

IN THE COURT OF THE SPECIAL JUDGE, C.B.I.-II, BHUBANESWAR.

PRESENT :

**Dr. A.K.Mishra,  
Special Judge, C.B.I.-II, Bhubaneswar.**

**T.R.No. 5/7/24 of 2015/2013/2007.**  
R.C. No. 19 of 2006.

Date of argument : 07.11.2015.

Date of Judgment : 17.11.2015.

Republic of India.

**Versus.**

Himansu Sekhar Mishra, aged about 43 years,  
Son of Chandra Sekhar Mishra, Vill. Kalarahanga,  
P.S. Mancheswar, Dist. Khordha.

... Accused.

For the prosecution : Sri R.Hota, Spl.P.P. C.B.I.

For the Defence : Sri Asutosh Tripathy,Adv.  
Sri P.S.Tripathy,Adv.

Offences u/s. 468, 471, 477-A, 409 IPC and u/s. 13(2) read with Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.

### **JUDGMENT**

Accused stands charged under Section 468, 471, 477-A and 409 Indian Penal Code (briefly IPC) and under section 13(1)(c) and 13(1)(d) read with section 13 (2) of the Prevention of Corruption Act,1988 (to be referred hereinafter P.C.Act) for having committed forgery and false document

for the purpose of cheating and misappropriation of Rs.1,63,890/- to obtain pecuniary advantage as a branch postmaster.

**2.** The factual matrix of accusation runs thus:

That, accused was serving as the postmaster, Kalarahanga Gramina Daka Sevak Branch Post-office, Bhubaneswar from 13.8.2003 to 5.11.2005. As a Postmaster accused was authorized to take deposits and make payments against withdrawal from the accounts holders and to make entries in the passbook and other connected records. He was the sole custodian of the stamps and seals of the office and was singularly authorized to make transaction with the account holders. He was competent to sanction withdrawal up to the limit of Rs.2000/-. In case of loan or withdrawals from the recurring deposit accounts, sanction was required from the sub-post master of KIIT Post office and for that recommendation was to be given by the accused in a prescribed proforma. The loan facility in the RD account could be availed after one year of the commencement of the deposit for maximum of 50% of the available balance. The account holder of the R.D account may prematurely close the account after three years of the opening and the recommendation of the Branch Postmaster should show the balance as nil, so that the interest accrued in the account could be paid to the account holder.

On getting reliable information that accused has misappropriated a sum of Rs.2,37,883/- from several savings bank and recurring deposit accounts holders, the Superintendent of Police, CBI, SPE, Bhubaneswar registered

an FIR (Ext.132) on 18.4.2006 vide R.C.No.19 of 2006 and directed Sri L.T.Sahu, Inspector (P.W.43) to investigate. In course of investigation, the Investing Officer examined the witnesses, seized the passbooks and other documents of the Post offices. He collected the specimen signatures of account holders. It was found that accused had forged the signatures of 13 savings bank accounts and 24 Recurring Deposit accounts to misappropriate Rs.1,63,890.30 paise and after obtaining sanction on 2.7.2007 (Ext.126) from Sr. Superintendent of Post Offices, Bhubaneswar Division (P.W.41) filed charge sheet on 17.7.2007. The Court took cognizance under Section 409, 468, 471, 477-A IPC and under Section 13(2) read with section 13(1)(c) and 13(1)(d) of the P.C.Act. Hence, this case.

- 3.** Accused took the plea of denial, but admits that he was working as Branch Postmaster at Karahanga branch post-office. In course of his explaining questions put u/s. 313 Cr.P.C, accused specifically stated that he had not deposited any amount towards misappropriation.
- 4.** Prosecution examined 43 witnesses. Defence examined none. 147 documents are exhibited from the side of prosecution. No document is exhibited from the side of the defence. Learned Spl.P.P and learned defence counsel filed written memorandum u/s. 314 Cr.P.C.
- 5.** Points for determination are:
  - (i) Whether accused was a public servant from 13.8.2003 to 5.11.2005 as Postmaster of Kalarahanga Gramina Daka Sevak Branch Post-office, Bhubaneswar?

