

(2023) 11 GAU CK 0027
In the Gauhati High Court
Case No : Criminal Appeal No. 97 Of 2012

Shyamal Bezbaruah

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 21-11-2023

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19, 27
Code Of Criminal Procedure, 1973 — Section 164, 313, 374(2)
Indian Penal Code, 1860 — Section 120B, 219, 299, 420, 468, 471, 471A
Evidence Act, 1872 — Section 10, 30

Citation : (2023) 11 GAU CK 0027

Hon'ble Judges : Mitali Thakuria, J

Bench : Single Bench

Advocate : P. Kataki, M. Haloi

Final Decision : Disposed Of

Judgement

1. Heard Mr. P. Kataki, learned counsel for the appellant. Also heard Mr. M. Haloi, learned Special Public Prosecutor, CBI, representing the respondent.

2. This is an appeal under Section 27 of the Prevention of Corruption Act read with Section 374(2) of the Code of Criminal Procedure, 1973, against the judgment and order dated 23.05.2012, passed by the learned Special Judge (CBI), Assam, in Special Case No. 28/2004, convicting the accused/appellant under Section 120(B)/468 of the Indian Penal Code read with Section 13(2) & Section 13(1)(d) of the Prevention of Corruption Act, 1988, and sentenced him to undergo R.I. for 5 (five) years and to pay a fine of Rs. 5,000/- (Rupees five thousand) only in default to undergo R.I. for another 1 (one) month for the offence under Section 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988, and further to undergo R.I. for 5 (five) years and to pay a fine of Rs. 5,000/- (Rupees five thousand) only in default to undergo R.I. for another 1 (one) month for the offence under Section 468 of the Indian Penal Code and it is further ordered that both the sentences will run concurrently.

3. The prosecution case pertains to the forgery of order dated 25.02.1999, passed by this High Court in Civil Rule No. 4314/1997. The then Registrar General vide letter dated 04.03.1999 directed the Superintendent of Police (CBI) for investigating in the matter for alleged substitution of Page No. 9 of the judgment and order dated 20.11.1998, passed by this Court in Civil Rule No. 4314/1997, by forging the signature of Hon'ble Mr. Justice A. K. Patnaik. Accordingly, the case was registered and numbered as R.C. Case No. 5(A)/99 (SHG), under Sections 120B/219/420/468/471 of the Indian Penal Code read with Section 13(2) & Section 13(1)(d) of Prevention of Corruption Act and endorsed to Shri K. Barman, Inspector of Central Bureau of Investigation of Corruption Branch, Guwahati, for investigation and on completion of investigation, the CBI filed Charge-Sheet against the accused- A. R. Mazarbhuiyan, Chatindra Nath Deka @ Satyen Deka and the present accused/ appellant- Shyamal Bezbaruah under Sections 120B/468/ 471(A)/299 of the Indian Penal Code read with Section 13(2) & Section 13(1)(d) of Prevention of Corruption Act. However, the charges were framed under Sections 120B/468/471 of the Indian Penal Code read with Section 13(2) & Section 13(1) (d) of Prevention of Corruption Act.

4. The Charge-Sheet alleges that while the appellant was functioning as Superintendent of Copying Section in the Registry of this Court, he entered into a criminal conspiracy with Shri A. R. Mazarbhuiyan, the former employee of the Office of Block Elementary Education, Cachar, Silchar, and with Shri Chatindra Nath Deka, Lower Division Assistant in the Office of Senior Government Advocate of Assam, and in pursuant to the said conspiracy, the appellant obtained original record of Civil Rule No. 4314/1997 from the Record Room and fraudulently and dishonestly forged the judgment and order of this Court dated 20.11.1998 and forged letters in the name of Secretary, Education Department, Government of Assam, as well as Director, Elementary Education, Government of Assam, in order to take undue benefit for reinstatement of the accused- A. R. Mazarbhuiyan in his service on the basis of forged judgment. During trial, the prosecution examined as many as 34 (thirty four) numbers of witnesses including the Investigating Officer. After hearing the arguments put forwarded by the learned counsels for both sides, the learned Special Judge (CBI) passed the judgment and order on 23.05.2012 convicting the present accused/ appellant under Sections 120(B)/468 read with Section 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced him as aforesaid.

5. On being highly aggrieved and dissatisfied with the judgment and order dated 23.05.2012, passed by the learned Special Judge (CBI), Assam, in Special Case No. 28/2004, the appellant preferred the present appeal on the following grounds, amongst others:-

(i) That the evidence on record does not warrant conviction and sentence upon the present appellant under Sections 120(B)/468/471 of the Indian Penal Code read with Section 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988,

and as such, the conviction and sentence imposed on the appellant is bad in law and liable to be set aside.

(ii) That the learned Special Judge (CB) came to an erroneous and perverse finding that the present appellant entered into a conspiracy with accused- A. R. Mazarbhuiya and Chatindra Nath Deka and forged the certified copy of the judgment without following the departmental procedures and norms and without any cogent or believable evidence and hence, the same is liable to be set aside.

(iii) That there is no evidence of the handwriting expert that the signature of Hon'ble Mr. Justice A. K. Patnaik was forged at the instance of the present appellant and there is also no evidence at all to prove that the present appellant has forged the signature of Hon'ble Mr. Justice A. K. Patnaik to convict the accused appellant under Section 468 of the Indian Penal Code. Moreso, there is no evidence at all to fulfill the ingredients of Section 120(B) of the Indian Penal Code that there was an agreement between the present appellant with the accused persons for any illegal act. Rather, the appellant, holding the post of Superintendent of Copying Section of the Registry of this Court, had issued the Exts.-2, 6, 7 & 8 and merely for issuance of the certified copy will not prove the case against the present appellant to convict him under Section 120(B) of the Indian Penal Code and therefore, the conviction of the accused/appellant under Sections 468/120(B) of the Indian Penal Code is bad in law and liable to be set aside.

(iv) That from the evidence of P.W.-6, it is seen that in a day around 50 to 100 numbers of certified copies generally issued and when a certified copy is ready after due process including the copying etc., the same is placed before the Superintendent of Copying Section. At the time of certifying the copy of the application, the money receipt were not placed before the Superintendent, however such money receipt was shown at the time of receipt of such certified copies and in that event, considering the load of work, it is humanly not possible to verify each and every page of certified copy with the original judgment and thus, the appellant cannot be a party to the conspiracy to commit the offence of forgery under Section 468 of the Indian Penal Code.

(v) That the prosecution also failed to prove that while holding a post of Superintendent of Copying Section in the Registry of this Court, the appellant had abused his position as public servant for causing undue benefits to any other person to convict under Section 13(1)(d) and hence, the same is liable to be set aside.

Accordingly, it is stated that the judgment and order, dated 23.05.2012, convicting the present accused/appellant by the learned Special Judge (CBI), Assam, in Special Case No. 28/2004, is bad in law and liable to be set aside.

