

IN THE COURT OF THE SPECIAL JUDGE, C.B.I. COURT NO.II,  
BHUBANSWAR.

PRESENT:

**Shri S.K.Mishra,**  
Special Judge, C.B.I. Court No.II,  
Bhubaneswar.

**T.R. Case No.18 of 2007**

Arising out of R.C.No.1(A) of 2006.

Date of Argument : 01.11.2016

Date of Judgment : 08.11.2016

Republic of India.

Versus.

1. Santosh Kumar Joshi, aged about 63 years,  
Son of late Ganesh Narayan Joshi,  
At- Daleipada, P.S. Sambalpur Town, Dist. Sambalpur,  
Presently residing at-Nayabazar Sector-21, P.S. Plant  
Side Road, Rourkela, Dist. Sundargarh.
2. Debananda Bhusagar, aged about 44 years,  
Son of Ekadasia Bhusagar, Vill. Kadalimunda,  
P.S. Sambalpur Sadar, Dist. Sambalpur.

... Accused persons.

For the prosecution : Sri Ajay Singh, P.P. C.B.I.  
Sri A.K.Jaiswal, P.P. C.B.I.

For accused No.1. : Sri P.K.Sahoo& Associates, Advs.  
For accused No.2. : Sri G.Acharya& Associates, Advs.

Offences U/S.409, 120-B, 420, IPC and 13(2) r/w Section 13(1)(c)  
and 13 (1)(d) of the Prevention of Corruption Act, 1988.

**JUDGMENT**

1. The accused Santosh Kumar Joshi, Branch Manager,  
Punjab National Bank, Badarama branch stands charged for the  
commission of offences u/s. 409, 120(B), 420, 471 of the

Indian Penal Code and u/s. 13(2) read with section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. The accused Debananda Bhusagar Proprietor of M/S. Sagar Fuel stands charged for the commission of offences u/s. 120(B),420 and 471 of the Indian Penal Code.

2. Prosecution case, in brief, is that accused Santosh Kumar Joshi was working as Branch Manager in Badarama Branch during the period from 26.4.2002 to 2.5.2005. The accused Debananda Bhusagar, proprietor of M/S. Sagar Fuels having its Indian Oil Petrol station at Jamankira in the district of Sambalpur and he had one S.F.Account bearing No. 2836 (in P.N.B. saving bank (SB) account is known as Saving Fund (SF) account) as well as one Cash Credit Account No.28 having cash credit limit of Rs.4 lakhs in PNB Badarama branch. It is the further case of the prosecution that as on 28.6.2003, a sum of Rs.7,95,340/- was balance in the S.F. A/c No.2 of Smt. Sasi Satpathy and Rs.89,779/- was in the S.F. A/c No.723 of Sri Kulbir Singh. It is alleged that on 28.6.2003 accused Joshi being the branch manager of PNB, Badarama branch prepared two numbers of duplicate passbooks relating to S.F. A/c No.2 and S.F. A/c No. 723 in the name of Smt. Sasi Satpathy and Sri Kulbir Singh respectively without any application and without their knowledge and mentioned the credit of balance of Rs.7,95,340/- in S.F.A/c no.2 and Rs.89,779/- in S.F. A/c No.723. Thereafter, two applications were filed by both the accused persons purportedly prepared by the above named two customers, requesting the Branch Manager for pledging the deposits of those accounts for sanctioning Over Draft (O.D.) to M/S. Sagar Fuel of accused Sri Bhusagar. So, accused- branch manager, Sri Joshi took the balance of both the aforesaid S.F. accounts as securities and allowed over draft of Rs.8,70,000/-

in respect of O.D. A/c No. 60 of M/S. Sagar Fuels whose proprietor is the accused Bhusagar on the same day i.e. on 28.6.2003. It is further alleged that on the same day accused-branch manager Sri Joshi signed on those duplicate passbooks with remarks that the amounts were pledged to the Bank as "lien" towards the O.D. sanctioned in favour of the accused Sri Bhusagar and transferred the aforesaid over draft amount from the O.D.No.60 of accused Bhusagar, proprietor of M/S. Sagar Fuel to his C.C. A/c No.28.

It is the specific case of the prosecution that both the customers Smt. Satpathy and Sri Singh have not signed on those "lien" documents as their original passbooks were with them. Accused- branch manager Sri Joshi allowed both the account holders for transactions and has made payments both the customers passing their cheques and withdrawal slips even after the alleged date of lien i.e. 28.6.2003. Accused- branch manager Sri Joshi has passed the cheque No. 326801 dated 4.3.2004 for Rs.2 lakhs, cheque No.326803 dated 14.7.2004, cheque No. 326806 dated 14.7.2004, cheque No.326807 dated 14.7.2004, and cheque No.326808 dated 14.7.2004 each for Rs.50,000/- of Smt. Sasi Satpathy from her S.F A/c No. 2 and also passed the withdrawal slips dated 23.10.2003 for Rs.30,000/- and dated 23.6.2004 for Rs.5,000/- of Sri Kulbir Singh, even though the accused Sri Joshi himself had taken both the accounts as security for the O.D. No.60 of accused Bhusagar, proprietor of M/S. Sagar Fuels and has mentioned the said fact in the ledger. It is specifically alleged that accused Sri Bhusagar had not paid the O.D. amount of Rs.8,75,737/- in the O.D. A/c No.60 of M/S. Sagar Fuel.

It is the further case of the prosecution that though the S.F. accounts bearing No. 3154, 3060, 3069 and 3079 were

opened in the name Sri Debendra Jaipuria of Jamankira, Shri Dhiren Kumar Gardia of Jamankira, Shri Uma Kanta Jhakar of Padiabahal and Shri Mitrabhanu Pradhan of Padiabahal respectively, those accounts were used by accused Bhusagar. It is revealed that as accused- branch manager was not competent to purchase cheques issued by private parties, purchased seven cheques of different private parties drawn in the name of accused Sri Bhusagar and credited the amount to the Cash credit account No.28 of M/S. Sagar Fuels before clearing the same, for which the accused Sri Bhusagar had withdrawn that amount. On 21.2.2004 accused – branch manager had purchased cheque No.013048 for Rs.73,000/- issued by Sri Braja Mohan Pradhan of M/S. Lingaraj Cement in the name of accused Sri Bhusagar and drawn on its C.C account at P.N.B. Sambalpur and against the said cheque accused Sri Joshi instantly credited an amount of Rs.72,170/- to the S.F.A/c No.2836 of accused Bhusagar after deducting the commission before clearing the same. Similarly, accused Sri Joshi purchased another cheque bearing no.0832891 for Rs.60,000/- issued by Sri Rupesh Panigrahi of M/S.Hari Omm Traders in favour of Shri Debananda Jaipuria which was drawn on his current account at SBI,ADB, Sambalpur and credited the amount of Rs.59340/- in the account of Jaipuria after deducting commission. The accused Sri Joshi credited the amount of those cheques by debiting the outstation demand draft (ODD) to the account of the bank. On the same day i.e. on 21.2.2004, after the credits were given, Rs.59,400/- was transferred from S.F. A/c No.3154 of Shri Jaipuria and Rs.72,700/- was transferred from the S.F.A/c No. 2836 of accused Sri Bhusagar to the Cash Credit A/c No.28 of M/S. Sagar Fuels. On the same day accused Sri Bhusagar had withdrawn the amount of

Rs.3,30,000/- in the form of a draft bearing No.501903 and issued in favour of I.O.C. Ltd. Sambalpur which was allowed by the accused-branch manager Sri Joshi.

3. It is further alleged that accused branch manager Sri Joshi had purchased five cheques bearing No.043015 for Rs.66,734/- from Shri Uma KantaJhakar, cheque No.043013 for Rs.66,734/- from Sri Mitrabhanu Pradhan, cheque No.043014 for Rs.66,734/- from Shri Debananda Jaipuria, cheque no.043012 for Rs.66,734/- from Sri Debananda Bhusagar issued by Shri Braja Mohan Pradhan of M/s. Lingaraj Cement on his C.C account of P.N.B. Sambalpur and cheque No.0832893 for Rs.66,734/- from Shri Dhiren Gardia issued by Shri Rupesh Kumar Panigrahi of M/s. Hari Omm Traders on his C.A account at SBI, ADB, Sambalpur, total amounting to Rs.3,33,670/-. The accused Shri Joshi also instantly credited an amount of Rs.65,972/- each to the respective accounts of the above named account-holders before clearing the same after deducting the commission by debiting branch O.D.D.. On 6.3.2004 the proceeds of the above five cheques were transferred to the C.C. A/c No. 28 of M/S. Sagar Fuels of accused Shri Bhusagar through four debit vouchers for Rs.65,900/- each whereas an amount ofRs.70,900/- was transferred from the S.F account of Sri Bhusagar to his C.C. A/c No.28. So, accused Sri Bhusagar filing a draft bearing No.5019313 withdrew the amount of Rs.3,33,000/- in the name of I.O.C.L.Sambalpur.