- (ii) Whether accused committed forgery for the purpose of cheating by creating false documents in withdrawal slips Ext.58 to Ext.87, deposit slips Ext.88 to Ext.93, savings bank passbooks and R.D. passbooks as postmaster in Kalarahanga Gramina Daka Sevak Branch Post Office, Bhubaneswar during the period from 13.8.2003 to 5.11.2005?
  - (iii) Whether accused by the time and place fraudulently and dishonestly used aforesaid withdrawal slips and deposit slips as genuine which he has reasoned to believe to be forged?
  - (iv) Whether the accused by the time and place being the branch post master of Kalarahanga Gramina Daka Sevak Branch Post Office, Bhubaneswar willfully and with intent to defraud falsified passbooks, withdrawal slips, deposit slips, registers and records of the post-office?
  - (v) Whether the accused by the time and place being entrusted with a sum of Rs.1,63,890/- by the account holders has committed breach of trust?
  - (vi) Whether the accused by the time and place and in the capacity of a public servant dishonestly and fraudulently misappropriated Rs.1,63,890/- which was entrusted to him by the account holders?
  - (vii) Whether by the time and place accused by corrupt or illegal means obtained pecuniary advantage for himself?
  - (viii) Whether the prosecution is validly launched?
- 6.** Having harked the points posed above, the evidence needs to be analyzed. The evidence adduced by prosecution can be categorized under three heads. Under first, the testimony of account holders P.W.1 to P.W.17 and P.W.20 to P.W.22,

P.W.26 to P.W.39, out of whom P.W. 20, P.W.21, P.W.26, P.W.28, P.W.29, P.W.33, P.W.34, P.W.36, P.W.37 are savings bank account holders while others are Recurring Deposit account holders. The second category comes to encapsulate the postal officials like P.W.19, P.W.23, P.W.24, P.W.25, P.W.40, P.W.41 and P.W.42, out of whom P.W.41 is the sanctioning authority, while others are witnesses to the handwritings and seizure of documents. The documents proved and the evidence of P.W.43, the I.O who is not cross-examined come under third category.

The striking feature of prosecution evidence is that some of the witnesses are not cross-examined, though their testimonies reveal positive and direct evidence to implicate accused. The I.O (P.W.43) is not cross-examined who had obtained the specimens of accused and account holders and had proved the seizure. Another important piece of evidence is the testimony of the father of the accused who is examined as P.W.18. He has admitted to have deposited money on behalf of his son to indemnify the misappropriation. P.W.2 is the husband of P.W.13 and both of them are pressed into service to prove recurring deposit Ext.3 and surprisingly P.W.2 is not cross-examined. P.W.33 does not support the prosecution when he admits his signature in the withdrawal slip Ext.81. With this nature of evidence, the complicity of accused in creating false documents by forging the signature of the account holders and also by making endorsement in the withdrawal slips may be tested.

P.W.1 proves his R.D account passbook Ext.1 and stated that the withdrawal slip Ext.2 does not contain his

signature. This witness is not cross-examined. The same is the evidence of P.W.2 who has proved his R.D passbook Ext.3 and withdrawal slips Ext.4 and Ext.5. P.W.3 proved his R.D account Ext.6 and Ext.8 and denied to have signed in the withdrawal slips Ext.9. In cross-examination he has stated that he has received all the amount which he had deposited. It may be stated here that the signature of accused found in the withdrawal slip Ext.7/1 and Ext.9/1 are proved by P.W.25 who had acquaintance with the signature and handwriting of the accused. If the amount deposited in Ext.7 and Ext.8 are duly received back by the account holders P.W.3 and withdrawal slip available for that purpose are stated to have been not signed by the account holders , the signature of accused available therein as Postmaster vide Ext.7/1 and Ext.9/1 leads to one conclusion that accused had created false documents.

P.W.4 proves his R.D passbook Ext.10 and does not admit his signature in the withdrawal slips Ext.11 and Ext.12. P.W.5 proved his R.D account Ext.13 and denied to have signed in the withdrawal slip Ext.40. P.W.6 proves his R.D account Ext.15 and denied to have signed in withdrawal slip Ext.16. P.W.7 proving his R.D. passbook Ext.17 admits to have received back all the amount, but he disputed his signature in the withdrawal slip Ext.18. P.W.08 proves his R.D passbooks Ext.19 and denied to have withdrawn Rs.3,500/- on 28.2.2005. P.W.09 proves his RD accounts Ext.20 and withdrawal slip Ext.21, but denied to have either written or signed in the withdrawal slip. In cross-examination he has admitted to have received the deposited amount.

P.W.25 has proved the signature of accused as Postmaster in the withdrawal slip vide Ext.21/1.

P.W.10 proves his RD passbook Ext.22 and denied to have signed the withdrawal slip Ext.23 and Ext.24. In cross-examination he admits to have received the money deposited. P.W.11 proves R.D passbook Ext.27 but denied to have signed Ext.25 and Ext.26 withdrawal slips. In cross-examination he admits to have received the deposited amount. P.W.12 proves his RD account Ext.28.