6. The learned counsel for the appellant, Mr. P. Kataki, has submitted that the learned Special Judge (CBI) failed to consider the fact that from Ext.-55, the File Movement Register, the original judgment of Civil Rule No. 4314/1997 was sent

to Copying Section on 23.12.1998 and it was taken by the Record Arranger-Padma Nath and it was the said Record Arranger who had filed the copy application, i.e. Ext.-66 & Ext.-12, on 07.01.1999 and there is no evidence when the original judgment was sent back and thus, it appears that the said forgery had taken place through the said Record Arranger and therefore, the conviction of the appellant on the basis of testimony of witnesses is bad in law and liable to set aside. The learned counsel for the appellant further submitted that the learned Special Judge (CBI), in its judgment, observed that there is no direct evidence of conspiracy against the present accused/appellant, but it is held by the learned Special Judge (CBI) that from the act of issuing certified copy of the judgment, the accused/appellant also agreed for doing the unlawful act and in consequence of their attempt, the forged certified copy was issued by the present accused/appellant and thus, it is held by the learned Special Judge (CBI) that the criminal conspiracy against the present accused/appellant is also proved by the prosecution. But, it was the duty of the accused/appellant only to sign and supply the certified copy on good faith being the Superintendent of Copying Section after observing all the formalities by other persons and the only issuance of the certified copy by him cannot be the ground to establish that he entered into a criminal conspiracy with the other accused persons in issuing the forged judgment and order, specially the Page No. 9 of the said judgment and order. The learned counsel for the appellant further submitted that even in the confessional statement of A. R. Mazarbhuiya, the co-accused, there is no mention of anything against the present accused/appellant, rather he named one co-accused-Chatindra Nath Deka to whom he gave Rs. 20,000/- for obtaining the certified copy with an order for reinstatement.

7. The learned counsel for the appellant further submitted that the P.W-9, who was working as a UDA in the Copying Section, has elaborately deposed as to how the certified copies used to be prepared. As per him, after going through the process and other formalities, it finally reaches the table of Superintendent, who accordingly issued the certified copies if he satisfied and then he generally returns the certified copies to the Section and from there the same is received by the advocate or the advocate's clerk. The learned counsel further submitted that the learned Special Judge (CBI) convicted the present appellant only on presumption though there is no specific evidence against him that he forged the signature of the Hon'ble Judge or the appellant forged or altered the Page No. 9 of the said judgment, passed in Civil Rule No. 4314/1997. The Record Arranger or the Peon, who used to move the record from one Section to another, is not made accused in this case though his duty was to bring the records for the certified copies and in that process, if any forgery has been made, the present accused/appellant, who was working under the strength of Superintendent, is not at all liable for the said forgery and hence, the judgment and order passed by the learned Special Judge is liable to be set aside.

8. In support of his submissions, the learned counsel for the appellant further relied on a decision of Hon'ble Apex Court reported in (2005) 12 SCC 631 (K. R.

Purushothaman Vs. State of Kerala), and drawn Court's attention to paragraph Nos. 13 & 14 of the judgment, wherein it has been held as under:

"13. To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deducted from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind the well-known rule governing circumstantial evidence viz., each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is sine quo non for constituting offence under Indian Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the Plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.

14. The suspicion cannot take the place of a legal proof and prosecution would be required to prove each and every circumstance in the chain of circumstances so as to complete the chain. It is true that in most of the cases, it is not possible to prove the agreement between the conspirators by direct evidence but the same can be inferred from the circumstances giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence. It is held in Noor Mohd. v. State of Maharashtra, AIR (1971) SC 885, that:

"[I]n most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors constitute relevant material."

9. Relying on the said judgment, it is further submitted by the learned counsel for the appellant that there is no evidence at all even to make any presumption that the accused/appellant was involved in forging the Page No. 9 of the said judgment and order of this Court, passed in Civil Rule No. 4314/1997, nor there is any evidence to show that he entered into an agreement with other accused persons to do a criminal act and there is also no evidence to fulfill the ingredients under Section 13(2) & 13(1)(d) of Prevention of Corruption Act. The learned Special Judge (CBI) came to an erroneous finding without any substantive piece of evidence and wrongly convicted the present accused/appellant and sentenced

him accordingly in the Special Case No. 28/2004, vide judgment and order dated 23.05.2012.

10. In this context, Mr. Haloi, learned Standing Counsel, CBI, has submitted that there may not be any direct evidence against the present accused/appellant, but the presumption was rightly drawn by the learned Special Judge (CBI) inasmuch as the present accused/appellant, who was working as Superintendent of Copying Section, is the ultimate person who delivered the certified copy and it is his duty to verify the genuineness of the certified copy before issuing the same and thus, his involvement in forging the certified copy, especially in the Page No. 9 of the judgment, cannot outrightly be rejected and hence, there is no need of any interference of this Court in the judgment and order 23.05.2012, passed by the learned Special Judge (CBI), Assam, in Special Case No. 28/2004.

11. Considered the submissions made by the learned counsels for both sides. Perused the case records vis-à-vis the judgment and order 23.05.2012, passed by the learned Special Judge (CBI), Assam, in Special Case No. 28/2004.

12. This has germinated with a direction of this Court, whereby the Registrar General of this Court, vide letter dated 04.03.1999, directed the Superintendent of Police, CBI, to investigate in the matter of substitution of Page No. 9 of the judgment and order dated 20.11.1998, passed by a co-ordinate Bench of this High Court in Civil Rule No. 4314/1997. The allegation brought against the present accused/ appellant, along with others, is that by entering into a criminal conspiracy, they had substituted the Page No. 9 of the above referred judgment and order, dated 20.11.1998, with forged signature of Mr. Justice A. K. Patnaik. In that order, there was no order for reinstatement of accused A. R. Mazarbhuyan in Page No. 9 of the said judgment and it was ordered that "... I am of the opinion that it is not a fit case in which the Court should direct reinstatement of the petitioner in service. Instead, I direct that the petitioner will be treated to be in his suspension after the impugned order of removal from service passed on 03.07.1997 and continue in suspension till ..." It is further alleged that to obtain a certified copy in favour of one of the accused, A. R. Mazarbhuyan, the another co-accused, Chatindra Nath Deka, LDA of the Office of Senior Government Advocate of Assam, received an amount of Rs. 20,000/-. The allegation brought against the present appellant is that by abusing his official position, he managed to bring the original case record of Civil Rule from the Disposal Section of the Registry of this Court without observing any procedure on 25.11.1998 and thereafter removed the Page No. 9 and inserted another typed copy of the said page containing forged signature of Mr. Justice A. K. Patnaik and issued the certified copy in favour of co-accused, A. R. Mazarbhuyan. The substituted Page No. 9 was typed as "... I am of the opinion that it is a fit case in which the Court should direct reinstatement of the petitioner in service with all benefits from date of superannuation ..." It is alleged that the co-accused A. R. Mazarbhuyan used the said forged certified copy of the judgment to get himself reinstated in his original post of service. Thus, it is seen that in the present case,

a very serious allegation is brought against the present accused/appellant, along with others, for forging the signature of Mr. Justice A. K. Patnaik at substituted Page No. 9 of the original judgment and order dated 20.11.1998 passed in Civil Rule No. 4314/1997 and replacing the same with one newly typed copy in order to give undue benefit to co-accused, A. R. Mazarbhuiya for reinstatement of his original post of service.

13. The prosecution examined as many as 34 (thirty four) numbers of witnesses in support of their case and 2 (two) Court Witnesses were also examined. The accused/appellant did not adduce any evidence in support of his case, though all the witnesses were duly cross-examined by the defence and also took the plea of total denial while his statement was recorded under Section 313 Cr.P.C.

Before coming to any decision, let us scrutinized the evidence of the P.Ws. and C.Ws. recorded by the learned Special Judge.

14. P.W.-1 was working as an Advocate Clerk at the relevant time of incident. He filed an application (Ext.-1) on 22.12.1998 to obtain the certified copy of the judgment and order dated 20.11.1998, passed in C R Case No. 4314/1997. He was asked to fill up the application by M. R. Borbhuyan, who was working as a Stenographer of Senior Government Advocate, Assam, and after getting the certified copy, he handed over the same to said M. R. Borbhuyan. Ext.-2 is the certified copy received by him. Ext.-3 is the another application filed by him for certified copy of the same order and this was also done on being asked by M. R. Borbhuyan. They did not collect the copy on being asked by Horen Kalita before whom the case record was pending.

