VED PRAKASH DEWANGAN
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CGHC010076242018 2026:CGHC:43309

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 368 of 2018

Reserved for judgment on 22/09/2026

Judgment delivered on 06/10/2026

1 - R.K. Netam (Died) Through Lrs As Per Honble Court Order 01-04-2026

1.2 - Smt. Sunita Netam Wd/o Late R K Netam Aged About 50 Years R/o Village Kanidabri, Police Station Arjuni, District Dhamtari Chhattisgarh

... Appellant

versus

1 - State Of Chhattisgarh Through Inspector, State Economic Crime Investigation Bureau, Raipur, Chhattisgarh.

2 - Smt. Nirmala Devi Agrawal W/o Laxminarayan Agrawal Aged About 70 Years R/o Baniyapara/ Tamer Para, Durg, District Durg, Chhattisgarh.

... Respondents

(Cause title taken from Case Information System)

For Appellant	:	Mr. H.B. Agrawal, Senior Advocate with Ms. A. Sandhya Rao, Advocate
For Respondent/State	:	Mr. Atanu Ghosh, Deputy G.A.

Hon'ble Shri Justice Ravindra Kumar Agrawal

C.A.V. Judgment

1. The present criminal appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 against the impugned

judgment of conviction and sentence dated 20.02.2018, passed by learned Special Judge (Prevention of Corruption Act), Durg, in Special Case No. 7 of 2014, whereby the appellant R.K. Netam (since deceased) has been convicted and sentenced in the following manner:-

CONVICTION	SENTENCE
U/s. 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act, 1988.	R.I. for 2 years and fine amount of Rs. 2000/-. In default of payment of fine amount further R.I. for 2 months.
U/s. 420, 120(B) of Indian Penal Code.	R.I. for 2 - 2 years and fine amount of Rs. 2000 – 2000/-. In default of payment of fine amount further R.I. for 2 – 2 months.
All the sentences are directed to run concurrently.	

2. Originally Mr. R.K. Netam was the accused and he was convicted and sentenced for the offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 420, 120-B of the IPC. During pendency of the present appeal, the appellant R.K. Netam has died on 23.07.2022, thereafter, an application was filed by his wife Smt. Sunita Netam under Section 394(2) of the CRPC for leave to continue the appeal and the leave was granted on 01.04.2026 and the name of Smt. Sunita Netam is substituted as the appellant.

3. The case of the prosecution is that, the complainant Gopal Krishna Agrawal had made a written complaint on 09.02.2006 to the office of Anti-Corruption Bureau with the allegation that his sister Asha Lata @ Asha Rani is residing at Pennsylvania, USA, who is having about 27

acres of agricultural land at Pulgaon, District Durg. One Smt. Nirmala Agrawal resident of Durg, on the basis of forge power of attorney executed the different sale-deeds in the name of family members and other persons, thereby caused huge loss of stamp duty to the State Government. The complaint was inquired by the Deputy Superintendent of Police, ACB Raipur, who submitted his report dated 26.04.2006 and found prima facie commission of the offence under Sections 420 and 120-B of IPC and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 against Smt. Nirmala Agrawal and R.K. Netam, who were the then Sub-Registrar, Durg. It was alleged that Asha Lata @ Asha Rani had executed a power of attorney in favour of Smt. Nirmala Agrawal on 28.08.2003 at Pennsylvania, USA for sell of her land bearing khasra No. 59/1 and 262/5 of Pulgaon, Durg. Under the provisions of Indian Stamp Act, 1899 the power of attorney executed outside of the India is to be produced before any Collector of Stamps within the territory of India within three months of its execution and then it was leviable by 7.5 % stamp duty for its validation in India as provided under Section 23 and Article 48 of the Indian Stamp Act, 1899. Smt. Nirmala Devi, neither produced the said power of attorney within three months before any Collector of stamps, nor paid the requisite stamp duty for its validation within the territory of India. Despite knowing this fact, Mr. R.K. Netam, the then Sub-Registrar accepted the power of attorney and registered the sale-deed produced before him, executed through alleged power of attorney holder Smt. Nirmala Agrawal. It is further alleged that in the said power of attorney, there was no

authority to sell the land of khasra No. 262/19, yet the said land was also sold through the registered sale-deed and thereby the State Government suffered a loss of Rs. 6,08,115/- towards the Stamp Duty. FIR (exhibit P-37) was registered against Smt. Nirmala Devi Agrawal and Mr. R.K. Netam for the offence under Sections 420, 120-B of IPC and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. During the investigation, the document relating to registration of the sale-deed through the alleged power of attorney have been seized from the office of Sub-Registrar, Durg, the relevant record from the office of I.G. (Stamp), Registrar (Stamp), Chhattisgarh, Raipur, Collector of Stamps, Durg, Chhattisgarh Board of Revenue, Bilaspur, Additional Collector, Durg, Sub-Divisional Officer (Revenue), Durg and Judicial Magistrate First Class, Durg have also been seized. The accused persons have been arrested, statements of the witnesses under Section 161 of CRPC have been recorded, necessary sanction for prosecution have ben obtained and after completion of usual investigation, charge sheet was filed against the accused persons before the learned trial Court.