It is also the case of the prosecution that when the above seven cheques amounting to Rs.4,66,670/- were sent for collection from the P.N.B. Sambalpur and S.B.I. A.D.B. Sambalpur, those were returned unpaid by both the banks due to insufficient balance. Thus, an amount of Rs.4,66,670/- was

outstanding debit balance in the O.D.D. account of the Bank towards the uncleared cheques.

It is further alleged that on 1.3.2004 accused Sri Joshi sanctioned flood loan of Rs.2 lakhs each in favour of Shri Bhakta Batsal Sharma bearing S.F. A/c No. 3470, Shri Kushadhwaja Pradhan bearing S.F.A/c No. 3472 and Shri Laxmidhar Swain bearing S.F.A/c No. 3469 respectively. But on 29.3.2004 accused Joshi transferred the loan amount of Rs.2 lakhs each from the above three accounts without the knowledge of those account holders and credited the amount of Rs.4,67,000/- to the O.D.D. account of the Bank. Accused Joshi has also transferred Rs.33,000/- out of the balance amount Rs.6 lakhs, to the C.C. A/c No.28 of M/S. Sagar Fuels of Debananda Bhusagar to bring the account within the sanctioned C.C limits of Rs. 4 lakhs, as the said account was over drawn by Rs.20,148/-. Accused Sri Joshi further transferred the balance amount of Rs.1 lakh out of Rs.6 lakhs, to O.D. A/c No.60 of M/S. Sagar Fuels to adjust the interest accrued against the O.D. amount sanctioned earlier.

It is further alleged that none of the debit transfer vouchers purportedly issued by the loanee- account holders bear their signature providing that their consent had not taken for transfer of the same. Accused Joshi extended undue pecuniary benefits amounting to Rs.6 lakhs apart from the O.D. account of Rs.8,70,000/- sanctioned in favour of accused Sri Bhusagar causing loss to the Bank.

The Supdt. of Police, C.B.I, Bhubaneswar Sri Pranab Mohanty on 6.1.2006 registered FIR on his own report vide R.C. Case No.1 (A) of 2006 u/s. 120(B), 409, 420, 468, 471 of IPC and section 13(2) read with Section 13(1)(d) of P.C.Act, 1988 and directed Sri S.D.Mishra, Inspector of Police, C.B.I for

investigation. During investigation, he examined witnesses and seized certain documents. It is specifically alleged that during the period from 26.4.2002 to 2.5.2005 accused Santosh Kumar Joshi Branch Manager of PNB, Badarama branch conspired with accused Sri Debananda Bhusagar cheated the bank and accused Joshi being an employee of the PNB Badarama branch abusing his official position dishonestly misappropriated the total amount of Rs.14,70,000/- by falsifying the records of the bank and thus, caused wrongful loss to the bank. After completion of usual investigation, the I.O submitted the police reports u/s. 173 (2) Cr.P.C in the form of charge sheets. The court took cognizance on 10.5.2007. Hence, this trial.

4. Defence plea is one of complete denial of complicity of the accused persons in the alleged crimes.
5. The points for determination are :
  - i. Whether the accused Santosh Kumar Joshi during the period from 26.4.2002 to 2.5.2005 while working as Branch Manager, P.N.B. Badarama branch and in such capacity of a public servant entrusted with a sum of Rs.14,70,000/- which was the property of the Bank or having dominion over the said property committed criminal breach of trust in respect of the said property?
  - ii. Whether the accused Santosh Kumar Joshi and Debananda Bhusagar have entered into a criminal conspiracy with each other and cheated the P.N.B. Badarama branch to the tune of Rs.14,70,000/- by falsifying the records and documents of the Bank?
  - iii. Whether the accused persons cheated the P.N.B. Badarama branch by dishonestly inducing it to deliver Rs.14,70,000/- by forging the transfer debit and credit

vouchers after sanctioning flood loan in the name of Bhakta Batsal Sharma, Kushadhwaja Pradhan and Laxmidhar Swain on 1.3.2004 and on 29.3.2004 transferred the loan amounts to the ODD account of the bank and to the C.C. a/c no.28 as well as O.D. No.60 of M/S. Sagar Fuels without their knowledge?

- iv. Whether the accused Joshi during the aforesaid period being a public servant working as Branch Manager, P.N.B. Badarama branch dishonestly misappropriated the amount of Rs.14,70,000/- which was entrusted to him as a public servant and by transferring the said amount to the account of accused Bhusagar and to the ODD account of the Bank for which the bank sustained loss of the said amount?
  - v. Whether the accused Joshi during the aforesaid period being a public servant working as Branch Manager, PNB Badarama branch by corrupt and illegal means or otherwise abusing his position as such public servant obtained for him pecuniary advantage to the tune of Rs.14,70,000/- by falsifying the documents of the Bank and by transferring the amounts to the O.D. Account and C.C. account of accused Bhusagar and O.D.D. account of the Bank without the knowledge of the different account holders and the bank sustained loss of the said amount?
6. In order to prove its case, the prosecution has examined as many as 21 witnesses, whereas the defence has adduced no evidence. Of 21 witnesses, P.W.1, P.W.8, P.W.15 and P.W.18 are the employees of P.N.B. Badarama branch. P.W.2 is an employee of the accused Sri Bhusagar. P.Ws.3 , P.W.4 and P.W.5 are the account holders of the Bank in whose favour accused Sri Joshi sanctioned flood loan of Rs.2 lakhs each and

subsequently had withdrawn the said amount without their consent. P.W.6 is the Branch Manager of SBI ADB Sambalpur who had furnished information relating to the account of Hari Om Traders to the S.P.C.B.I. on 17.3.2007. P.W.7 is the Branch Manager of PNB Sambalpur branch who had also furnished the information about M/S. Lingaraj Cement stores at Padiabahal to the S.P.C.B.I. on 22.9.2006. P.W.9 and P.W.20 are the daughter and granddaughter respectively of Smt. Sasi Satpathy, account holder in respect of S.F. A/c No.2. P.W.11 who was the owner of shop namely Hari Om Traders at Padiabahal Sambalpur. P.W.12 is one of the account holders of PNB Badarama branch and has proved Ext.15 withdrawal slip which has not filled up by him. P.W.13 is another account holder of PNB Badarama branch and has proved that the contents and signature of Ext.16 pay-in-slip do not belong to him. P.W.14 is one of the account holders of PNB Badarama branch and has proved that the signature appearing in Ext.14 pay-in-slip does not belong to him and he has not filled up the same. P.W.19 is another account holder having a cash credit account bearing No. C.C. 495 in the main branch, Sambalpur and has proved that his younger brother was having cement business and was the proprietor of M/s. Lingaraj Cement Store at Padiabahal. P.W.16 is the chemical examiner and has proved his reports vide Ext.103 and Ext.108. P.W.17 is the I.O of this case. One hundred fifty nine documents have been exhibited on behalf of the prosecution while only one document has been examined on behalf of the defence.

7. Factum of status of accused as Branch Manager, Punjab National Bank, Badarama branch is proved by the oral evidence of P.W.8 Durga Charan Murmu, the then officer in PNB Badarama Branch. He has testified in his evidence that during

his tenure accused Sri Santosh Kumar Joshi was working as Branch Manager and one Padmanav Dehury was working as cashier in that branch. He has proved the signature of accused Sri Joshi which have been marked as Ext.80/1, Ext.88/1, Ext.94/1, Ext.95/1, Ext.96/1, Ext.97/1, Ext.98/1 and Ext.99/1. P.W.15 Sri Rajesh Mahanta who was serving as an officer in P.N.B. Badarama branch from 31.12.2004 to November, 2006 has categorically deposed that accused Sri Santosh Kumar Joshi was the Branch Manager before 2004 till 2005 in that branch and thereafter he was placed under suspension. He has claimed in his evidence that he is acquainted with the handwriting and signature of the accused Sri Joshi as he was working with him in the said branch. Fact not disputed obviates debate, prosecution is found to have proved that as per Section 2 (c) of the P.C.Act,1988, accused Santosh Kumar Joshi was a public servant during the relevant period from 26.4.2002 to 2.5.2005 for being posted as Branch Manager in P.N.B. Badarama branch.