Ext.29 and Ext.30 withdrawal slips were admitted with objection. The signature of accused in this withdrawal slips is proved by P.W.25 vide Ext.29/1 and Ext.30/1. The document being used in public office by the Postmaster and having been seized from the custody of the officer, the objection regarding mode of proof raised by defence is not tenable. This witness surprisingly is not cross-examined.

P.W.13 is the wife of P.W.2 who denied to have withdrawn any amount contrary to the testimony of her husband P.W.2. She is not cross-examined. P.W.14 proves his RD passbook Ext.31 and denied to have withdrawn any amount though in cross-examination he has stated that he received back the money deposited. The witness appears to contradict himself. P.W.15 proves his RD passbook Ext.32 and denied to have signed in the withdrawal slip dated 23.8.2004. P.W.16 proves his RD passbook Ext.33 and denied to have signed in the withdrawal form Ext.33 /1. On verification of withdrawal slip and passbook, it is found that the withdrawal was dated 6.8.2005 not 4.8.2005. In cross-examination he has stated that he and his wife had received

back the missing amount from their accounts. P.W.17 admits his RD passbook Ext.34 and denied to have signed in withdrawal slip Ext.34/1. In cross-examination he has admitted to have received the missing amount.

P.W.20 proves his savings bank account Ext.46 and denied to have signed in withdrawal slip Ext.80. He has stated that the passbook taken by the accused for the purpose of mentioning the interest was not returned to him. P.W.21 proving savings bank account passbooks Ext.49 and Ext.50 denied her signatures in Ext.71 to Ext.77. It may be stated that Ext.71 to Ext.77 are the withdrawal slips purported to have been signed by Bishnu Priya Pathy which is stamped and also signed with date by the Postmaster. P.W.22 proves his RD passbook Ext.51 stating that he was handing over the cash every month to accused co-villager who was working as postmaster in that post-office., he denied to have signed in withdrawal slip Ext.58. P.W.26 has proved his S.B. Account passbooks Ext.47 and Ext.53 and denied to have signed in the withdrawal form Ext.79. P.W.27 who is the husband of P.W.26 denied to have signed in the withdrawal slip Ext.69 and he is the co-villager of the accused. P.W.28 proves his passbook Ext.48 and denied to have withdrawn money signing in Ext.78. P.W.29 proving his S.B. Passbook Ext.42 denied to have made signature in the withdrawal slip Ext.88. He has stated that he handed over his passbook, deposit slip and cash to the accused who after making necessary entry returned the passbook without giving any counter-foil.P.W.30 proving his RD account Ext.56 has stated to have received back his money. He states that

the accused was working as Postmaster at Kalarahanga Post-Office. P.W.31 proves his RD passbook Ext.52 and denied to have signed in the withdrawal slips Ext.59 and Ext.60. P.w.32 proves his RD passbook Ext.54 and denied to have signed in the withdrawal slip Ext.99. In cross-examination he has admitted that accused Himansu Mishra while present in the post office used to make entry in the passbook.

P.W.33 proving his S.B account passbook Ext.45 supported the defence admitting his signature in the withdrawal slip Ext.81.

P.W.34 proves his S.B passbook Ext.44 and denied his signature in the withdrawal slip Ext.84. P.W.35 proves his R.D account passbook Ext.57 and denied his signature in the deposit slip Ext.92. In cross-examination he admits to have received back all the deposits as per R.D. Account. P.W.36 has also proved his R.D passbook Ext.41 and denying his signature in the withdrawal slip Ext.93 admits in the cross-examination to have received back his money. P.W.37 proves his R.D passbook Ext.40 and denied his signature in the withdrawal slip Ext.70. P.W.38 proves his passbook Ext.119 and denied to have signed in the withdrawal slips Ext.64 and Ext.65. But he admits that he got back his money. P.W.39 proves his RD account passbook Ext.114 and disputed his signature in the withdrawal slips Ext.62 and Ext.63. But in cross-examination he has admitted to have received back the deposited amount.

The evidence of above account holders except P.W.33 proves that during the tenure of accused as postmaster, they made transaction in their respective passbooks at

Kalarahanga branch post-office and accused as a duty bound sole authority had received money and had endorsed in the passbooks.

7. With regard to status of accused as Postmaster which is to be dealt separately in affirmative, it may be seen that P.W.24 has given vivid description of procedure to open and operate the savings bank account and R.D accounts and duty of the branch postmaster. In cross-examination nothing has been elicited to raise a question mark on the procedure meant for the branch postmaster Kalarahanga.