4. The learned trial Court framed charges against the accused Mr. R.K. Netam for the offence under Sections 120-B and 420 of IPC and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The charge against the co-accused Smt. Nirmala Devi Agrawal was also framed for the offences under Sections 120-B and 420 of IPC. The accused persons denied the charge and claimed trial.

5. In order to prove the charge against the accused persons, the prosecution has examined as many as 15 witnesses. Statement of the accused persons under Section 313 of CRPC have also been recorded, in which they denied the circumstances that appears against them, pleaded innocence and have submitted that they have been falsely implicated in the offence. The accused Mr. R.K. Netam would further submit that none of the witnesses have deposed against him and he has been implicated in the offence only to harass him.

6. After appreciation of oral as well as documentary evidence led by the prosecution, the co-accused Smt. Nirmala Devi Agrawal has been convicted for the offence under Sections 420 and 120-B of IPC and sentenced for R.I. for 2-2 years with fine of Rs. 2000-2000/- with default stipulation. The accused Mr. R.K. Netam has been convicted and sentenced by the learned trial Court as has been mentioned in the earlier part of this judgment, which is under challenge in the present appeal.

7. The co-accused Smt. Nirmala Devi Agrawal had filed CRA No. 330 of 2018 before this Court challenging the judgment of conviction and sentence dated 20.02.2018, passed in Special Case No. 7 of 2014, passed by learned Special Judge (P.C. Act), Durg. During pendency of the appeal, the co-accused Smt. Nirmala Devi Agrawal has died on 15.09.2024 and thereafter the said CRA No. 330 of 2018 was abated by the order dated 14.02.2025.

8. Learned counsel for the appellant would submit that, the prosecution has failed to prove its case against the appellant beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses, which cannot be made basis to convict the accused Mr. R.K. Netam for the alleged offence. The allegation against the accused R.K. Netam was dereliction of his duty by not examining the subject power of attorney at the time of registration of the sale-deed. The subject power of attorney was executed on 28.08.2003 at Pennsylvania, USA in favour of Smt. Nirmala Devi Agrawal. There is no allegation against the accused R.K. Netam that he obtained any monetary benefit by his act. The subject power of attorney was produced before the Collector of Stamps, Bhandara, Maharashtra, where Smt. Nirmala Devi Agrawal was resided and the subject power of attorney was validated by the Collector of Stamps, Bhandara, Maharashtra. Once the power of attorney was validated within the territory of India, the accused R.K. Netam, who was the then Sub-Registrar at Durg was not required to again examine the validity of the said power of attorney. There is no allegation that the sale-deeds which were executed by Smt. Nirmala Devi Agrawal in favour of various persons were undervalued or deficit stamp duty have been paid on it. It is only the allegation that at the time of validation of the subject power of attorney, the requisite stamp duty was not obtained and thereby a loss of Rs. 6,08,115/- was caused to the State Government. He would further submit that though the Collector of Stamps, Durg has passed an order for recovery of Rs. 6,08,100/- from Smt. Nirmala Devi Agrawal vide order

dated 07.07.2006, but the said order dated 07.07.2006 was set aside by the Chhattisgarh Board of Revenue vide its order dated 15.05.2007 in an appeal filed by Smt. Nirmala Agrawal. Meaning thereby, there was no liability upon Smt. Nirmala Devi Agrawal to pay the additional stamp duty on the said power of attorney, though which the sale-deeds were executed by her. The necessary ingredients of the offence of conspiracy, cheating and illegal gratification are missing in the case, yet the learned trial Court has held that, there was a meeting of mind for conspiracy between the accused persons and Mr. R.K. Netam has permitted the invalid power of attorney for registration of the various sale-deeds and thereby the offence of cheating and criminal conspiracy was found proved. There is no sufficient evidence against the accused R.K. Netam for his conviction and therefore he is entitled for acquittal.

9. On the other hand, learned counsel appearing for the State opposes the submissions made by learned counsel for the accused R.K. Netam and has has submitted that the prosecution has proved its case beyond reasonable doubt. But for minor omissions or contradictions the evidence of prosecution witnesses are reliable and sufficient to hold the accused guilty for the alleged offence. Being the Sub-Registrar, it was his duty to examine the sale-deeds produced before him for its registration and it is only after his satisfaction, the deeds are being registered. The subject power of attorney was required to be necessary endorsed by the Collector of Stamps within the territory of India as the same was executed at Pennsylvania, USA. The said power of attorney was produced before a Notary Mr.