8. Accused Debananda Bhusagar is the proprietor of M/S. Sagar Fuel at Jamankira, Sambalpur and is a customer of Punjab Nationalised Bank, Badarama branch.
9. Undeniably, one of the important witnesses for the prosecution is Durga Charan Murmu who was working as an Officer in P.N.B. Badarama Branch along with the accused Santosh Kumar Joshi, Branch Manager from 2004 to January, 2005. This witness appearing as P.W.8 has deposed that all the entries made in saving bank passbook No.2 vide Ext.79 of Smt. Sashi Satpathy are the handwriting of accused-Manager, Santosh Kumar Joshi and on the cover page of the passbook, accused Sri Joshi had made endorsement that "pledged to O.D. 60". He has further deposed that by 16.6.2003 there was

balance of Rs.7,95,340/-in that passbook. He has proved the loan application dated 28.6.2003 of Sashi Satpathy as Ext.80 in which accused Sri Joshi had endorsed sanctioning the loan vide Ext.81. It is the specific evidence of P.W.8 that on 8.3.2004 he passed a cheque bearing no.326802 issued by Smt.Sashi Satpathy in favour of "self" in respect of her S.B.A/c No.2 for payment of Rs.2 lakhs and the payment was made on the same day vide Ext.81. He has categorically deposed that when he passed cheque no.81 on 8.3.2004, there was no endorsement in the original passbook that it was pledged to O.D. No.60. According to P.W.8, accused Joshi had passed one cheque bearing no.326801 vide Ext.82 for Rs.2,00,000/- on 4.3.2004 and four cheques bearing No.326803 for Rs.50,000/- vide Ext.83, cheque no.326806 for Rs.50,000/- vide Ext.84, cheque No.326807 for Rs.50,000/- vide Ext.85 and cheque baring No.326808 for Rs.50,000/- vide Ext.86 on 14.7.2004 issued by Sashi Satpathy in favour of "self" in respect of S.B. A/c No.2. All the aforesaid five cheques have been passed by accused Santosh Kumar Joshi having knowledge that S.B. A/c no.2 was pledged to O.D. No.60 and payments have been made on the same day.

It is the evidence of P.W.8 that Savings bank A/c No.723 was of one Kulbir Singh in which accused Joshi had made all the entries and made an endorsement on its cover page that the account was pledged vide Ext.87. His evidence further reveals that Kulbir Singh submitted a loan application form in the Bank on 28.6.2003 in which accused Joshi endorsed that the loan was sanctioned and Ext.88/1 is the endorsement of accused Joshi. He has proved the withdrawal slips dated 8.7.2004 for Rs.5,000/-, dated 23.10.2003 for Rs.30,000/- and dated 23.6.2004 in respect of A/c No.723 of Kulbir Singh

as Ext.89, Ext.90 and Ext.91. All those three withdrawal slips were passed by accused Joshi for payment.

P.W.8 has testified in his evidence that Ext.55 is the personal loan application dated 1.3.2004 of Kushadhwaja Pradhan and on the same day loan amount of Rs.2 lakhs was sanctioned by accused Joshi and the loan amount was transferred to the S.F.A/c No.3472 of Sri Pradhan. He has proved the credit voucher dated 1.3.2004 by Kushadhwaja Pradhan for transfer of Rs.2 lakhs from loan account to his S.F. A/c No.3472 which has been marked Ext.92. He has further deposed that on 28.6.2003 accused Debananda Bhusagar, proprietor of M/S. Sagar Fuels submitted one transfer voucher of Rs.8,70,000/- for transferring the same from his O.D.No.60 to Cash Credit A/c No.28 and it was done by accused Joshi on the same day vide credit voucher Ext.39. The accused Joshi also sanctioned a loan of Rs.8,70,000/- in favour of accused Bhusagar on the basis of his loan application form vide Ext.93.

It is the specific evidence of P.W.8 that Ext.94 is the debit voucher dated 29.3.2004 of P.N.B. Badarama branch for transfer of Rs.2 lakhs from account No.3469 of Laxmidhar Swain to the cash credit A/cNo.28 of accused Bhusagar. He has claimed in his evidence that though the debit voucher bears no signature of account holder, accused Joshi has passed it and Ext.94/1 is the signature of accused Joshi. Similarly, he has proved the debit voucher dated 29.3.2004 for transfer of Rs.2 lakhs from saving bank account no.3470 to O.D. Account of accused Bhusagar, debit voucher dated 29.3.2004 for transfer of Rs.2 lakhs from saving bank account no.3472 to ODD 6733 and C.C. a/c no.28 of accused Bhusagar, credit voucher dated 29.3.2004 of P.N.B. Badarama branch transferring Rs.33,000/- to the account of Sagar Fuel having signature of

accused Joshi, credit voucher dated 29.3.2004 for transferring Rs.4,67,000/- having no endorsement and signature of account holder and another credit voucher dated 29.3.2004 for transferring an amount of Rs.1 lakh to O.D. A/c No.60 of accused Bhusagar having no signature of account holder which have been marked as Ext.95, Ext.96, Ext.97, Ext.98 and Ext.99 respectively. Exts.95/1 to Ext.99/1 are signatures of accused Joshi as he has passed those vouchers.

10. The evidence of P.W.8 has received ample corroboration in all material facts from the witness P.W.15 Sri Rajesh Mahanta who was working as an Officer in P.N.B. Badarama branch for the period from 31.12.2004 to November, 2006. He has categorically stated in his evidence that as on 16.6.2003 there was balance of Rs.7,95,340/- in the savings passbook No. 2 of Smt. Sasi Satpathy vide Ext.79 and accused Sri Joshi had made endorsement in this passbook as "under Bank's lien" with signature and written in its front page that "pledged to current account no.60" with initial. He has proved the five bearer cheques vide Ext.82 to Ext.86 which were passed by the accused Sri Joshi. P.W.15 has testified that as on 31.3.2003 there was balance of Rs.89,779/- in S.F. A/c No.723 of Kulbir Singh and the accused Sri Joshi had made endorsement in its as "under bank's lien" and also mentioned in its front page that it is pledged to O.D.No.60 with initial. According to P.W.15, accused Sri Joshi had passed three withdrawal slips vide Ext.89, 90 and 91 submitted by Sri Kulbir Singh. He has proved the account opening form of accused Debananda Bhusagar vide Ext.7, demand draft application form dated 6.3.2004 of M/s. Sagar Fuel of C.C. a/c no.60 for Rs.3,33,000/- in favour of IOCL, Sambalpur and transfer credit voucher of Rs.3,34,500/- dated 6.3.2004 in favour of M/S. Sagar Fuel which were passed

by accused Sri Joshi. It is revealed from the evidence of P.W.15 that the cheque dated 6.3.2004 for Rs.3,33,670/- vide Ext.22 of M/S. Sagar Fuel executed by accused Sri Bhusagar for making demand draft in his favour. His specific testimony is that accused Sri Joshi has passed all the documents as Branch Manager of PNB Badarama branch in respect of accounts in question in connection with this case. He has identified and proved the signature of the accused Sri Joshi contained in the documents seized by the I.O. in this case. He has further stated in para-20 of his evidence that the consent of the borrower was not taken in writing in debit vouchers vide Ext.94 to Ext.96.

It is elicited in the cross-examination of P.W.15 that accused branch manager Sri Joshi had transferred the vouchers vide Ext.94 to 96 of three account holders namely Bhakta Bachhal Sharma, Kushadhwaja Pradhan and Laxmidhar Swain without their knowledge as those transfer vouchers had no consent of the above named account holders. He has categorically deposed during cross-examination for accused Sri Joshi that three withdrawal slips vide Ext.89, Ext.90 and Ext.91 were passed by accused Sri Joshi as Branch Manager of PNB Badarama branch was only empower and competent to pass those withdrawal slips. His specific answer in cross-examination is that accused- branch manager Sri Joshi was not empowered for purchase of cheques for any other account holder. In view of the evidence brought out by the defence in the cross-examination of P.W.15, cash credit loan is advanced against stock of a firm for which the proprietor is trading and overdraft advance is made against pledge of fixed deposit of bank or postal security of LIC policy. He has also stated in his cross-examination that during his tenure as an officer at PNB

Badarama branch, Sasi Satpathy and Kulbir Singh (P.W.21) had submitted their written complaint in the bank alleging irregularities in their account and he had seen those written complaints and handed over the same to the I.O of this case.