15. P.W.-2 is another Advocate Clerk and as per him also, he applied for certified copy vide Ext.-4 and the application was duly filled up by him to obtain the certified copy of the judgment and order dated 20.11.1998, passed in C R Case No. 4314/1997 and accordingly, he was supplied with the certified copy of the same and he personally obtained the certified copy of the order, but he could not remember as to whom he delivered the same and he also does not know much about the alleged occurrence.

16. P.W.-3 (M. R. Borbhuyan) was working as a Stenographer in the Office of the Senior Government Advocate and one Mr. Borbhuyan approached him and requested him to obtain the certified copy of order passed in C R Case No. 4314/1997 and accordingly, he engaged Shri Nakibul Hussain, the advocate clerk, to file necessary application in that regard and on next day, the said Nakibul Hussain obtained the certified copy and handed over to him. But again in the month of February, 1999, Mr. Borbhuyan approached him and requested him to obtain another certified copy of the said judgment and he again entrusted said Nakibul Hussain to obtain the certified copy. The second certified copy was sought for by Borbhuyan as the copy obtained earlier was not the same and different. In the first certified copy (Ext.-2), there was no mention of reinstatement of accused- Mazarbhuyan, rather it has been stated therein that

his suspension will continue till finalization of departmental proceeding initiated against him.

17. P.W.-4 is another advocate clerk and he also applied for a certified copy of the said judgment and order vide application (Ext.-5) for certified copy. He was asked to apply for the certified copy by one Dilip Das of Disposal Section of the Gauhati High Court and as the contents of the application was already filled up, he simply put his signature and handed over the same to said Dilip Das. But, subsequently, on 21.01.1999, he withdraw the application from the Copying Section as someone has asked him to withdraw the said application. He exhibited the certified copy of the judgment copy as Ext.-6, which was issued on 07.01.1999 containing 10 sheets and he also exhibited the signature of the present appellant, Shyamal Bezbaruah, as Ext. 6(1) and signed on the strength of Superintendent of concerned Copying Section. This witness was, however, declared as hostile. During his cross-examination by the prosecution, he denied that the present accused appellant asked him to withdraw the application.

18. P.W.-5 was the advocate of co-accused, Abdul Rahim Mazarbhuyian, connection with Civil Rule No. 4134/1997. His evidence is that on the day of delivery of the judgment, he met the co-accused, A. R. Mazarbhuyian, in the Court premises and he told him about the said order and has exhibited the certified copy of the judgment, i.e. Ext.-2. He further deposed that as per para 8 of Page No. 9 of the said judgment, "the operation of suspension will continue and it is also opined by the Court that it is not a fit case in which the Court should direct reinstatement of the petitioner in service." He further deposed that that Ext.-2 is the genuine certified copy of the judgment and order, but the other certified copies, i.e. Exts.-6, 7 & 8, are not the genuine certified copies wherein the operative portion of the judgment is reflected as "I am of the opinion that it is a fit case in which the Court should direct reinstatement of the petitioner in service with all benefit from the date of suspension." He stated in his cross-examination that he never instructed the Advocate's clerk to obtain the certified copies, Exts.-6, 7 & 8.

19. P.W.-6 was working as a Superintendent, Copying Section, and he exhibited the signature of present appellant as Ext.-7(1) in Ext.-7, i.e. the certified copy. He deposed that it is seen from Ext.-7 that it was applied on 25.11.1998 and certified copy delivered on 25.11.1998. Ext.-9 is the money receipt and it does not disclose that the application being filed for obtaining the certified copy of the order dated 20.11.1998, passed in Civil Rule No. 4314/1997. In his cross-evidence, he stated that the emboss seal appearing in the Page No. 9 of Ext.-7 does not match with the emboss seal appeared in other pages of Ext.-7 and the seal appeared in the Page No. 9 of Ext. 7 is bigger than the others. Further, the initial of certifying officer is seen in every pages of Ext.-7, but the initial in Page No. 9 does not match with the other initials.

20. P.W.-7 also accompanied A. R. Mazarbhuiyan to Gauhati High Court and after reaching Guwahati, the said Mazarbhuiyan asked him to meet one Satyen Deka

and accordingly, he met him in the High Court and then the said Satyen Deka (co-accused) told him that he has already done his assigned work and he asked Mazarbhuiyan to visit to his residence. Next day, he accompanied co-accused, Mazarbhuiyan, went to the house of co-accused, Satyen Deka, at Bamuni Maidan, Guwahati, near Ganesh Mandir, and after some discussion, accused-Satyen Deka and A. R. Mazarbhuiyan came out of the house of said Satyen Deka and during that time, he saw accused- Mazarbhuiyan while taking a bundle of notes amounting to Rs. 20,000/- from his back pocket and the money was handed over to Satyen Deka and thereafter, Satyen Deka returned one Rs. 500/- note to the accused- Mazarbhuiyan.

21. P.W.-8 is another advocate clerk. He also put his signature in the application form (Ext.-12). But, subsequently, the said application was withdrawn as it was told by one Shri Padma Nath from the Disposal Section.

22. P.W.-9 was working as a UDA in Copying Section. He explained the procedure how the certified copy was issued from the concerned Section after applying for the certified copies. He further mentioned after preparation of the Xerox copy, the same is tallied with the original one and on finding alright, he used to put the seal "it is a true photocopy of the original" and thereafter it reached the table of Superintendent of Copying Section to do the needful and the Superintendent scrutinize the same and if he satisfies with the endorsement, he put his signatures on the certificate that above documents are certified copy of the original.

23. P.W.-10 was working as a UDA in Civil Rule Disposal Section and he was also a custodian of the disposed CR files which they used to receive from the Copying Section of Gauhati High Court for obtaining the certified copy from the concerned authorities. He also, accordingly, described the procedure to obtain the certified copy. His evidence is that Ext.-5 and Ext.-12 are the application dated 07.01.1999 and 09.12.1999, respectively, for certified copy of order dated 20.11.1998, passed in C. R. Case No. 4314/1997 and Ext.-6 and Ext.-8 are the certified copies in respect of Ext.-5 and Ext.-12 respectively. Exts.-13, 14 & 15 are the file movement register.

24. P.W.-11 does not know much about the occurrence and while he was working as a Superintendent in Government Advocate Section, he handed over the attested copy of the appointment letter (Ext.-17) of Chatindra Nath Deka (accused), wherein he exhibited signature of one Gulam Mohammad as Ext.-17(1).

25. P.W.-12 was working as UDA in the Legal Cell of Education Department, Government of Assam, wherefrom some documents were seized vide seizure memo and he deposed that he also acquainted with the co-accused, Chatindra Nath Deka @ Satyen Deka as he used to meet him when he comes for any official purpose. He handed over the file (Ext.-19) to the CBI and that file contains four photocopies of certified copies, i.e. Ext.-19(4) to 19(7). He denied

the letter No. CR 4314/97/88, dated 30.12.1998 to have been issued under the signature of the then Secretary, Education Department.

26. P.W.-13, the then Secretary, Department of Education, Government of Assam, denied issuing the Letter dated 30.12.1998, purported to be issued by the Secretary, Education Department, Government of Assam, with initial and as per him, he never put initials in any official documents, but signatures and that Ext.-20(1) is not his signature in Ext.-20, i.e. letter dated 30.12.1998, purported to be under the signature of Secretary, Education Department.