Once the procedure creating responsibility and authority of accused-branch postmaster Kalarahanga is found uncontroverted, the evidence of account holders stated above that they made transactions for their respective passbooks with accused cannot be disbelieved.

Here comes the evidence of P.W.19 who while proving the passbooks has categorically stated that he had acquaintance with the signature and handwriting of the accused and he proved the original withdrawal slips Ext.58 to Ext.87 where the accused had passed order for payment vide endorsement Ext.58/1 to Ext.87/1. He has also proved the withdrawal slips of which signature was not admitted by the account holders-witnesses except P.W.33. This witness was the Deputy Post Master G.P.O Bhubaneswar and from his custody all those exhibits were seized. P.W.25 was the branch postmaster, but originally posted as peon at Kalarahanga branch post-office. He proves the signature of the accused as well as of himself in the charge report Ext.104 and the signature of the accused in the passbooks Ext.40/1

to Ext.51/7 and Ext.105/1 to Ext.120/1. He has also proved the handwritings and signatures of the accused in the respective passbooks. He proved the signature of accused in the R.D account journal vide Ext.121/1 and Ext.122/1. He proved the signatures of accused in S.B account ledger Ext.104/1 and Ext.105/1 to Ext.125/9. He proved the signatures of accused in the vouchers Ext.58/1 to Ext.93/1. In cross-examination he admits that when accused was the postmaster, he was the post-peon and accused had put initials in the passbooks which were exhibited. P.W.42 the Assistant Superintendent of Post offices has proved that in his presence specimen signatures of accused both in English and Oriya were taken in 35 pages vide Ext.131. These evidence of P.W.25 and P.W.19 that they had familiarity with the initial, signature and handwriting of accused is not demolished in any manner. No malice is attributed as to why they crushed sword against the accused. The accused had authority and was responsible to make initial, signature and endorsement in the passbooks, withdrawal slips and ledgers and the same is proved by the person employed under him and above him. I carefully verified the documents. If the documents purported to have been signed and maintained by postmaster were not done by him, the person responsible like accused-postmaster is required to explain as it was within his special means of knowledge. This is not done here.

Learned counsel for defence argued that in absence of handwriting expert opinion, the court cannot conclude that the documents bear the signatures and handwriting of the accused. In support of his contention he has relied on the

decision reported in **(2013) 56 OCR (SC) 107 B.Raghuvir Acharya -vrs- Central Bureau of Investigation**. Learned Spl.P.P repelled the above contention stating that the evidence of P.W.19 and P.W.25 as well as account holders is admissible u/s.47 of the Evidence Act and when some of the witnesses are not cross-examined in this regard, there was no need to seek handwriting expert opinion. He buttressed his argument stating that B.Raghuvir case does not prescribe a proposition that opinion of handwriting expert is a must in all cases to prove handwriting.

In the above decision of Hon'ble Apex Court, the evidence of one witness P.W.5 to prove the handwriting of accused was discarded on account of want of correspondence through which he gathered his familiarity with the handwriting of the accused. In that back drop, Their Lordships have referred to decisions in the following manner:-

"37. This court in Fakhruddin -v- State of M.P., AIR 1967 SC 1326 has held that the premise of the witness claiming familiarity with the handwriting of the author must be tested.

"11.Both under Section45 and Section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premise of the expert in the one case and to appraise the value of opinion in the other case".

38. The prosecution's failure to produce material before the Special Judge on which P.W.5 claimed familiarity with the handwriting of accused No.1 is fatal. In can safely be stated

that the prosecution has failed to establish the premise of witness in order to allow the Special Court to appreciate the veracity of assertions made by P.W.5.

39. In *Mobarik Ali Ahmed -v- State of Bombay*;, (1958) SCR 328 at page 342 this Court held as follows :

".... It may be proof of the handwriting of the documents, or of the signature, by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act. It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the Court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender, limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship. In an appropriate case the Court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship."

In the case at hand, the position on direct evidence to prove the handwriting of accused is in abundance and for that the absence of handwriting expert opinion cannot be said a deficiency to establish prosecution case.