11. P.W.1 Sri Subash Chandra Lenka who is none other than one of the employees of PNB Badarama branch and was working as Manager from 2006 to 2008 in that branch. He has stated in his evidence that any branch manager of P.N.B of the rank of Scale-1 can instantly credit to the tune of Rs.15,000/- to the account of the depositor presenting a cheque of the above amount from outside sources. If the cheque amount exceeds Rs.15,000/- and instant credit is necessary, Branch Manager has to seek permission from the Zonal office. He has also stated that Branch Manager can credit up to Rs.1 lakh in case it is a Govt. cheque. His specific evidence is that on the basis of the credit vouchers for Rs.73,000/- vide Ext.13 and Rs.60,000/- vide Ext.14 submitted by accused Debananda Bhusagar, accused Joshi purchased the amount of those vouchers and credited to the account No.2836 and 3154 respectively. According to him, the amount in both the cases has been debited from outward demand draft purchase account of the Bank. He has further deposed that accused Joshi had also purchased five cheques to the tune of Rs.66,734/- each vide Ext.15 to Ext.19 and credited the same amount to the account No.3069, 4079, 3154, 2836 and 3060. The accused Joshi debited the same amount from the above accounts later through debit vouchers vide Ext.23 to Ext.27 and credited that amount to the C.C. a/c No. 28 of accused Bhusagar vide Ext.21. His evidence further reveals that accused Bhusagar issued a cheque for Rs.3,33,670/- vide Ext.22 for issuance of a cheque draft in favour of Indian Oil Corporation vide Ext.20. He

has explained in his evidence that a long book is being maintained in the bank for all transaction in respect of a particular date and has proved the long book dated 12.5.2003 vide Exgt.34, dated 5.6.2003 vide Ext.35, dated 24.6.2003 vide Ext.36. He has further explained in his evidence that all the transfers made in the bank for a particular day are being reflected in the transfer journal maintained in the bank and has proved the certified copy of the transfer journal dated 10.5.2003, 12.5.2003, 5.6.2003, 24.6.2003 and 26.3.2003 vide Ex.37. His further testimony is that the fact of debit and credit of the overdraft Rs.8,70,000/- has been reflected in the Transfer Journal vide Ext.2 and issuance of the drafts vide Ext.40 to Ext.43 issued in favour of Indian Oil Corporation has been mentioned in the Transfer Journal vide Ext.37. It is the specific evidence of P.W.1 that on 15.3.2007 the I.O of this case had seized some documents vide Ext.2 to Ext.27 as per seizure list Ext.1. He has proved the ODD voucher of the branch vide Ext.49 for Rs.3,33,670/- and the credit voucher of the bank vide Ext.50 for the above amount after deducting the commission which were seized from him by the I.O. P.W.1 has not been cross-examined by the accused Sri Bhusagar.

12. P.W.18 Laxmidhar Mahanta, who was working as Daftary in P.N.B. Badarama Branch for the period from 1998 till June, 2012. He has deposed that he know the accused Santosh Kumar Joshi as Branch Manager of that branch and as such he is acquainted with the handwriting and signature of the accused Joshi in regular course of official business. He has proved the signatures of the accused Joshi which have been marked Ext.88/1, Ext.142/1, Ext.143/1, Ext.145/1, Ext.156/1, Ext.155/1, Ext.157/1, Ext.158/1, Ext.159/1, Ext.163/2, Ext.164/2 and Ext.80/1.. It has been elicited in his cross-

examination that he knows the accused Debananda Bhusagar, proprietor of M/S. Sagar Fuel as he used to have daily transaction in their bank.

Much has been sought to be made of the admissions of P.W.1, P.W.8, P.W.18 and P.W.15, but those admissions are too trivial in nature to affect the essential credibility of the prosecution case.

14. It is pertinent to note that accused Sri Santosh Kumar Joshi being the Branch Manager of Punjab National Bank, Badarama Branch has made endorsement as "under bank's lien" in the passbooks of Sasi Satpathy and Sri Kulbir Singh, passed the debit vouchers and credit vouchers, cheques and withdrawal slips of account holders involved in this case in his official capacity. It is further elicited in the cross-examination of P.W.15 by the accused Sri Joshi that when no officer was empowered to pass vouchers, branch manager Sri Joshi only alternate for the said work as only one branch manager, one officer and one cashier-cum- clerk were working in PNB Badarama Branch. Nothing has been elicited in the cross-examination of the aforesaid witnesses by the learned counsel for the accused Sri Joshi that the accused Sri Joshi was of the rank of Scale-1 officer during the relevant period and he can instantly credit to the tune of Rs.15,000/- to the account of a private depositor presenting a cheque of the above amount from outside sources. The accused Sri Joshi has not filed a scrap of paper that he was in rank of Scale-1 officer of PNB at the relevant time for which he is empowered instantly to credit the amount more than Rs.15,000/- to the account of a depositor presenting a cheque of the outside source. In fact, the assertion of the prosecution witnesses to that effect has virtually remained unimpeached.

15. Smt. Geeta Mishra, daughter of Smt. Sashi Satpathy has been examined as P.W.9. She has deposed in her evidence that her mother had one savings bank account No.2 in P.N.B. Badarama branch where accused Joshi was the branch manager. Her further evidence is that she and her family members accompany her mother, whenever she goes to the Bank for withdrawal of money. She can identify the signature of her mother. Her specific evidence is that Ext.80 the loan application purportedly has been filed by her mother and the signatures appearing in the loan application are not the signatures of her mother. She has specifically deposed that the passbook Ext.79 is not the passbook of her mother as the original passbook of her mother was in her custody. She has proved the specimen signature card of PNB, Badarama branch containing her mother's signature which has been marked Ext.100. She has also proved the cheques issued by her mother which have been marked Ext.81 to Ext.86. Similarly, P.W.20 Dyuti Mishra, maternal granddaughter of Smt. Sashi Satpahy corroborating the evidence of P.W.9 has proved her signatures appearing on the above cheques as she has personally filled up those cheques and her signatures have been marked as Ext.81/1 to Ext.86/1 on the front side of the cheques and Ext.81/2 to Ext.84/2 on the reverse of the cheques. Her specific evidence is that she does not know about M/S. Sagar Fuels and its proprietor and her maternal grandmother had never pledged her bank account in favour of M/S. Sagar Fuels or its proprietor. According to P.w.20, Smt. Sashi Satpathy had not signed in the loan application vide Ext.80 and the signatures shown to have been given by Smt. Sashi Satpathy in Ext.80 are not the signatures of Smt.Satpathy.P.W.20 has admitted in her cross-examination

that Smt. Sasi Satpathy had not given anything separately in writing to the Bank Manager, except the cheques in question, authorising them to withdraw the money from her account. If the account holder Smt. Sasi Satpathy had not authorised P.W.9 and P.W.20 to withdraw the money from her account, the accused Sri Joshi being the branch manager of PNB Badarama branch, as to how passed the cheques submitted by P.W.9, P.W.20 and Sriti Mishra having signature of P.W.20 on the reverse of those cheques vide Ext.82 to Ext.86, having signature of P.W.9 on the reverse of cheque vide Ext.83 and having signature of Sriti Mishra sister of P.W.20 on the reverse of cheque vide Ext.85.

16. Sri Kulbir Singh one of the customers of the P.N.B. Badarama branch having one S.F. A/c No. 723 appearing as P.W.21 has deposed that he knew the accused Sri Joshi as Branch Manager of that branch of the Bank. He has proved the withdrawal slips vide Ext.89, Ext.90 and Ext.901 and has also proved his signatures therein vide Ext.89/1, Ext.90/1 and Ext.91/1. He has specifically deposed that he has not filled up the loan application vide Ext.80 and he has not pledged his S.F. Account in the said bank and the signatures vide Ext.88/3, Ext.88/4, Ext.88/5, Ext.88/6 and Ext.88/8 appearing in the loan application are not his signatures. According to P.W.21, the passbook vide Ext.87 does not belong to him and he had never made any banking transaction in favour of M/S. Sagar Fuels. P.W.21 has also testified that the I.O of this case has taken his specimen signatures vide Ext.105. It is elicited in his cross-examination that although he knows about the place where M/S. Sagar Fuel is situated at Sambalpur, he had no concern with it. He has denied a suggestion of the accused Sri Bhusagar that he had voluntarily signed in Ext.88.