27. P.W.-14 was working as an Assistant Registrar, Gauhati High Court, and he is also acquainted with the signature of the accused/appellant and he exhibits the initials of the appellant on Ext.-7. As per him, the initials on Page Nos. 1 to 8 and signature on page No. 10 are of the present appellant, but in Page No. 9, it does not bear the initial or signature of the present appellant and the initial appeared therein is seems to be a forged by someone else.

28. P.W.-15 was working as Superintendent in Establishment Section of Gauhati High Court and as per him, the accused/appellant was posted as Superintendent of Copying Section at the relevant point of time, i.e. during November 1998 to February 1999, and one Shri Padma Nath was working as Record Arranger of Disposal Section.

29. P.W.-16 was posted and functioning as UDA of Director of Elementary Education, Kahilipara, Guwahati, and while working in the said Office, he gave a note in the Official Register, i.e. Ext.-26, and Ext.-26(1) & Ext.-26(2) are the signatures and noting pertaining to reinstatement of A. R. Mazarbhuiyan, LDA, Sonai, under the District of Kachar. He further deposed that on 05.01.1999, he received a Letter dated 30.12.1998 (Ext.-20) from the Secretary to the Government of Assam, Education Department, and also received a photocopy of the judgment [Ext.-19(4)] and thereafter, he gave the note, which is exhibited as Ext.-26, and then it was placed before the Registrar to do the needful in the light of the judgment passed by this Court. His further evidence is that accused-Satyen Deka once come to his office with a copy of order of High Court regarding reinstatement of A. R. Mazarbhuiyan.

30. P.W.-17 was working as a Substitute LDA, Block Elementary Education Office at Silchar, in place of A. R. Mazarbhuiyan at that relevant time, he came to know from a newspaper that A. R. Mazarbhuiyan had been reinstated in his original post in the same office. Coming to know about the same, he asked his brother to apply for the certified copy of the judgment and order. Ext.-1 is the application for certified copy and Ext.-2 is the certified copy of the aforesaid judgment where there was no order of reinstatement of the accused- A. R. Mazarbhuiyan in his original post. But, thereafter, the accused- A. R. Mazarbhuiyan had joined in his original post on 23.01.1999 and worked there till 03.02.1999. Thereafter, he requested the Director to regularize him in any other post and accordingly, he was allowed to join as Substituted LDA on 04.02.1999.

31. P.W.-18 is not aware about the incident, however he put his signatures in the seizure list (Ext.-27) by which the letter dated 18.01.1999 of Block Elementary Education, i.e. Ext.-28, produced by him before CBI was seized.

32. P.W.-19 was working as a Superintendent of Copying Section in the Registry of this Court from April 1997 to 1998 and thereafter he was transferred to Filing Section. He described the procedure to obtain the certified copy and stated that the dealing assistant has to enter the application in Daily Movement Register also known as Entry Register and thereafter the applications are sent to the concerned Section and thereafter Section Assistant obtains the relevant records and after ascertaining the number, he will make a note in the application and finally it is verified by the dealing assistant and he used to put his signature along with the seal and impression of the Office. Apart from that, Comparing Assistant and the Typist used to put their respective signatures in the certified copy as well as in the Register. In his cross-examination, he stated that the certified copy contains signatures of 3 (three) office employees, i.e. the Dealing Assistant, Comparing Assistant and the Copyist/Typist. They put their signatures in token of preparing and verifying the certified copy and thereafter, the Superintendent of the Copying Section puts his signature after verifying the same.

33. P.W.-20 also described the procedure of sending the judgment & order by the Private Secretary of the Judge after entering the judgment in the Daily Movement Register to the Disposal Section in respect of civil suits and cases and the Superintendent of Disposal Section receives the judgments with his receipt signature and he also explained the other procedure to be followed by the Office of preserving the judgment/order with the concerned records.

34. As per P.W.-21, Ext.-5 and Ext.-12 are the applications of the certified copies of Civil Rule No. 4314/1997, dated 07.01.1997, which were filled up and signed by Padma Nath, office employee, and that he is acquainted with the signature of said Padma Nath.

35. Both P.Ws.- 22 & 23 were present when the seizure memos were prepared by the CBI official and they put their signatures in the seizure memo. Ext.-35 and Ext.-36 are the respective seizure list by which the documents mentioned therein produced by the two witnesses were seized.

36. P.W.-24 was working as a Director, Elementary Education, at the relevant period of time and he deposed that at the request of the Investigating Officer, CBI, he issued the sanctioned order (Ext.-37) with his signature therein, i.e. Ext.-37(1) to Ext.-37(3). He accorded the sanctioned against A. R. Mazarbhuiyan only after perusal of the relevant records produced before him by the I.O. of this case finding sufficient materials for according sanction.

37. P.W.-25 was working as Deputy Registrar, Gauhati High Court, and he handed over all the documents mentioned in Sl. Nos. 1 to 7 to CBI Inspector during investigation. The item Nos. 8 and 9 mentioned in Ext.-38 (seizure list) were

given to appellant for safe custody and he collected from the respective department and handed over to the CBI. Ext.-52 is the office copy of the receipt back of Copying Section and Ext.-53 is the Steno Note Book issued to the Steno Golap Hazarika for noting judgments from 10.05.1998 to 10.06.1999.

38. P.W.-26 was also working as an Assistant Registrar at the relevant point of time and he also handed over some documents to CBI in connection with this case, which were seized vide Ext.-39. Ext.-55 is the file movement registers of Civil Rule Disposal Section for the period 02.01.1998 to 28.01.1999. Ext.-56 and Ext.-57 are the judgment/order sending registers.

39. P.W.-27 was working as a Senior Government Advocate on 30.09.2000 and he gave the sanctioned order (Ext.-40) against Chatindra Nath Deka, LDA (co-accused), who was working in the Office of the Senior Government Advocate during the period of 1998-1999. He further deposed that the sanctioned was accorded by him after going through the contents of the case and charges brought against him on being satisfied against the charges.

40. P.W.-28 was working as a Private Secretary at the relevant point of time and he identified the signature of the then Hon'ble Chief Justice of Gauhati High Court, Hon'ble Mr. Justice Brijesh Kumar, who signed on the sanctioned order of prosecution against the present appellant.

41. P.W.-29 was the then Registrar General of the Gauhati High Court, who was authorized by the High Court vide order dated 25.02.1999 in C R 4314/1997 to submit letter to the Superintendent of Police, CBI, Guwahati for investigation in connection with the forgery and substitution of Page No. 9 of the judgment & order dated 20.11.1998 in C R 4314/1997. Ext.-42 is the complaint with his signature Ext.-42(1). The copy of the order dated 20.11.1998 and certified copy dated 16.02.1999 were enclosed with the complaint.