- 8.** Here comes the relevant contention of the learned Spl.P.P with regard to deposit of money towards misappropriation due, which according to him, amounts to admission of accused. P.W.18, the father of accused has stated that his son-accused had received a letter from postal authority for deposit of Rs.1,42,600/- for adjustment of loss vide Ext.35 and he (father) had given a cheque for Rs.1,30,000/- vide receipt Ext.36. In cross-examination he has stated that he had deposited all total Rs.2,72,801/- and his son had told

him that there had been some misappropriation in that branch and Postal overseer, sub-post master of key and Asst. Superintendent of post offices were involved in the misappropriation. Ext.35 is the letter to accused dated 18.5.2006 intimating the defalcation amount Rs.2,60,675/-. Ext.36 is the money receipt dated 9.6.2006. P.W.40, the Sub-Postmaster of KIIT post-office, has stated that accused after detection of misappropriation had deposited Rs.50,000/- on 2.12.2005 vide Ext.126-A, Rs.1.30,000/- on 15.6.2006 vide Ext.127, and Rs.42.649/- on 7.11.2005 vide Ext.128. He has also stated that the Superintendent of Post offices had issued acknowledgement receipt of Rs.1,42,600/- to accused towards the adjustment of loss vide Ext.130 and the total defalcated amount was Rs.2,60,675/-. This witness is not cross-examined. P.W.19 Deputy Post Master G.P.O has added feather on this point stating in his evidence at para-4 that Sr. Superintendent of Post Offices had intimated the part payment of misappropriation amount by the accused vide Ext.97, i.e. Letter dated 15.6.2007. The above evidence of P.W. 18, P.W.19 and P.W.40 getting corroboration from letter and money receipt clearly proves that after intimation to accused regarding misappropriation of money to the tune of Rs.2,60,675.30 paise, the accused and his father had deposited Rs.2,22,649/-. This deposit through correspondence in regular intervals cannot be said to be the outcome of threat or coercion. At this juncture, it may be stated that some of the account holders examined have stated to have received the money which was missed from

their accounts. For this reason, the deposit of money towards defalcation occurred under the authority of the accused in Kalarahanga branch post-office is not but an admission and this view of mine gets support from a decision reported in **2004 Criminal Law Journal 4366 Ramanandan Prasad - vrs- State of Odisha (judgment dated 2.7.2004) where it has been held:**

"11. Whatever may be the evidence adduced by the prosecution, one thing is not disputed that the appellant without any demur deposited a sum of Rs. 10,217.15, vide Exts. 7 and 7/1, and also a sum of Rs. 30,000.00 vide Exts. 7/4 and 7/5 and the said Act of the appellant fortifies the case of the prosecution that the appellant had inflated the amounts in the cash books and had misappropriated cash, might be for temporary periods. The plea of the appellant that the aforesaid amounts were found short due to wrong entries in the cash books cannot be believed. Depositing the misappropriated amount by the appellant fully substantiated the case of the prosecution that he had misappropriated the same. The technical pleas raised by the learned counsel for the appellant at this stage would therefore not stand in the way of the prosecution. "

Contextually, in the case at hand the evidence connects the link between accused and the forgery and falsification of documents. The accused was the Branch Postmaster of Kalarahanga Gramina Daka Sebak branch post-office. Under his authority as per procedure, he received money, made endorsement in the passbooks and created document of withdrawals putting his own signature and forging the signature of account holders. When the accusation was communicated to him, he and his father deposited Rs.2,22,649/-. On the conspectus of above finding, the points are to be answered.

**9. ANSWER TO POINT NO.1**

In order to avoid repetition, it is recorded that by the evidence of P.W.19 para-3, P.W.25 and P.W.41 sanctioning authority getting corroboration from Ext.94 and Ext.95. Ext.104 coupled with the admission made by accused u/s. 313 Cr.P.C , it is proved beyond reasonable doubt that accused being appointed was functioning as Postmaster in Kalarahanga Gramina Daka Sebak branch post-office from 13.8.2003 to 5.11.2005 and in that capacity he was a public servant as defined u/s. 2(c) of the P.C.Act.

**10. ANSWER TO POINT NO.II.**

Accused created false documents which are withdrawal slips vide Ext.58 to Ext.87, He did not make correct entries in the ledgers and the log books. By creating such false document withdrawal slips, he caused the department to part with the money which the account holders had deposited and thereby he intended to commit fraud. Such forgery of withdrawal slips as well as ledgers was used for the purpose of cheating. The account holders were induced fraudulently to part with their money. This act of forgery for the purpose of cheating as per section 468 IPC is proved beyond reasonable doubt .

**11. ANSWER TO POINT NO.III.**

Accused used withdrawal slips Ext.58 to Ext.87, deposit slips Ext.88 to Ext.93, R.D journals Ext.121 to Ext.125 knowing that those were not genuine, to draw money and it was done with the intention of causing wrongful gain to himself and to wrongful loss to account holders. The offence u/s. 471 IPC is also proved beyond reasonable doubt.