17. P.W.3 Bhaktabachala Sharma, P.W.4 Kusadhwaja Pradhan and P.W.5 Laxmidhar Swain who were teachers of Jamankira Panchayat High School. They have deposed that they knew the accused Santosh Kumar Joshi as Branch Manager, P.N. B. Badarama branch. They have further deposed that in the year 2004, accused Joshi came to their school and persuaded them to avail loan from the bank for which they filed their loan applications vide Ext.51,Ext.55 and Ext.60 respectively. P.W.3 has also deposed that he has not signed in any debit voucher dated 1.3.2004 and no amount was given to him by accused Joshi in response to his loan application. He has admitted in his evidence that he had given one undertaking on 27.2.2004 to his Headmaster that in case of loan, the instalment would be deducted from his salary vide Ext.52 and Ext.52/1 is his signature. He has proved his opening account application and the specimen card of the Bank vide Ext.53 and Ext.54. P.W.4 has admitted in his evidence that Ext.56 is his transfer voucher dated 1.3.2004 for transferring the loan amount to his account and Ext.57 is the undertaking given by him to the Headmaster to deduct the instalment from his salary. He has proved his opening account application and the specimen card of the Bank vide Ext.58 and Ext.59. He has alleged in his evidence that despite several request, the loan amount of Rs.2 lakhs was not paid to him and he has never consented for transfer of his loan amount in anybody's favour. P.W.5 has admitted in his evidence that on 1.3.2004 loan amount of Rs.2 lakhs was transferred to his account through transfer voucher vide Ext.62. He has alleged in his evidence that he had never given any consent for withdrawal of the loan amount of Rs.2 lakhs from his S.B. Account. He has also proved his account opening form and the specimen signature of

the bank which have been marked as Ext.63 and Ext.64. P.W.3, P.W.4 and P.W.5 have denied the suggestion of the accused persons that they had taken one of his friends to the bank and they had made request to the branch manager to transfer the loan amount in favour of their respective friends. It is clearly revealed from the above suggestion that the amount of Rs.2 lakhs each has been transferred from their account without their knowledge.

18. P.W.11 Rupesh Kumar Panigrahi has deposed that he got a shop in the name of Hari Om Traders at Padiabahal Sambalpur and he was dealing in cement and asbestos. He has further deposed that he had one current account in the name of that firm in SBIADB, Sambalpur branch. He has claimed in his evidence that he know the accused Debananda Bhusagar proprietor of M/S. Sagar Fuel, but the accused Bhusagar had not met him on any business transaction. P.W.12 Umakanta Jhakadand P.W.13 Mitrabhanu Pradhan have deposed that they knew the accused Bhusagar while P.W.14 Debananda Jayapuria has deposed that he does not know the accused Bhusagar. P.W.12 has deposed that he had opened an account in P.N.B. Badarama branch vide Ext.7/2 and he has admitted his signature given in the specimen sheet vide Ext.101. He has categorically stated in his evidence that he has not filled up the withdrawal slip Ext.15 and also stated showing that withdrawal slip that cannot say who has filled it up and signed. P.w.13 Sri Mitrabhanu Pradhan has testified that he had one S.F. account in PNB Badarama branch and Ext.7/3 is his account opening form. He has specifically deposed that the contents and signature appearing in Ext.16 pay in-slip do not belong to him and accused Bhusagar had never contacted him for any transaction. P.W.14 Sri Debananda Jaypuria has further

deposed that he had one account in P.N.B. Badarama Branch vide Ext.7/4 the account opening form. He has further testified after verifying the specimen witness sheet of account opening form that the signature found therein does not belong to him and also the signature available in pay-in-slip Ext.14 does not belong to him and he has not filled up the form Ext.14.

19. P.W.2 Dhiren Garadia has deposed that he knew accused Debananda Bhusagar as he was working under him as salesman in his petrol pump and on his instruction, he had opened one S.F. A/c No.3060 in P.N.B. Jamankira branch on 27.1.2003. He has admitted in his evidence that accused Bhusagar was making transaction in the bank after obtaining his signatures on the forms. He has further deposed that Ext.19 is the deposit slips of cheque No.0832893 for Rs.66,734/- of SBI ADB, Sambalpur showing deposit of the said amount in his account and Ext.25 is the debit voucher dated 6.3.2004 showing transfer of rs.65,900/- from his account to C.C. A/c NO. 28. He has admitted that Ext.19/1 and Ext.25/1 are his signatures. He has specifically deposed that he was only signing on those documents at the instance of the accused as he does not know when money was deposited in his account and when money was transferred from his account. He has categorically deposed that he does not know Rupesh Kumar Panigrahi of M/S. Hari Omm Traders of Padiabahal and he had never received any cheque from him. P.W.19 Braja Mohan Pradhan has deposed that his younger brother Lingaraj Pradhan was the proprietor of M/s. Lingaraj Cement Store situated at Padiabahal, Sambalpur. He has further deposed that he had a cash credit account bearing C.C. a/c No. 495 in PNB, Main branch, Sambalpur and he was operating that account through cheque. According to P.W.19, he knew the accused

Debananda Bhusagar proprietor of M/S. Sagar Fuel at Jamankira. He has admitted in his evidence that he had given 5 to 6 nos. of signed blank cheques to accused Bhusagar to be utilised for his (accused Bhusagar) requirement after depositing same amount in that account, but he had never issued any cheque in respect of that account in the name of Umakanta Jhakar, Mitrabhanu Pradhan and Debananda Jaypuria. He has categorically deposed in para-3 that he had not issued the cheque No.13044 for Rs.70,000/- in favour of Mitrabhanu Pradhan and cheque No.13042 for Rs.75,000/- in favour of Umakanta Jhakar and those have been shown as withdrawn from his account on 28.2.2004. He has further deposed in the same para that he had not issued the cheque no.13046 for Rs.60,000/- in favour of D.Garadia, cheque No.13049 for Rs.65,000/- in favour of Umakanta Jhakar and cheque No.13047 for Rs.75,000/- in favour of Mitrabhanu Pradhan and all those three cheques have been shown as withdrawn from his account on 1.3.2004.

20. None of the prosecution witnesses have been suggested that the accused Sri Bhusagar had a fixed deposit for his overdraft advance. Learned counsel for accused Sri Bhusagar has not filed any document to that effect. Thus, it is clearly revealed from the evidence of the prosecution witnesses that the accused Sri Joshi entered into criminal conspiracy with the accused Sri Bhusagar by forging the signatures of Smt. Sasi Satpathy and Sri Kulbir Singh opened two duplicate passbooks in their name and took the balance of their S.F. Accounts No.2 and No.723 respectively as security and allowed over draft of Rs.8,70,000/- to the accused Sri Bhusagar proprietor of M/S. Sagar Fuel on 28.6.2003 vide O.D. A/c No.60 and on the same day accused Joshi also transferred the said amount of

Rs.8,70,000/- from O.D. A/c No.60 to C.C A/c No.28 of the accused Sri Bhusagar with his consent and knowledge and accused Sri Bhusagar had utilised the same. It is further seen that accused Sri Bhusagar had utilised the same, though he had knowledge that he and accused Joshi had prepared two applications on 28.6.2003 by using forged signatures of Smt. Satpathy and Sri Singh for pledging their deposits for sanctioning over draft in favour of M/S. Sagar Fuels of accused Sri Bhusagar. Even after pledging both the above accounts in favour of O.D. A/c No.60, accused Joshi allowed transactions to its account holders of those lien S.F accounts. The accused Sri Bhusagar did not repay the outstanding debit balance of Rs.8,75,737/- in the said O.D.A/c No.60. True, it is that learned defence counsels have brought some admissions in the cross-examination of the above account holders, but those admissions are too trivial in nature to affect the essential credibility of the prosecution case.

- 21 P.W.6 Pradeep Kumar Hota, the then Branch Manager, S.B.I. A.D.B. Sambalpur has deposed that on 17.3.2007 he had supplied information about the account of Hari Om Traders vide Ext.65. He has proved the statement of account, account opening form, specimen signature card of Sri Rupesh Kumar Panigrahi, proprietor of Hari Omm Traders which have been marked Ext.68, Ext.67 and Ext.66 respectively. He has further deposed that on 1.1.2004 the debit entry of Rs.74,000/- through cheque No.832889 was made in the statement of account vide Ext.68 but on that day balance was Rs.822/-. P.W.7 Sri Prithivraj Mishra, Sr. Manager of P.N.B. Sambalpur branch has deposed that on 22.9.2006 he had furnished information about the account of M/S. Lingaraj Cement Store at Padiabahal whose proprietor Sri Brajamohan Pradhan vide

Ext.69. He has proved the certified copy of Inward Demand bills collection register which has been marked Ext.70 and certified copy of statement of account of M/S. Lingaraj Cement Store bearing A/c No.495 vide Ext.71. His further evidence is that during his tenure at Sambalpur PNB Office, four cheques bearing No.043012 to 043015 were not received for encashment by that branch. His specific evidence is that in the letter vide Ext.69 he has mentioned that chequeNo.013048 dated 21.2.2004 for Rs.73,000/- was returned without payment to the branch from whom it was received. According to him, on 16.3.2007 the Investigating officer of this case had seized six verified copies i.e. draft application dated 9.6.2005 of A.K. Sharma vide Ext.72, certified copy of record of draft dated 9.6.2005 favouring Hemanta Ch. Patel vide Ext.73, certified copy of draft application dated 9.6.2005 of Dillip Sarangi vide Ext.74, certified copy of record of draft dated 9.6.2005 of Hemanta Ch. Patel vide Ext.75, certified copy of draft application dated 9.6.2005 of D.K. Sarangi vide Ext.76 and certified copy of record of draft dated 9.6.2005 favouring Hemanta Ch. Patel vide Ext.77 from him as per seizure list Ext.78.

