimanama in respect of the maps seized under Ext.2 be cancelled and the Yadast Ext.4 be returned to the concerned Settlement Officer. Order regarding disposal of property shall take effect four months after expiry of the appeal period if no appeal is preferred and in case of appeal, the same shall be dealt as per the order of the Appellate Court.

Judge(Vigilance),
Special
Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 5th day of May, 2014.

Judge(Vigilance),
Special
Bhubaneswar.

List of witnesses examined for the prosecution :

- P.W.1 Bishnu Charan Biswal.
- P.W.2 Sridhar Mishra.
- P.W.3 Badrikanta Mohanty.
- P.W.4 Abhimanyu Patra.
- P.W.5 Basanta Kumar Patra.
- P.W.6 Debendranath Sahoo.
- P.W.7 Surendra Sahoo.
- P.W.8 Udayanath Nishank.
- P.W.9 Sidhartha Sankar Pani.
- P.W.10 Purna Chandra Sahoo.
- P.W.11 Malaya Kumar Mohanty.
- P.W.12 Narahari Panda.

List of witnesses examined for the defence :-

None.

List of exhibits marked for the prosecution :-

Ext.1	Sanction order.
Ext.1/1	Signature of PW-1 on Ext.1.
Ext.2	Seizure list.
Ext.2/1	Signature of PW-2 on Ext.2.
Ext.3	Report of PW-2.
Ext.3/1	Signature of PW-2 on Ext.3.
Ext.2/2	Zimanama.
Ext.2/3	Signature of PW-2 on Ext.2/2.
Ext.4	Yadasta Book.
Ext.4/1	Yadast No.370.
Ext.4/2	Handwriting of Amin J.Majhi.
Ext.4/3	Order of ASO of Yadasta No.370.
Ext.4/4	Yadasta No.371.
Ext.4/5	Handwriting of Amin J.Majhi.
Ext.4/6	Order and Signature of ASO M.Mohanty.
Ext.4/7	Yadasta No.372.
Ext.4/8	Handwriting of J.Majhi.
Ext.4/9	Order and signature of M.Mohanty.
Ext.4/10	Yadasta No.374.
Ext.4/11	Handwriting of J.Majhi.
Ext.4/12	Order with signature of M.Mohanty.
Ext.4/13	Yadasta No.375.
Ext.4/14	Handwriting of J.Majhi.
Ext.4/15	Order with signature of M.Mohanty.
Ext.4/16	Yadasta No.376.
Ext.4/17	Handwriting of J.Majhi.
Ext.4/18	Order with signature of M.Mohanty.
Ext.4/19	Yadasta No.377.
Ext.4/20	Handwriting of J.Majhi.
Ext.4/21	Order and signature of M.Mohanty.
Ext.4/22	Yadasta No.379.
Ext.4/23	Handwriting of J.Majhi.
Ext.4/24	Order and signature of M.Mohanty.
Ext.5	Rent Case Record No.2338.
Ext.5/1	Report with signature of PW-2 on Ext.5.
Ext.5/2	Order, dt.3.6.04 of Addl.ASO on Ext.5 at page-4 to 10.
Ext.5/3	Signature of Addl. ASO on Ext.5/2.
Ext.4/25	Signature of PW-4 on the Yadasta.

Ext.2/4	Signature of PW-9 on Ext.2.
Ext.6	F.I.R.
Ext.6/1	Signature of PW-12 on Ext.6.
Ext.6/2	Endorsement with signature of the then SP namely, Ritu Arora.
Ext.6/3	Endorsement with signature of A.Y.Khan the then OIC,BBSR Vigilance P.S.
Ext.6/4	Formal F.I.R.
Ext.6/5	Endorsement with signature of Sri A.Y.Khan on the last page of formal F.I.R.
Ext.2/5	Signature of PW-12 on Ext.2.
Ext.2/6	Signature of PW-12 on Ext.2/2.
Ext.7	Letter No.3089, dt.13.10.03.
Ext.7/1	Information sheets containing ten sheets furnished by Charge Officer, Puri.
Ext.7/2 to 7/5	Sketch maps which were attached to the letter of Charge Officer (Ext.7).
Ext.8	Certified copy of sale deed bearing No.6144, dt.26.11.99 from DSR,Khurda.
Ext.9	Statement u/s.164 Cr.P.C.of accused Jatadhari recorded by the Magistrate (three sheets).
Ext.10	Statement u/s.164 Cr.P.C. of accused Bhaskar Swain recorded by the Magistrate (three sheets).

List of exhibits marked for the defence :-

Ext. A Report of Amin Raghunath Khatua.

List of M.Os. marked for the prosecution :-

Nil.

List of M.Os. marked for the defence :-

Nil.

Special Judge(Vigilance),
Bhubaneswar.