**12. ANSWER TO POINT NO.IV**

Accused was the postmaster and was responsible to maintain accounts of branch post-office at Kalarahanga. What is proved beyond doubt that accused made false entries and in capacity of postmaster willfully and with intent to defraud the account holders had made wrong entry in the R.D account and savings bank account passbooks and forged withdrawal slips Ext.58 to Ext.87. Subsequently, when intimation was given about defalcation by Ext.35, he and his father deposited some amount and thereby the account which was prepared to defraud was set into rectification. The offence u/s.477-A IPC is proved to the hilt.

**13. ANSWER TO POINT NO.V and VI.**

The money was entrusted to accused during his tenure at Kalarahanga Gramina Daka Sebak branch Post-office, Bhubaneswar. In reference to u/s. 409 IPC and 13(1)(c) of P.C.Act, acquittal is solicited on account of incurable vague charge. Learned defence counsel would argue that time stipulation for the charge of both the offences is in infraction of section 23 of the Prevention of Corruption Act and section 212 (2) proviso of Code of Criminal Procedure and accused could not meet such vague charge resulting prejudice and thereby being misled by such error, failure of justice has been occasioned. According to him, such error was the consequence of prosecution's failure to provide the particulars year wise as mandated under the above provisions. The points being technical need deeper scrutiny.

While framing charge for section 409 IPC and also for offence u/s. 13(1)(c) of the P.C.Act the period was stated to

be from 13.8.2005 to 5.11.2005 alleging breach of trust for a sum of Rs.1,63,890.30paise. The sanction order and charge sheet do not specify year wise defalcation amount. In the sanction order Ext.126, the period of misappropriation is mentioned to be from 11.11.2003 to 29.10.2005. The same is the charge sheet. So factually the prosecution while submitting the charge sheet has not specified the dates to include the time between the first and last of such dates not exceeding one year. Once such specifics are found lacking, the time included for framing charge of misappropriation steps out of one year. It is incurable. The plea of accused that he was prejudiced by such error in the charge cannot be discarded outright. When the framed charge being incurable has occasioned the failure of justice, the defence is entitled to be given benefit of doubt.

In this context, the following decisions are apt to be referred to. **(1) AIR 1953 Orissa Page-258 Guru Charan Samal -v- State (2) 1960 Supreme Court-661, Kadiri Kunha Ahammad -v- State of Madras (3) AIR 1962 Supreme Court -1153 State of Bombay -v- Umar Saheb Buren Saheb. (4) 1965 Supreme Court 1248 Ranchhaodlar -vrs- State of M.P.**

Suffice is to conclude that with regard being had to the failure of justice for the error of charge which is not curable at this stage, the accused is entitled to be given benefit of doubt of offences u/s. 409 IPC and under Section 13(1)(c) of P.C.Act.

**14. ANSWER TO POINT NO.VII.**

The accused as postmaster of Kalarahanga Gramin Daka Sevak branch post office has forged withdrawal slips and created false documents in the passbooks of account holders and by such illegal means he had obtained pecuniary advantage of sum of Rs.2,60,675/-. Having taken such pecuniary advantage he had deposited a sum of Rs.2,22,649/-. Such deposit proves the taking of pecuniary advantage resulting wrongful loss to the department and account holders. The indemnification of pecuniary advantage is still wanting for a sum of Rs.38,024/-. The official position was misused and the ingredients of offence u/s. 13(1)(d) are proved to the hilt.

**15. ANSWER TO POINT NO. VIII**

Learned Defence counsel urged the invalidity of sanction as required u/s. 19 of the P.C.Act stating that no independent application of mind was made before signing Ext.126.

Sanction is proved by P.W.41 who was a Senior Superintendent of Post office, Bhubaneswar. As Head of Postal division, he had authority to remove the accused from service. He has proved sanction order Ext.126.

In this regard law requiring previous sanction u/s. 19 of the P.C.Act is well enumerated in the decision reported **2014 Cri.L.J 930 (S.C.) C.B.I. -vrs- Ashok Kumar Agarwala.**

In the above decision Their Lordships have reiterated that Court must examine the issue regarding failure of justice

in the true sense or a camouflage argument relating to sanction.

Tested in the touchstone of above law, the sanction order Ext.126 is found valid and defence contention is not acceptable.

- 16.** In the result, accused is held not guilty of the offences u/s. 409 IPC and u/s. 13(1)(c) of the P.C.Act and is acquitted therefrom u/s. 248 (1) Cr.P.C. But the accused is held guilty of the offences u/s. 468/ 471/ 477(A) of IPC and u/s. 13(2) read with Section 13(1)(d) of the P.C.Act, 1988 and is convicted thereunder.