22. P.W.17 Sri Saraladas Mishra, investigating officer of this case has categorically deposed that he collected specimen signature and handwriting of accused Debananda Bhusagar on 12.5.2006 and on 4.12.2006 vide Ext.123 to Ext. 136 and had also collected specimen writings of accused Santosh Kumar Joshi on 30.10.2006 which have been marked Ext.110 to Ext.122. P.W.8, P.W.15 and P.W.18 have claimed in their evidence that they are acquainted with handwriting and signature of accused Santosh Kumar Joshi in usual course of official business. P.W.17 has categorically stated in his cross-

examination that notice was sent to witness Kulbir Singh, both the accused persons for obtaining their specimen signatures and handwritings and had gone to the house of Sasi Satpathy for that purpose. Thus, the specimen signatures and handwritings of accused Debananda Bhusagar and specimen writings of accused Santosh Kumar Joshi stand wholly proved by P.W.8, P.W.15, P.W.17 and P.W.18. It therefore, follows a natural corollary that P.W.8, P.W.15 and P.W.18 are well acquainted with the handwriting and signature of accused Sri Joshi. P.W.16 Arbind Kumar Singh who happens to be the Government Examiner of Questioned Documents has deposed that he has carefully and thoroughly examined the original disputed documents marked as Q-1 to Q-8 and compared with the standard writings marked as S-1 to S-8 and A-1 to A-20 and came to the irrefutable conclusion which are mentioned in his opinion No. DXC- 310/2006 dated 6.10.2006 that the persons who wrote the blue enclosed signatures stamped and marked S1 to S4, A1 to A4 and S5 to S8 , A10 to A20 did not write the red enclosed signatures similarly stamped and marked Q1 to Q4 and Q5 to Q8 respectively. He has proved his opinion report as Ext.103. He has further deposed that on receiving further documents from S.P. C.B.I. Bhubaneswar under letter dated 27.3.2007, he has carefully and thoroughly examined the further original documents and compared with the relevant specimen signatures and came to the conclusion which are mentioned in his supplementary opinion No.DXC-310/2006 dated 18.5.2007 that the person who wrote the blue enclosed signatures stamped and marked S30 to S35 also wrote the red enclosed signatures similarly stamped and marked Q9 to Q26, the person who wrote the blue enclosed signatures stamped and marked S36 to S41 also wrote the red

enclosed signatures similarly stamped and marked Q27 to Q34 and the red enclosed writings stamped and marked Q1 to Q8 being slowly written in detached style do not afford suitable data for basing any opinion in comparison to the writings marked S9 to S621 and S22 to S29. He has also identified and proved the specimen handwritings of accused Sri Joshi which have been marked Ext.110 to Ext.122 and the specimen writings of Debananda Bhusagar which have been marked Ext.123 to 136.

23. It is proved by the prosecution that though the accused Sri Joshi was not competent to purchase cheques more than Rs.15,000/- issued by private parties, he in conspiracy with accused Sri Bhusagar, purchased seven cheques of different private parties vide Ext. 13 to Ext.19 drawn in the names of accused Sri Bhusagar and transferred the proceeds to the C.C a/c No.28 of M/S. Sagar Fuel of accused Sri Bhusagar who had withdrawn the same with sufficient knowledge that he had no such amount in his C.C a/c No.28. All the transactions made by the accused Sri Bhusagar in the O.D. A/c No.60 and C.C. A/c No.28 were passed by the accused Sri Joshi by falsifying the documents of the Bank. It is also proved by the prosecution that accused Sri Joshi fraudulently and dishonestly transferred the loan amount of Rs.2 lakhs each from the accounts of Sri Bhakta Baschal Sharma P.W.3, Sri Kusadhwaja Pradhan P.W.4 and Sri Laxmidhar Swain P.W.6 without their consent and credited an amount of Rs.4,67,000/- vide Ext.98 having no signature of account holders, to the ODD Account of the Bank on 29.3.2004. He has also transferred an amount of Rs.1 lakh through credit voucher (Ext.99) to O.D. A/c No.60 and Rs.33,000/- through credit voucher vide Ext.97 to C.C. a/c

No.28 of accused Sri Bhusagar and those credit vouchers do not bear the signatures of account holders.

24. So far as the offence under Section 409 IPC is concerned it must be proved that a person entrusted with property or with any dominion over property, in his capacity as public servant commits criminal breach of trust in respect of such property, as defined in Section 405 IPC, meaning thereby that he dishonestly misappropriates or converts to his own use that property.

In this connection reliance can be placed on a decision reported in **AIR 2006 SC 2211 ,State Of Himachal Pradesh vsKaranvir (dated 12 May, 2006)**, wherein it was found that

"The respondent was a Post Master. He was holding an office of public trust. The complainant who was a teacher entrusted the amount to the respondent for the purpose of purchasing National Savings Certificates. As soon as the amount was received by the respondent on behalf of the postal authorities, it became public money. It was required to be utilised for the purpose for which the same was handed over to the respondent."

And it is held:-

"The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 of the IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor. "

Evidence adduced proves in absence of any explanation that accused has misappropriated an amount of Rs. 14,70,000/- and offence u/s. 409 IPC is proved beyond reasonable doubt.

25. To constitute offence of cheating U/S 420 IPC it must be shown that the person must "dishonestly" or "fraudulently"

induce the complainant to deliver any property. In the second part, the person should intentionally induce the complainant to do or omit to do a thing. Thus, inducement must be dishonest or fraudulent. Further inducement should be intentional. Thus a guilty intention is an essential ingredient of the offence of cheating. It is, therefore, necessary that there must be *mens rea* for the offence of cheating. Thus to constitute the offence of cheating the intention to deceive should be in existence at the time when inducement was offered. Reliance can be placed on the decision reported in **AIR 2001 SC 2960 in the case of S.N. Palanitkar and others Vrs. State of Bihar and another.** In the present case, accused Joshi had pledged the deposits of S.F.A/c No.2 and S.F.A/c No.723 without the knowledge of those account holders and sanctioned amount of Rs.8,70,000/- towards over draft A/c No.60 of M/S. Sagar Fuel of accused Debananda Bhusagar on 28.6.2003. Thereafter, the accused Joshi transferred the said amount from O.D. No.60 to C.C. A/c No.28 of the accused Sri Bhusagar with his consent and knowledge on 28.6.2003 itself and accused Sri Bhusagar had utilised the same. P.W.9 daughter and P.W.20 granddaughter of Smt. Sashi Sathpathy, account holder of S.F. A/c No. 2 have stated that Sm. Sasi Sathpathy had never pledged her account in favour of accused Sri Bhusagar. Similarly P.W.21 Kulbir Singh, account holder of S.F. A/c NO. 723 has categorically deposed that he had not pledged his account for obtaining loan or getting money from the said bank in favour of M/S. Sagar Fuel. The accused Joshi, therefore, in connivance with the accused Sri Bhusagar, had the dishonest intention of cheating the Bank in respect of the above amount. As a matter of fact accused Joshi had succeeded in withdrawing money without any motive of refund. The accused Joshi, therefore,

had the guilty intention of cheating the Bank. Ingredients of section 420 IPC have been established.

26. With regard to offence U/S 120-B IPC it may be stated that this section requires that-

- i. both the accused persons conspired with one or more persons;
- ii. the conspiracy agreed was to do an illegal or a legal act by illegal means;
- iii. in case the agreement was to commit an offence, it is not necessary to establish doing an overt act in pursuance of the conspiracy.