42. P.W.-30 is the Stenographer, who was working with Hon'ble Mr. Justice A. K. Patnaik, at the relevant time of incident. He took the dictation and as per his assigned duty, he sent the judgment with the signature of Hon'ble Judge to the concerned Section. He further deposed that he is well acquainted with the signature of Hon'ble Mr. Justice A. K. Patnaik as he was working with him for more than 8 (eight) years. He saw the original judgment dated 20.11.1998, i.e. Ext.-43, passed in CR No. 4314/1997, which was in 10 sheets. He identified his initials in Page No. 1 to 8 and 10 as 'ghc' and that of Justice A. K. Patnaik's initials and marked as Ext.-43(1) to 43(8) and the full signature of Justice Patnaik in Page No. 10, i.e. Ext.-43(9). But, he denied that he typed the Page No. 9 of the Ext.-43 and that the typing therein was done in another typewriter and not the one used by him. He deposed that while typing he used to put three dots after the word 'cont' whereas in Ext.-44, there are six dots after the word 'cont'. He further mentioned that in the original judgment, i.e. Ext.-43, the last line the words 'till the' is written in continuation of word 'suspension', but in Page No. 9 of Ext.-44 (containing Q6 and Q7) the words 'till the' has been typed over the word

petitioner. He also mentioned about the difference appearing in Page No. 9 of the original judgment, i.e. Ext.-43, and Page No. 9 of Ext.-44. He further deposed that during the course of investigation, he was asked to type the Page No. 9 of the judgment and accordingly, he typed the Page No. 9 in presence of the Inspector, CBI, Guwahati, in the Court premises of the Gauhati High Court using the same typewriter used to type the original judgment. Ext.-45 is the said page. In his cross-evidence, he stated that after typing and taking signature in the judgment, the entire file was sent to the Civil Disposal Section, but he is not aware about the process of making certified copy by the Copying Section.

43. P.W.-31 is the Office Employee of the District Elementary Education Office at Silchar and he simply handed over 2 (two) files to CBI, which was seized vide Ext.-50 (seizure list) with Ext.-50(1) and 50(2) being his signatures. Ext.-51 is the said file.

44. P.W.-32, while working as the Special Judicial Magistrate, recorded the confessional statement of accused- A. R. Mazarbhuyan under Section 164 Cr.P.C. in connection with R.C. Case No. 5/99, under Sections 120B/420/468/471A & 211 of the Indian Penal Code read with section 13(1)(d) & 13(2) of the P.C. Act, as per the order of the learned Chief Judicial Magistrate, Kamrup, Guwahati. Before recording of the confessional statement, the accused was given precaution as required under Section 164 Cr.P.C. and was also given sufficient time for reflection and thereafter he voluntarily confessed the guilt through his confessional statement which was recorded by her. In her cross, she stated that she did not certify the fact of the confession that the confession was made voluntarily and that the statement was read and found correct by the accused.

45. P.W.-33 was the initial Investigating Officer and on his transfer another Investigating Officer was entrusted with the investigation. He deposed that on receipt of the communication through the Registrar General of the Gauhati High Court, he registered a case under Sections 120B/420/219/ 468/471 of the Indian Penal Code read with Section 13(2) & 13(1)(d) of the Prevention of Corruption Act against accused- A. R. Mazarbhuyan and others. As per the allegation made in the F.I.R., the Page No. 9 of the judgment dated 20.11.1998, in Civil Rule No. 4314/1997, was forged and the initial of the Hon'ble Judge was also forged in the Page No. 9 of the said judgment. During investigation, he recorded the statement of witnesses, collected the seized documents by various seizure memos, arrested the accused- A. R. Mazarbhuyan, who agreed to confess his guilt and accordingly, his confessional statement was recorded under Section 164 Cr.P.C. by the learned Special Judicial Magistrate, Kamrup, Guwahati. This witness, accordingly, exhibited several seized documents/registers which were seized through various seizure memos, i.e. Ext.-64, Ext.-65, Ext.-66, Ext.-35, Ext.-36, Ext.-38, Ext.-39, Ext.-50, Ext.-59, Ext.-27, Ext.-68 and Ext.-69 during the course of investigation. He further deposed that during the course of investigation, he also took the specimen signature of Shyamal Bezbaruah in presence of witness, Ataur Rahman, SSO, O/O the TDM, Ulubari, and the

accused- Shyamal Bezbaruah voluntarily gave his specimen signatures and thereafter his signatures were sent along with some questioned documents before the GEQD, Kolkata for opinion. He further deposed that he also examined one of the vital witness, Shri Sujit Mishra, on 30.08.1999, who accompanied accused- A. R. Majarbhuiyan while handing over the money to C. N. Deka and the money was paid in the last week of November, 1998. He got transfer and relieved from investigation of this case on 31.03.2000 and subsequent investigation was taken up by Shri A. K. Saha, Dy. S.P., CBI. In his cross-evidence, he denied that he compelled the accused- A. R. Majarbhuyan to give his confessional statement before the Magistrate.

46. P.W.-34 is the subsequent Investigating Officer who took up the investigation after the transfer of P.W.-33 and he accordingly collected all the case record, including statement of witnesses and documents etc. from the previous Investigating Officer. He also collected the information from GEQD, Kolkata, with regard to the specimen signatures along with the questioned documents and also obtained the sanction order for prosecution in respect of the public servant/accused persons from different authorities as required under Section 19 of P.C. Act and after going through the entire materials on record, he prima facie came to a conclusion that it is a fit case to file Charge-Sheet against the accused-Shyamal Bezbaruah, A. R. Majarbhuyan and S. N. Deka and accordingly, he filed Charge-Sheet against these accused persons. He further stated that before filing of the Charge-Sheet, he was of the opinion that 3 (three) accused persons were in conspiracy with each other and committed the offence and hence, they were sent before the competent Court of law for trial. He further deposed that when he recorded the statement of witness- Jadab Baruah, he stated before him that on 21.01.1999, when he visited the Copying Section of the Gauhati High Court, the accused- Shyamal Bezbaruah, the Superintendent of Copying Section, asked him to withdraw the application for certified copy and accordingly, he withdrew the same by putting his signature on the bottom of the application. It has come in his cross-examination that he did not rely upon the GEQD report.

47. After examining the 34 (thirty four) numbers of prosecution witnesses, the learned Special Judge(CBI), Assam, also examined 2 (two) Court witnesses.

48. C.W.-1, Atowar Rahman, deposed that he was working as a Senior Section Supervisor in the Office of General Manager, Telecom Department, BSNL. On 17.12.1999, he was asked by CBI to attend their office at Guwahati and when he saw accused- Shyamal Bezbaruah putting his signature in 11 (eleven) sheets of paper and he also gave his endorsement "given by me voluntarily" and signed in his presence as well as in presence of the other officials of the CBI and one Mr. Barman. Ext.-73 to 83 are those 11 aforesaid sheets of paper, where the appellant has put his signatures, i.e. Ext.-73(4) to Ext.-83(4). He recognized the appellant accused before the Court.

49. C.W.-2 is the Deputy General Manager, Ordinance Factory, Vandara. He deposed that he degree as MSC, Phd in Chemistry and was working in CFSL from

1993 to July 2000 and during that period, he examined numbers of cases related to document examination and also deposed evidence in different Courts during his tenure. He received the documents related to this case from Superintendent of CBI, Guwahati, vide their Letter dated 24.05.2011, and he was entrusted for examination by GEQD, Shri S. K. Saxena, and thereafter he examined the document by using the aids and facilities available in the office and accordingly, he gave his opinion in connection with this case. This witness also exhibited the opinion as Ext.-85 and his signature thereon. Ext.86 is his opinion in 3 sheets with Ext.-86(1) to Ext.-86(3), being his signatures. He also deposed that Shri S. C. Gupta, Dy. GEQD, also examined the questioned documents and come to the same conclusion as his. Ext.-85(1) is his signature and Ext.-85(2) is the signature of Shri S. C. Gupta. He deposed that he examined the signature of accused- Shyamal Bezbaruah in 11 sheets marked as S-49 to S-59 and compared with the questioned documents and he stated that further that "during examination the signatures of Shyamal Bezbaruah as well as his writings as appearing on A 9 to A 14 were examined and compared with the specimen writings as well as questioned documents. The initial appearing vide Ext.8/1 on Ext.8, which is a certified copy of judgment and order dated 20.11.1998 passed by Hon'ble Gauhati High Court in Civil rule NO. 4314/97 at page No. 1, the signature Q 2 which is Ext.8/10, appearing in page No. 10 at page NO.10 of Ext.8, questioned signature Q 3 appearing in page NO. 10 of Ext.7, which is again a certified copy of the Judgment and order dtd. 20.11.98 passed in C.R. 4314/97 as well as questioned signature Q 5 which is Ext.2/10 again appearing at page No. 10 of Judgment and order dtd. 20.11.98 (Ext. 2) were also examined and compared with the aforesaid specimen signatures as well as admitted writings to be that of same person." Accordingly, he opined that the person who wrote the blue enclosed writings and signatures stamped and marked as S 49 to S 59 and A 9 to A 14 also wrote the red enclosed signature similarly stamped and marked as Q1, Q2, Q3 & Q5.