The privilege of Probation of Offenders Act is not extendable u/s.18 of the Prevention of Offenders Act, 1958. Having regards to the number of depositors interest involved as well as the nature of punishment, the benefit of Probation of Offenders Act is denied to the accused.

Special Judge, C.B.I.-II, Bhubaneswar.

Typed to my dictation and corrected by me. The Judgment is pronounced in the open court today this the 17<sup>th</sup> November, 2015.

Special Judge, C.B.I.-II, Bhubaneswar.

**HEARING ON POINT OF SENTENCE.**

Heard the convict and the learned counsels for both parties. Leniency is prayed. Having regards to nature of criminal misconduct established, the doctrine of proportionality in awarding sentence would be adhered to. The minimum sentence would serve the ends of justice. The convict is sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.25,000/- in default to undergo rigorous imprisonment for three months for the offence u/s. 468 IPC, sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.25,000/- in default to undergo rigorous imprisonment for three months for the offence u/s. 471 IPC, sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.25,000/- in default to undergo rigorous imprisonment for three months for the offence u/s. 477-A IPC and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 25,000/- in default to undergo rigorous imprisonment for three months for the offence under Section 13(1) (d) punishable u/s. 13(2) of the Prevention of Corruption Act, 1988. The substantive sentences awarded are to run concurrently.

The period undergone as UTP be set off u/s. 428 Cr.P.C.

Zimanamas be cancelled after two months of the appeal period, if no appeal is preferred against this judgment and in case of appeal, the same shall be subjected to appeal.

Special Judge, C.B.I.-II, Bhubaneswar.

Dictated and corrected by me. Sentence is pronounced in the open court today this the 17<sup>th</sup> November, 2015.

Special Judge, C.B.I.-II, Bhubaneswar.

**LIST OF WITNESSES EXAMINED FOR THE PROSECUTION.**

P.W.1	Aditi Das
P.W.2.	Sanyasi Das
P.W.3.	Gobind Behera.
P.W.4.	Pradeep Swain.
P.W.5.	Siba Das
P.W.6	Sankar Das
P.W.7	Sukanta Das
P.W.8	G.Das.
P.W.9	Rajkumari Das
P.W.10	Bhampei Das
P.W.11	Udhaba Das
P.W.12	Damodar Das
P.W.13	Suji Das
P.W.14	Pramila Sethy
P.W.15	Basanti Das
P.W.16	Chalendranath Das
P.W.17	Bina Das
P.W.18	Chandra Sekhar Mishra.
P.W.19	Dillip Kumar Samal.
P.W.20	Rajat Kumar Behera
P.W.21	Tusar Ranjan Pathy
P.W.22	Gayatri Pathi
P.W.23	Lingaraj Nayak
P.W.24	Sanatan Barik
P.W.25	Parikhita Padhy
P.W.26	Sanjukta Naik
P.W.27	Kabiraj Naik
P.W.28	Nakul Barik

P.W.29	Sukadev Mishra
P.W.30	Purna Chandra Behera
P.W.31	Sandhyarani Dash
P.W.32	Bhubaneswari Behera
P.W.33	Anjana Naik
P.W.34	Sailabala Panda
P.W.35	Kanhu charan Mishra
P.W.36	Sabitri Biswal
P.W.37	Jagannath Muduli
P.W.38	Runu Pathy
P.W.39	Bidulata Behera
P.W.40	Laxmidhar Behera
P.W.41	Padmalochan Bhol
P.W.42	Maheswar Sethi
P.W.43	Legi Thomas Sahu

**LIST OF WITNESSES EXAMINED FOR THE DEFENCE**

None.

**LIST OF DOCUMENTS EXHIBITED FOR THE PROSECUTION.**

Ext.1.	Passbook
Ext.2	Withdrawal slip
Ext.3.	Passbook
Ext.4 &5	Withdrawal forms.
Ext.6	Passbook
Ext.7	Withdrawal slip
Ext.8	Passbook
Ext.9	Withdrawal slip
Ext.10	Passbook
Ext.11	Withdrawal slip
Ext.12	Withdrawal slip.