In the present case, it is seen from the evidence of P.W.9 daughter and P.W.20 grand-daughter of Smt. Sashi Sathpathy, account holder of S.F. A/c No. 2 have stated that Smt. Sasi Sathpathy had never pledged her account in favour of accused Sri Bhusagar. Similarly P.W.21 Kulbir Singh, account holder of S.F. A/c NO. 723 has categorically deposed that he had not pledged his account for obtaining loan or getting money from the said bank in favour of M/S. Sagar Fuel. P.W.3, P.W.4 and P.W.5 have stated that they do not know the accused Sri Bhusagar. But accused Joshi had withdrawn Rs.2 lakhs each from their loan account without taking their consent and out of that amount, an amount of Rs.4,66,670/- was credited to the Bank's O.D.D. account on 29.3.2004 for reversing the debit entries relating to the outstanding amount of Rs.4,66,670/-, an amount of Rs.33,000/- was transferred to the C.C. A/c No.28 of M/S.Sagar Fuel to bring the account within the sanctioned limits of Rs.4 lakhs and an amount of Rs.1 lakh to O.D. A/c No.60 of accused Sri Bhusagar to adjust the interest accrued against the O.D. amount sanctioned earlier by accused Joshi.

All those transactions were made with the conspiracy of both the accused persons by falsifying the documents of the Bank.

It is relied on the decision reported in 2015 (1) Acquittal 397 (SC) Subhash @ Dhillu -vrs- State of Haryana where it has been held that

“To make out the offence under section 120-B of IPC, the prosecution must lead evidence to prove the existence of some agreement between the accused persons. There is no specific evidence as to where and when the conspiracy was hatched and what was the specific purpose of such conspiracy”.

The prosecution on the other hand has established to prove beyond reasonable doubt by adducing cogent and reliable evidence that there was criminal conspiracy between accused Sri Bhusagar and accused Sri Joshi. There is specific evidence to show that the conspiracy was hatched by both the accused persons between 28.6.2003 and 29.3.2004. Both of them were hand in gloves for the purpose of cheating the bank as well as the account holders i.e. P.W.8, P.W.21, P.W.3, P.W.4 and P.W.5. Hence, the ingredients of the offence u/s. 120(B) of the IPC is well proved by the prosecution against both the accused persons.

27. The learned counsel for the accused Sri Joshi has relied on the decision reported in **2015(1) Acquittal 397 (S.C.) in the case of Subhash @ Dhillu -vrs- State of Haryana** where it has been held that :-

“Section 120-B -Appellants alleged to have informing the accused that the victim is carrying money which could be looted- Convicted u/s. 120-B- No specific evidence as to where and when the conspiracy was hatched and what was the specific purpose of such conspiracy”.

This decision is not at all applicable to the present case for the simple and obvious reason that both the accused persons conspired with each other and agreed to do an illegal act by illegal means for misappropriation of money. The argument is not only factually misconceived but also legally unsustainable.

The learned counsel for the accused Shri Joshi has further relied on the decision reported in **(2009) 43 OCR (SC) 571 Harmanpreet Singh Ahluwalia & others -vrs- State of Punjab & others** where it has been held that "Section 420- For constituting an offence of cheating, it is required to be shown that the accused had fraudulent or dishonest intention at the time of making promise or representation- Existence of a wrongful intention of making initial promise or existence thereof from the very beginning of formation of contract is necessary".

But in the present case accused Shri Joshi had pledged the deposits of S.F.A/c No.2 and S.F.A/c No.723 without the knowledge of the account holders and sanctioned amount of Rs.8,70,000/- towards O.D.A/c No.60 of M/S. Sagar Fuel of accused Debananda Bhusagar on 28.6.2003. Thereafter, the accused Sri Joshi transferred the said amount from O.D.A/c No.60 to C.C. A/c No.28 of accused Sri Bhusagar with his consent and knowledge on 28.6.2003 itself and accused Sri Bhusagar had utilized the same, though he had knowledge that he had no such amount in his account. As the defence has signally failed to prove its plea in the standard of preponderance of probability, as accused Shri Joshi had fraudulent or dishonest intention at the time of making transactions in those accounts of accused Shri Bhusagar with his agreement. This decision is not at all applicable to the

present case. The argument is not only factually misconceived but also legally unsustainable.

28. With regard to offence u/s. 471 IPC, in view of the above documentary evidence coupled with the above statement of the witnesses, this court find that accused Sri Joshi in connivance with the accused Bhusagar forged the signatures of account holders bearing S.F. A/c No.2 and No.723 and prepared forged applications in their name and also accused Joshi without taking consent of the account holders namely P.W.3, P.W.4 and P.W.5, had withdrawn the amount of Rs.2 lakhs each from their respective accounts by passing forged debit vouchers without their knowledge and credited the said amount in Bank's O.D.D account and in the O.D. Account No.60 as well as C.C. account no.28 of the accused Bhusagar. Prosecution, therefore, has succeeded in establishing the involvement of both the accused persons in forging the documents and used the same as genuine.
29. Accused Joshi is found to have misappropriated a sum of Rs.14,70,000/- as a public servant in the capacity of Branch Manager of P.N.B. Badarama branch being connived with the accused Sri Bhusagar. It was an act of fraud to deceive the account holders. The means was not in accordance with the rule prescribed and practiced in the P.N.B. Bank. The misappropriated amount was a pecuniary advantage, the accused had obtained for which the bank has sustained the same amount. The offence of criminal misconduct u/s. 13(1) (c) and 13(1)(d) are proved which is punishable u/s. 13(2) of the Prevention of Corruption Act, 1988.
30. In ultimate appraisal of the totality of the evidence on record I am driven to hold that prosecution has proved its case

against the accused persons beyond all reasonable doubt. This court, therefore, finds the accused Sri Santosh Kumar Joshi guilty of the offences u/s. 409, 120 (B), 420, 471 IPC read with Section u/s. 13(1)(c) and (d) of the P.C.Act,1988 and convicted him thereunder. This court also finds the accused Debananda Bhusagar guilty of the offences u/s. 120(B)/ 420/ 471 of the IPC and convict him 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 nature of punishment, the benefit of Probation of Offenders Act is denied to the accused persons.

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 8<sup>th</sup> November, 2016.

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

### **HEARING ON POINT OF SENTENCE.**

Heard the convicts and the learned counsels for both parties. Leniency is prayed by both the learned counsel for the accused persons. Having regards to the misappropriation of amount and 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 Sri Joshi is sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.50,000/- in default to undergo rigorous imprisonment for six months for the offence u/s. 409 IPC, to undergo rigorous imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo rigorous imprisonment for three months for the offence u/s. 420 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. 120(B) of the 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 of the 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) (c) punishable u/s. 13(2) of the Prevention of Corruption Act, 1988. No separate sentence is awarded for offence u/s. 13(1)(d) P.C.Act in view of sentence to other offences. The substantive sentences awarded are to run concurrently.

Similarly, the convict Sri Bhusagar is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.25,000/- in default to undergo rigorous imprisonment for three months for the offence u/s. 420 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. 120(B) of the 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 of the

IPC. The substantive sentences awarded are to run concurrently.

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

The seized documents be returned from whom seized and zimnama, if any, be cancelled four months after the appeal period is over, if no appeal is preferred and in the event of an appeal subject to the order of the Hon'ble Appellate court.

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

Dictated and corrected by me. Sentence is pronounced in the open court today this the 8<sup>th</sup> November, 2016.

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

LIST OF THE WITNESSES EXAMINED FOR THE PROSECUTION.	
P.W.1.	Subash Ch. Lenka.
P.W.2.	Dhiren Gardia
P.W.3.	Bhakta Bachala Sharma
P.W.4.	Kusadhwa Pradhan
P.W.5.	Laxmidhar Swain
P.W.6.	Pradeep Kumar Hota.
P.W.7.	Prithivraj Mishra.
P.W.8.	Durga Charan Murmu
P.W.9.	Smt. Geeta Mishra.
P.W.10.	Expunged vide order dt.18.6.16.
P.W.11.	Sri Rupesh Kumar Panigrahi.
P.W.12.	Umakanta Jharkad
P.W.13.	Mitrabhanu Pradhan.
P.W.14.	Debendra Jaypuria
P.W.15	Rajesh Mahanta.
P.W.16	Arbind Kumar Singh.
P.W.17	Saraladas Mishra.