50. In his cross-evidence, CW-2 stated that he, along with one S. C. Gupta, separately and independently examined the documents as well as the admitted specimen writings by using the scientific methods and techniques and arrived at the opinion.

51. The learned Special Judge framed the following points for determination while preparing the judgment:-

(i) Whether the accused persons i.e. Sri Chatindra Nath Deka @ Satyen Deka while working as LDA in the office of the Sr. Government Advocate, Assam, Gauhati High Court and Sri Shyamal Bezbaruah while working as Superintendent, Copying Section, Gauhati High Court, entered into criminal conspiracy along with Sri Abul Rohim Mazarbhuyan to forge the judgment dated 20.11.1998 passed in C.R. No. 4314/1997 by substituting the original sentence in page No. 9 with "..... I am of the opinion that it is a fit case in which the Court should direct reinstatement of the petitioner in service with all benefit from the date of

suspension” during the period of 1998-99?

(ii) Whether the accused persons while working as stated above, commit forgery of page No. 9 of the judgment and order dated 20.11.1998 obtained on 25.11.1998, passed in C.R. No. 4314/1997 for the purpose of cheating for reinstatement of A. R. Mazarbhuyan?

(iii) Whether the accused persons while working as stated above, committed forgery and fraudulently or dishonestly used forged judgment dated 20.11.1998 passed in C.R. No. 4314/1997 as genuine?

(iv) Whether the accused persons while working as stated above, cheated the Secretary, Elementary Education Department, Director, Elementary Education and Block Elementary Education Officer, Sonai, Cachar dishonestly inducing them to believe the forged judgment dated 20.11.1998 passed in C.R. No. 4314/1997, to be genuine to issue reinstatement order of A. R. Mazarbhuyan?

(v) Whether the accused Shyamal Bezbaruah while working as stated above, as a public servant forged the judgment dated 20.11.1998 passed in C.R. No. 4314/1997 being a judicial proceeding by corrupt practice knowing it to be contrary to law?

(vi) Whether the accused persons while working as stated above, being a public servant committed criminal misconduct by taking pecuniary advantage of Rs. 20,000/- through corrupt and illegal means?

52. From the above discussion of evidence of PWs, it is seen that it was the PW-1, who at first applied for the certified copy of the Order dated 20.11.1998 passed in the CR 4314/97 (herein after referred to as “the said order”) vide Ext.-1 (application dt.22-12-1998) and obtained the certified copy i.e. Ext.-2 and the same is the copy of the correct order passed by the Justice A. K. Patnaik. This fact is corroborated by PW-3 (M. R. Borbhuyan), PW-17 (substitute LDA of Block elementary Education Office, Silchar) and PW-30 (the then, Stenographer of Justice A. K. Patnaik). PW-3 was working as Stenographer in the O/o Sr. Govt. Advocate Assam and he being asked by one Mr. Borhuyan instructed PW-1 to apply and obtain the certified copy of the said order. PW-5 deposed about genuineness of the Ext.-2, as he was the engaged advocate in that case for the co-accused A. R. Mazarbhuyan and the Court did not pass any order of reinstatement and that the Ext.6,7, and 8 (certified copies) are not genuine as it mentioned about reinstalment. As per PW-17 there was no order of reinstatement of A R Mazarbhuyan as per Ext.-2 and he was working as substituted LDA in place of A R Mazarbhuyan under suspension. He instructed his brother to apply for the certified copy vide Ext.-1. PW-30 is the Stenographer who was attached with Justice A. K. Patnaik at that relevant time and after going through the original said order, i.e. Ext.43, he found that out of 10 sheets, his initials as ‘ghc’ are there in page 1 to 8 and 10 and initials of Justice A. K. Patnaik are in page 1 to 8 i.e. Ext.43(1) to Ext.43(8) and full signature in page 10 in Ext.43(9). He denied that page 9 was typed by him and that the page 9 is

found to have been written in another typewriter. He explained his way of writing (indicating the next page with three dots as '...' after the word 'Cont', etc. Ext.-44 is that forged page 9, which PW-30 denied being typed by him. He was asked to type that Page 9 four times by the CBI and they are Ext.45 to Ext.48 with Ext.45(1) to Ext.48(1) being his signatures.

53. The evidence of above witnesses i.e. PW-1, PW-3, PW-5, PW-17 and PW-30 is that the Court did not pass any order for reinstatement of accused A R Mazarbhuyan, who was under suspension and that Ext.-2 i.e. the certified copy of the said order is correct, whereas Ext.-6,7 and 8 (certified copies of the said order) are not genuine. The forgery or manipulation was done in respect of page No.9 of the said order. The said order was typed in 10 sheets by PW-30 with his initials on each page and that of the Judge with full signature in page 10 and initials on other pages. Ext.43 is the original order except page 9 (Ext.44) as Ext.44 was typed in separate typewriter.

54. The above fact establishes that the page 9 of the said order has been substituted/forged. The question arises are 1. Who will be benefited by such forgery? and 2. Who has done this substitution/forgery?

55. The answer to the first query is simple because by such change and forgery of the said order, the Co-accused A. R. Mazarbhuyan will be benefitted as he being LDA working in the O/o Block Elementary Education Office, Silchar was under suspension and subsequently removed from service after the Disciplinary Proceedings. The Court vide the said order dismissed the writ petition CR 4314/97 with the opinion "that it is not a fit care in which the Court should direct re instatement".

56. By forging the order it is the appellant A R Mazarbhuyan will be benefitted by reinstatement and being so it is he only who will seek manipulation/changes/ forgery in the said order and using such forged order alongwith other forged official order like Ext.-20, purported to be under the initials of PW-13, which was denied by PW-13 to be his initials. PW-17's evidence is that A R Mazarbhuyan was reinstated in the original post. PW-16's evidence confirms that the appellant A R Mazarbhuyan came to his Office with a copy of the order of the High Court regarding his reinstatement and he also received letter dt. 30-12-98 (Ext.-20) and photo copy of Judgement (Ext.19(4)) and he put the note in the file to reinstatement and accordingly it was allowed. Ext.-19 is the file pertaining to documents regarding A R Mazarbhuyan and it was seized from PW-12 vide Ext.-18 (seizure memo). Ext.-7 is the reinstatement order date 19-01-1999 of Director Elementary Education in pursuance to the order dated 20-11-1998 in CR 4314/97 . Ext.-6 is the confessional statement of A R Mazarbhuyan u/s 164 CrPC.

57. The materials on record establishes that by such forgery it was A R Mazarbhuyan only who was to be benefitted and accordingly on the basis of it he obtained the benefit of re-instatement. He has confessed his guilt before PW-32 (Judicial Magistrate).