Ext.13, 15, 17 and 19	Passbooks.
Exts.14, 16 and 18	Withdrawal slips.
Ext.20	Passbook
Ext.21	Withdrawal slip
Ext.22	Passbook
Ext.23 & 24.	Withdrawal slips
Ext.25 and 26	Withdrawal slips
Ext.27	Passbook
Ext.28	Passbook.
Ext.29 and 30	Withdrawal slips
Ext.31	Passbook
Ext.32	Passbook
Ext.33 and 34	Passbooks
Ext.33/1 and 34/1	Withdrawal slips
Ex.35	Letter
Ext.36	Receipt token
Ext.37	Seizure list
Ext.37/1.	Signature of P.W.19
Ext.38	Document
Ext.39	Seizure list
Ext.39/1.	Signature of P.W.19
Ext.40 to 57	Passbooks.
Ext.58 to 87	Withdrawal slips
Ext.58/1 to 87/1	Endorsement.
Ext.88 to 93	Deposit slips
Ext.94 to 96	Letters
Ext.97	Letter

Ext.97/1.	Signature of Padmalochan Kar.
Ext.98	Sanction memo
Ext.99 and 100	Withdrawal slips
Ext.58/2.	Not the signature of P.W.22.
Ext.101	Seizure list
Ext.101/1	Signature of P.W.23
Ext.102 and 103	Documents
Ext.104	Charge report.
Ext.104/1	Signature of P.W.25
Ext.104/2	Signature of accused.
Ext.40/1 to 57/1	Handwriting and signatures of the accused in the passbooks.
Ext.1/1, 3/1, 6/1, 8/1, 10/1, 13/1, 15/1, 17/1, 19/1, 20/1, 22/1, 27/1, 28/1, 31/1, 33/1, and 34/1	Handwritings of the accused.
Ext.105 to 120	Savings passbook of different depositors of Kalarahanga post office.
Ext.105/1 to 120/1	Signatures of the accused.
Ext.121	Handwriting and signature of the accused
Ext.121/1	Handwriting and signature of the accused
Ext.122	R.D journal
Ext.122/1	Signatures of the accused
Ext.123	Savings bank journal of Kalarahanga branch post-office.
Ext.123/1	Signature of the accused.
Ext.124	Savings bank ledger
Ext.124/1	Signature of accused.
Ext.125	Written statement.
Ext.125/1 to 125/9	Signatures of accused.

Ext.58/1 to 93/1	Signature of accused on the vouchers.
Ext.2/1, 4/1, 5/1, 7/1, 9/1, 11/1, 12/1, 14/1, 16/1, 18/1, 21/1, 23/1, 24/1, 25/1, 26/1, 29/1 and 30/1	Signatures of the accused.
Ext.126	Sanction order
Ext.126/1.	Signature of P.W.41
Ext.126-A	Receipt No.76 dt.2.12.2005.
Ext.127	Receipt No.86 dated 15.6.2006
Ext.128	Receipt N.59 dt. 7.11.05
Ext.129	Receipt No.67 dt.19.11.05
Ext.130	Acknowledgement of the receipt
Ext.131	Specimen handwritings
Ext.131/1	Signature of P.W.42
Ext.132	FIR
Ext.132/1	Signature of S.P. CBI
Ext.37/2.	Signature of P.W.43.
Ext.39/2	Signature of P.W.43
Ext.101/2	Signature of P.W.43
Ext.133	Specimen signature of Kabiraj Nayak
Ext.134	Specimen signature of Sanjukta Nayak
Ext.135	Specimen signature of Sailabala Panda
Ext.136	Specimen signature of Bisnupriya Pati
Ext.137	Specimen signature of Nakula Barik
Ext.138	Specimen signature of Bidulata Behera
Ext.139	Specimen signature of Runu Pathy
Ext.140	Specimen signature of Basanti Devi
Ext.141	Specimen signature of Purna Chandra Behera

Ext.142	Specimen signature of Pramila Sethi
Ext.143	Specimen signature of Sabita Biswal.
Ext.133/1	Signature of Kabiraj Nayak
Ext.134/1	Signature of Sanjukta Nayak
Ext.135/1	Signature of Sailabala Panda
Ext.136/1	Signature of Bishnupriya Pathy
Ext.137/1	Signature of Nakula Barik
Ext.138/1	Signature of Bidulata Behera
Ext.139/1.	Signature of Runu Pathy
Ext.140/1.	Signature of Basanti devi
Ext.141/1	Signature of Purna Chandra Behera
Ext.142/1	Signature of Pramila Sethi
Ext.143/1	Signature of Sabita Biswal.
Ext.144	Seizure list
Ext.144/1	Signature of P.W.4
Ext.145	Seizure list
Ext.145/1	Signature of P.w.43
Ext.146	Seizure list
Ext.146/1	Signature of P.W.43
Ext.147	Seizure list
Ext.147/1.	Signature of P.W.43.

**LIST OF DOCUMENTS EXHIBITED BY THE DEFENCE.**

NIL.

Special Judge, C.B.I.-II, Bhubaneswar.