<b>LIST OF THE WITNESSES EXAMINED FOR THE DEFENCE.</b>	
	None.
<b>LIST OF THE DOCUMENTS MARKED FOR THE PROSECUTION.</b>	
Ext.1.	Seizure list.
Ext.1/1	Signature of P.W.1.
Ext.2,3,4	Copy of transfer journal.
Ext.2/1 and 3/1.	Certificate
Ext.5 to 5/2	Deposit slips.
Ext.6 to 6/6	Demand drafts
Ext.7 to 7/4.	Account opening forms.
Ext.8.	Copy of ledger.
Ext.9 to 12	Statement of account.
Ext.13 to 19.	Deposit slips.
Ext.20	Draft application.
Ext.21	Transfer voucher.
Ext.22.	Cheque
Ext.23 to 27	Transfer voucher.
Ext.28 and 29.	Collection schedules.
Ext.30 and 31.	Transfer debit form.
Ext.32	Cheque.
Ext.33	Draft application form.
Ext.34	Certified copy of long book dated 12.5.2013.
Ext.35	Certified copy of long book dated 5.6.2013.
Ext.36.	C.C of long book dated 24.6.2003.
Ext.37	Transfer journal.
Ext.38	Debit voucher.
Ext.39	Credit voucher.
Ext.40 to 43	Cheques.
Ext.44 to 47	Draft application forms.
Ext.48	Seizure list.
Ext.48/1.	Signature of P.W.1.
Ext.49	ODD Voucher.
Ext.50	Credit voucher.
Ext.7/5	Signature of P.W.2
Ext.7/16	Specimen signature of P.W.2.
Ext.7/9	Declaration form.
Ext.7/8	Signature of P.W.2
Ext.19/1.	Signature of P.W.2.
Ext.25/1	Signature of p.W.2.
Ext.51	Loan application form of p.W.3.
Ext.51/1.	Signature of p.W.3.
Ext.52	Undertaking of p.W.3.dated 27.2.04.
Ext.52/1	Signature of P.W.3
Ext.53	account opening form dated 11.2.04.
Ext.54	Signature of P.W.3 on specimen card.

Ext.55	Loan application form.
Ext.55/1	Signature of P.W.4.
Ext.56	Transfer voucher dt.1.3.2004.
Ext.56/1.	Signature of P.W.4.
Ext.57.	Undertaking of P.W.4.
Ext.57/1.	Signature of P.W.4.
Ext.58	Account opening application form.
Ext.58/1.	Signature of P.W.4.
Ext.59	Signature of p.W.4 on specimen card.
Ext.60	Loan application form.
Ext.60/1.	Signature of p.W.5.
Ext.61	Transfer voucher
Ext.61/1.	Signature of P.W.5.
Ext.62	Transfer voucher.
Ext.62/1.	Signature of p.W.5.
Ext.63	Account opening form.
Ext.63/1	Signature of P.W.5.
Ext.64	Signature of P.W.5 in specimen card.
Ext.65.	Letter dtd. 17.3.2007
Ext.65/1.	Signature of P.W.6.
Ext.66	Certified copy of account opening form of Hari Om Traders.
Ext.66/1	Endorsement given by P.W.6.
Ext.67	C.C of specimen signatures of Rupesh Kumar Panigrahi proprietor of Hari Om Traders.
Ext.68	C.C of statement of account a/c No.01050146097
Ext.69	Letter.
Ext.69/1.	Signature of P.W.7.
Ext.70	Inward demand bills collection register.
Ext.70/1.	Signature of P.W.7.
Ext.71	Certified copy of statement of account of M/S. Lingaraj Cement Store bearing a/c No.495.
Ext.72	C.C of draft application dated 9.6.2005 of A.K.Sharma.
Ext.72/1.	Signature of P.W.7
Ext.73	Certified copy of record of draft dated 9.6.005 forwarding M.C.Patel.
Ext.73/1.	Signature of P.W.7.
Ext.74	C.C of draft application dated 9.6.2005 of DillipSarangi.
Ext.74/1.	Signature of P.W.7.
Ext.75	C.C of record of draft dated 9.6.2005 of H.C.Patel.
Ext.75/1.	Signature of p.W.7.

Ext.76	C.C of draft application dated 9.6.2005 of D.K.Saranghi.
Ext.76/1.	Signature of P.W.7.
Ext.77.	C.C of record of draft dated 9.6.2005 forwarded by H.C.Patel.
Ext.77/1.	Signature of P.W.,7.
Ext.78.	Seizure list.
Ext.78/1.	Signagure of P.W.7.
Ext.79	Pass book no.2.
Ext.80	Loan application dt. 28.6.2003.
Ext.80/1.	Signature of S.K.Joshi.
Ext.81.	Cheque no. 326802
Ext.82	Cheque No.326801
Ext.83	Cheque no. 326803.
Ext.84	Cheque no. 326806
Ext.85	Cheque No. 326807
Ext.86	Cheque No.326808
Ext.87	Passbook No. 723
Ext.88	Loan application dt.28.6.2003.
Ext.88/1.	Endorsement of accd.Joshi.
Ext.89	Withdrawal receipt dt.8.7.2004.
Ext.90	Withdrawal slip dated 23.10.2003.
Ext.91.	Withdrawal slipdt. 23.6.2004.
Ext.92	Credit voucher dt.1.3.04.
Ext.93	Loan application form dt.28.6.2003.
Ext.94	Debit voucher dt.29.3.2004.
Ext.94/1.	Signature of accd.S.Joshi.
Ext.95and 96	Debit voucher dt.29.3.2004.
Ext.95/1 and 96/1	Signatures of accd.S.Joshi.
Ext.97, 98,99	Credit vouchers.
Ext.97/1, 98/1, 99/1	Signatures of accused S.Joshi.
Ext. 100.	Specimen signature card of P.N.B. Badarama branch.
Ext.7/9	Signature of P.W.12.
Ext.101	Signature of P.W.12 in the specimen sheet.
Ext.7/10	Signature of P.W.13
Ext.102	Specimen signature of P.W.13 on specimen sheet.
Ext.103	Report of P.W.16.
Ext.103/1	Signature of P.W.16.
Ext.104.	Specimen signature of S.Satpathy
Ext.105	Specimen signature of Kulbir Singh.
Ext.106	Official seal of govt.
Ext.107	Forwarding leter of Govt. Examiner

	BSGBhatnagar.
Ext.107/1.	Signature of BGS Bhatnagar.
Ext.108	Opinion dt.18.5.2007
Ext.108/1.	Signature of P.W.16
Ext.108/2.	Signature of BGS Bhatnagar.
Ext.109	C.C of forwarding letter by BGS Bhatnagar.
Ext.110 to 122	Specimen handwriting of Sri s.K.Joshi.
Ext.112/1 to 122/1	Official seals.
Ext.123/1 to 136/1.	Official seals
Ext.137 to 141	Disputed questioned writings.
Ext.142 to 145	Signatures of M/S. Sagar Fuels.
Ext.146	Reasoning for opinion vide DCX No.310/06 dt.6.10.06.
Ext.146/1	Signature of P.W.16.
Ext.147	Formal FIR.
Ext.147/1.	Signature of P.Mohanty, the then S.P.C.B.I.
Ext.148	Seizure list.
Ext.148/1, ½, 78/2	Signature of P.W.17.
Ext.149	Seizure list.
Ext.149/1.	Signature of P.W.17.
Ext.149/2.	Signature of R.Mahanta.
Ext.150	Seizure list.
Ext.150/1.	Signature of P.W.17.
Ext.151	C.C of passbook
Ext.150/2	Zimanama.
Ext.150/3.	Signature of C.Mishra.
Ext.152	Seizure list. Dt.2.5.06.
Ext.152/1	Signature of P.W.17.
Ext.152/2	Signature of K.Singh.
Ext.153	Original pass book no.723
Ext.154	Original application for cash credit loan.
Ext.155	Voucher dt.28.6.03 relating to OD.No.60 dt. M/S. S.Fuel.
Ext.156	Limit proposal for fresh borrowers dt.28.6.03.
Ext.157	Original specimen signatures card of Kulbir Singh in respect of S.B.A/c No.723
Ext.158	C.C of statement of Account of S.B. A/c No.2 of S.Satapathy.
Ext.159	C.C of statement of account of S.B. A/c No. 723 of K.Singh
Ext.104/1 to 104/4.	Signatures with official seal

Ext.105/1 to 105/4	Signatures with official seal.
Ext.123/2 to 136/2.	Signatures of P.W.17 with official seal.
Ext.110/2 to 122/2.	Signatures of P.W.17 with official seal.
Ext.81/1 to 86/1.	Signature of SashiSatpathy in the front side of the cheque.
Ext.81/2 to 84/2.	Signature of Sashi Satpathy on back side of the cheque.
Ext.82/3	Signature of P.W.2
Ext.86/2.	Signature of P.W.2.
Ext.83/3	Signature of G.Mishra.
Ext.85/2	Signature of S.Mishra.
Ext.159/1, 152/2, 89/1 to 91/1	Signatures of P.W.21.
Ext.88/3 to 88/7	Signature of P.W.21.
Ext.105/5 to 105/8	Endorsement with signature of P.W.21
LIST OF THE DOCUMENT MARKED FOR THE DEFENCE.	
Ext.A.	Statement of account of loan account No.1815 issued by A.K.Rana.

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