58. Now the most pertinent query is the second one i.e. who committed the substitution of page 9 of the said order and forgery in conspiracy and obviously the conspiracy between A R Mazarbhuyan and others. It is to be seen whether the present appellant had access to the record/documents and had the chance to do so? It is also be seen as to what is the forensic report as to the initials/signature/seal in that relevant page 9 of the said original order?

59. Let us start with the forensic evidence.

60. CW-2 examined the specimen, admitted and questioned documents at CFSL Kolkata and opined that the person who wrote the blue enclosed writings and stamped and marked as S 49 to S59 and A9 to A14 also wrote the red enclosed Q1, Q2, Q3 and Q5.

61. S 49 to S 59 are the 11 sheets containing the specimen writings/signatures of Shyamal Bezbarua, the appellant. CW-1 was the witness, in whose presence the appellant voluntarily signed in 11 sheets in the CBI Office. Ext.73 to Ext.83 are these sheets with Ext.73(1) to Ext.83(1) being CW-1's signature. A-9 to A-14 are the admitted writings/signatures of the appellant and they are his old applications for casual leave. Ext.25 collectively containing 6 sheets are those applications with Ext.25(1) to Ext.25(6) being the appellants signature. And the Questioned signatures are marked as Q1, Q2, Q3 and Q5 and they are the signatures of the appellant i.e. Ext.6(1), Ext.8(10), Ext.7(1) and Ext.2(10) i.e. the signatures in the certified copies. Ext.2 is the certified copy containing the correct operative portion of 'the said order' and other three exhibits contain the forged and substituted page 9 of the said order. All these four exhibits i.e. Ext.6, Ext.8, Ext.7 and Ext.2 are the certified copies of the said order. PW-14, the then Assistant Registrar of the Gauhati High Court was acquainted with the handwriting, signature and initial of the appellant and as per him the initials and full signatures appearing in Ext.6, Ext.-8, Ext.-7 and Ext.2 are of the appellant, except the signature i.e. Ext.-7(10) and that the embross seal also appears to be different in page 9 of the said order.

62. The appellant being the Superintendent of the copying section is bound to put his initials and signatures in the certified copies. PW-14 had earlier worked in the copying section and according to him, as stated, in cross, the Office staff type all the copies of the orders/Judgements, same compared by the other staff and once this procedures are over, the same is put up before the Superintendent of the Copying Section for final signature. PW-19 worked as Superintendent in the copying section of the High Court and he narrated the procedure undergone in the copying section for issuing the certified copies. He corroborated PW-14 that after comparing and verification with the original, the Dealing Assistant put the certified copies finally before the Superintendent of the copying section for signature and the Superintendent after verification put his signatures. In his cross PW-19 stated that the Superintendent simply put his signature after getting them duly prepared and verified by the Dealing Assistant. It contains the signature of Dealing Assistant, Comparing Assistant and the Copyist/Typist.

63. The forensic evidence is confined to the specimen, admitted and questioned signatures of the appellant and they are found to be the signature of the appellant. Whether this establishes the forgery by the appellant. The answer is 'No' as the signatures i.e. Q1, Q2, Q3 and Q5 are to be there as Superintendent of the copying section.

64. The forgery is in respect of page 9 of the said order. Being so, the prosecution has to be proved as to whose signature/initials are there in page 9 of the said order and the role of the appellant as a conspirator and his involvement in the substitution/forgery or active knowledge with participation. The most important part of the investigation was as to whether the initials in that Page 9 is that of the appellant. The certified copies are issued from the original order. The certified copies issued in respect of the said order are both the original order as in Ext.-2 as well as forged order as in other exhibits i.e. Ext.6, Ext.7 and Ext.8. Ext.19(4), Ext.19(5) and Ext.19(6) are also the copies of the certified copies but forged order and these exhibits the part of Ext.19 (file seized from the Elementary Education Office).

65. There is no forensic evidence as to the forgery of page 9 of the said order. There is no evidence as to who prepare the forged page 9 or whose initial is there except the confession of A R Mazarbhuyan to the extent of his giving Rs. 20,000/- to Satyen Deka to get the order favourable to him. PW-7 corroborated the meeting of A R Mazarbhuyan and Satyan Deka. The other evidence is that it was not typed by PW-30, the Stenographer of the Judge and that the portion of the Order so typed in that page is forged one. The original page 9 has been changed with the forged one i.e. Ext.-44. The page 9 was later on constituted with the original version of the order in terms of order dated 25-02-1999 passed by the same Judge in CR 4314/97 and inserted in the said order. The order dated 25-02-1999 has been exhibited as Ext.-49 by PW-30.

66. There is no evidence as to who substituted Page 9 of the original said order. No doubt the appellant had the occasion to handle the record at the time of verification before signing the certified copies but same has also been handled by the Dealing Assistant, Comparing Assistant and Copyist/Typist. Over and above, the peon who carried the record in the copying section and also in the Disposal section. The other persons in the Disposal Section too had access to the said record of CR 4314/97. As per PW-14 and PW-19, the certified copies so prepared comes to the superintendent (appellant in this case) after the signatures of Dealing Assistant, Comparing Assistant and Copyist/Typist.

67. Co-accused Santindra Deka @ Satyan Deka and M R Mazarbhuyan has not implicated the present appellant. In his confessional statement (Ext.-61) recorded u/s 164 Cr.PC before PW-32 (the then Judicial Magistrate), co-accused M R Mazarbhuyan has only taken the name of another accused Santindra Deka @ Satyan Deka, whom M R Mazarbhuyan paid Rs.20,000/- for getting the order in his favour. There is no evidence that Satyan Deka conspired with the appellant or paid money to substitute the page 9 of the said order. The I/O of this case, i.e.

PW-33 and PW-34 also did not depose that during investigation they found that the appellant was involved in the conspiracy or substitution of page 9 of 'the said order'. PW-34 (I/O) deposed that witness Jadav Baruah (PW-4) stated before him that when he visited the copying section on 21-01-1999, the appellant asked him to withdraw the copy application (Ext.5). PW-4 did not depose this fact while deposing before the Court and prosecution declared him hostile on this point and cross examination him, to which PW-4 stated that he did state this fact before the I/O. But this statement remained a mere statement before the I/O (PW-34) and not before the Court for which it has no evidentiary value.

68. Even if the above statement of PW-4 before the I/O (PW-34) is assumed to be evidence, then also it does not prove the allegation against the appellant. Asking to withdraw the application for the certified copy can be for many other reasons. It is also not that no certified copies were issued. Suspicion however strong, cannot be ground for conviction.

69. Suspicion do arise against the appellant but suspicion however strong cannot take the place of evidence to held the accused guilty. Hon'ble Supreme Court in (2013) 5 SCC 722(Rajkumar Singh -vs- State of Rajasthan) held that suspicion, no matter however strong, cannot and must not be permitted to take the place of proof. Similar view taken in (2016) 10 SCC 537(Bhagwan Jagannath Markand - Vs- State of MP) and held that prosecution has to prove each case beyond reasonable doubt and the accused is entitled for the benefit of reasonable doubt.

70. In the case of K. R. Purushothaman Vs. State of Kerala, reported in (2005) 12 SCC 631, the Hon'ble Supreme Court, in paragraph 14 of the judgment, has held as under:

"The suspicion cannot take the place of a legal proof and prosecution would be required to prove each and every circumstance in the chain of circumstances so as to complete the chain. It is true that in most of the cases, it is not possible to prove the agreement between the conspirators by direct evidence but the same can be inferred from the circumstances giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence."

71. There is no direct evidence in this case and as such, the establishment of the charges lies on circumstantial evidence and the burden of proof lies on the prosecution to establish the full chain of circumstances. It is felt pertinent to discuss the law points involved in this case, such as, circumstantial evidence, criminal conspiracy and burden of proof.

BURDEN OF PROOF:

72. It is the duty of the prosecution to prove its case against the accused beyond all reasonable doubt and mere suspicion strong cannot take the place of the evidence to hold the accused guilt. Hon'ble Supreme Court in the case of Dr. S.L.Goswami -vs- State of MP reported in (1972 3 SCC 22) held that onus of proving all the ingredients of an offence is always upon the prosecution and at no

stage does that shift to the accused. Even in cases where the defence of the accused doesn't appear to be credible or is culpably false then also the burden doesn't become any less on the part of the prosecution. The standard of proof to prove a defence plea is not the same as that of the prosecution and where the onus shift to the accused and once the probability of accused plea is established the accused gets the reasonable benefit of doubt.

73. Reliance is made to the judgment of Hon'ble Supreme Court reported in AIR 1977 SC 170 : (1976) 4 SCC 233 (Rabindra Kumar Dey -vs- State of Odisha), wherein Hon'ble Supreme Court has held the three cardinal principle of criminal jurisprudence as:

(i) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubts and it cannot derive any benefit from weakness or fallacy of the defence version while proving case;

(ii) that in a criminal trial the accused must be presumed to be innocent unless proved guilty and

(iii) that the onus of the prosecution never shifts.

Conspiracy:

74. The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy.

75. It was observed by Hon'ble Supreme Court in Shiv Narayan Laxminarayan Joshi & Ors. Vs. State of Maharashtra reported in (1980) 2 SCC 465, a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible.

76. In Kehar Singh & Ors. Vs. State (Delhi Administration) reported in (1988) 3 SCC 609 the gist of the offence of the conspiracy has been brought out succinctly in the following words: "The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."

77. "Mostly, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair, as held by the Hon'ble Supreme Court in the case of State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru reported in (2005) 11 SCC 600.

78. Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused. The well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible." [Ref: Nalini's Case 1999 (5) SCC 253 (page 516)]

79. Hon'ble Justice Wadhwa in Nalini's Case (supra) has discussed 10 broad principles governing the law of conspiracy in para 583 of the judgment. The third principle as summarized, is that "conspiracy has to be in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to infer from the circumstances and the conduct of the accused." The sixth principle is that "it is not necessary that all the conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when the conspirator joined the conspiracy and when he left."

80. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is the intention to commit crime and joining hands to the persons having same intentions and have agreed to commit the crime.

81. The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no defined mode of proof of the offence of conspiracy and that of any other offence: it can be established by direct evidence or by circumstantial evidence. But Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the co-conspirators. The said section reads:

"When there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

82. Principle of law governing Section 10 of the Evidence Act has been succinctly stated in a decision of this Court in Sardar Sardul Singh Caveeshar v. State of

Maharashtra [AIR 1965 SC 682: (1964) 2 SCR 378] where it has been said as :

"This section, as the opening words indicate, will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law ; with the result, anything said, done or written by a coconspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only "as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. It can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the section can be analysed as follows :

(1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy ; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them ; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it ; and (5) it can only be used against a co-conspirator and not in his favour."

83. Hon'ble Supreme Court in Nalini's case (supra) has discussed Section 10 of the Evidence Act and it is felt proper to reproduce para 581 of the said judgment, which is as:

"581. It is true that provision as contained in Section 10 is a departure from the rule of hearsay evidence. There can be two objections to the admissibility of evidence under Section 10 and they are (1) the conspirator whose evidence is sought to be admitted against co-conspirator is not confronted or cross-

examined in Court by the co-conspirator and (2) prosecution merely proves the existence of reasonable ground to believe that two or more persons have conspired to commit an offence and that brings into operation the existence of agency relationship to implicate co-conspirator. But then precisely under Section 10 Evidence Act statement of a conspirator is admissible against co-conspirator on the premise that this relationship exists. Prosecution, no doubt, has to produce independent evidence as to the existence of the conspiracy for Section 10 to operate but it need not prove the same beyond a reasonable doubt. Criminal conspiracy is a partnership in agreement and there is in each conspiracy a joint or mutual agency for the execution of a common object which is an offence or an actionable wrong. When two or more persons enter into a conspiracy any act done by any one of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution of or in reference to their common intention is deemed to have been said, done or written by each of them. A conspirator is not, however, responsible for acts done by a conspirator after the termination of the conspiracy as aforesaid. The Court is, however, to guard itself against readily accepting the statement of a conspirator against the co-conspirator. Section 10 is a special provision in order to deal with dangerous criminal combinations. Normal rule of evidence that prevents the statement of one co-accused being used against another under Section 30 of the Evidence Act does not apply in the trial of conspiracy in view of Section 10 of that Act. When we say that court has to guard itself against readily accepting the statement of a conspirator against co-conspirator what we mean is that court looks for some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on law. All said and done ultimately it is the appreciation of evidence on which the court has to embark."

CIRCUMSTANTIAL EVIDENCE

84. When there is no direct evidence, the proof hinges upon circumstantial evidence. The most fundamental and basic decision of the Apex Court is that of Hanumant vs. The State of Madhya Pradesh reported in AIR 1952 SC 343 : 1952 1 SCR 1091 his case has been uniformly followed and applied subsequently in a large number of later decisions. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (supra):

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and pendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of

the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

85. A close analysis of his decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by the Apex Court in *Shivaj Sahabrao Bobade & Anr. Vs. State of Maharashtra* reported in 1973 AIR 2622 : 1974 SCR (1) 489 authored by Justice V Krishnaiyer, where the following observations were made:

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) The facts so established should be consistent only with the hypotheses of the guilt of the accused, that is to say, they should not be explainable on any other hypotheses except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypotheses except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

86. These five golden principles has been constituted to be the panchsheel of the proof of a case based on circumstantial evidence by the Supreme Court in the case of *Sharad Birdhi Chand Sarda vs. State of Maharashtra* reported in 1984 AIR 1622 : 1985 SCR (1) 88.

87. From the discussion of evidence and the law points made above, it is seen that there is no direct evidence against the present accused appellant establishing his involvement in the alleged offence. It is also seen that the prosecution could not establish the case against the present appellant under the circumstantial evidence and except suspicion/presumption, there is no evidence against the present appellant. Neither the prosecution could establish the criminal conspiracy of the present appellant along with the other accused persons, nor the prosecution could establish the full chain of circumstantial evidence with criminal conspiracy against the present appellant to warrant conviction against him under Section 120(B)/468 of the Indian Penal Code read with Section 13(2) & Section 13(1)(d) of the Prevention of Corruption Act, 1988.

88. In the above premises, it is held that the prosecution could not establish the case against the appellant under Section 120(B)/468 of the Indian Penal Code read with Section 13(2) & Section 13(1)(d) of the Prevention of Corruption Act, 1988, beyond reasonable doubt and hence, the appellant is entitled for acquittal on the benefit of doubt. Accordingly, the appeal stands allowed. The judgment and order dated 23.05.2012, passed by the learned Special Judge (CBI), Assam in Special Case No. 28/2004, convicting the accused/appellant under Section 120(B)/468 of the Indian Penal Code read with Section 13(2) & Section 13(1)(d) of the Prevention of Corruption Act, 1988, is hereby set aside and the appellant is set at liberty forthwith on being acquitted of all the charges. Bond, if any, shall stand discharged.

89. In terms of above, this criminal appeal stands disposed of.

90. Send back the case record along with a copy of this judgment and order.