Madhukant K. Bandebuche (PW-5) at Bhandara, Maharashtra, who issued the certificate. The allegation was inquired by the Deputy Superintendent of Police, ACB Raipur, who submitted his report dated 26.04.2006 (exhibit P-11), in which he found the substance of allegation of conspiracy and cheating and also the offence under Prevention of Corruption Act against Mr. R.K. Netam. After considering the entire transaction, the manner in which the power of attorney executed at Pennsylvania, USA was used in India for registration of the sale-deeds, alienation of the land, which was not the part of the power of attorney, the learned trial Court has convicted the accused persons, which does not suffer from any illegal or perversity and the appeal filed by the accused R.K. Netam is liable to be dismissed.

10. I have heard learned counsel for the parties and perused the record of the trial court.

11. The charge against the present appellant is that he conspired with Smt. Nirmala Devi Agrawal and permitted the registration of the sale-deeds through the power of attorney, which was otherwise illegal, as no proper stamp duty has been paid on the said power of attorney and by his act, he caused loss of the stamp duty of Rs. 6,08,115/- to the State, thereby he committed criminal misconduct, which is punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act and Sections 420 and 120-B of the IPC.

12. PW-1, J.S. Armo, Senior District Registrar, Raipur has stated in his evidence that from February 2008 to July 2012, he was posted as

District Registrar at Durg. He submitted the necessary information to the ACB Raipur on 13.02.2008 with respect to order dated 07.07.2006, passed by the Collector of Stamps, Durg which is exhibit P-1. In cross-examination he admitted that, the Board of Revenue vide its order dated 15.05.2007 has set aside the order dated 07.07.2006, passed by the Collector of Stamps, Durg. The accused R.K. Netam was not a party in the proceedings before the Collector of Stamps. He further stated that after necessary sanction, a writ petition was filed before the High Court against the order dated 15.05.2007 passed by the Board of Revenue, though there is no document annexed in the case to that effect.

13. PW-2, Raju Bansod is a Stamp Vendor at Tahsil Office Bhandara, Maharashtra. Though he declared hostile, but in cross-examination by the prosecution he admitted by giving his police statement (exhibit P-2). In cross-examination, he stated that except the sell of the stamp, he could not remember as to what statement he had given to police.

14. PW-3, Syyed Mohammad Ali is a Typing, Photocopy and Computer Centre owner at Bhandara, Maharashtra. He too has turned hostile and not supported the prosecution case.

15. PW-4, D.L. Ratre was the District Registrar, Durg from 2002 to 2007. He stated in his evidence that he received a complaint with respect to sale of agricultural land by Nirmala Devi Agrawal through power of attorney. Being the Collector of Stamps, he registered a case and after provided an opportunity of hearing to her, he found that the

power of attorney through which the sale-deeds were executed, was not properly stamped. Nirmala Devi Agrawal was represented through her counsel and in the further proceeding, when her counsel was not appeared, he passed an *ex parte* order. Exhibit P-4 is the order passed by him, by which the liability to pay stamp duty of Rs. 6 lakhs was ordered. In the year 2007, he retired from service. In cross-examination he admitted that the power of attorney executed at foreign countries is required to be properly stamped under the Indian Stamp Act, 1899. He could not remember, as to whether the order dated 07.07.2006 was set aside from the Board of Revenue or not.

16. PW-5, Madhukant K. Bandebuche is an Advocate Notary at Bhandara, Maharashtra. He stated in his evidence that he did not know the accused persons. A document was sent to him for inquiry about sufficiency of its stamp duty which was executed at Johannes Berg. After the inquiry, he found that the said document was not properly stamped and he executed a certificate. His police statement was also recorded, which is exhibit P-5. Though he too was declared hostile but, he admitted by giving his police statement. In cross-examination, he admitted that he gave a certificate with respect to issuance of power of attorney from Pennsylvania, which was produced before him within time and he issued a certificate as a capacity of notary. He further admitted that after his satisfaction, he issued the certificate. He further stated that he first time made a statement that the stamp duty on the deed was insufficient. He further admitted that at the time of recording his police statement (exhibit P-5) he disclosed that he did not know, as to whether Nirmala

Agrawal has properly stamped the power of attorney under the provisions of Stamp Act or not.

17. PW-6, Shrikant Nagdeve has also turned hostile and not supported the prosecution case. PW-7, Sanjay Kumhre has also turned hostile and denied by making any complaint to the police or ACB. Though he admitted his signature in the written complaint (exhibit P-7), but he could not remember about his police statement. In cross-examination by the prosecution he has not supported the prosecution case. In cross-examination by the accused, he stated that he did not know about the rules for issuance of power of attorney. He did not know the accused Nirmala Agrawal and Smt. Asha Rani. He also did not know about any transaction between them. He has not made any complaint to ACB against Nirmala Agrawal and he did not know about the contents of the complainant (exhibit P-7).

18. PW-8, Gurpreet Singh is the purchaser of 2.62 hectares of land situated at Pulgaon, Durg from Nirmala Devi Agrawal. He purchased the land from her through the power of attorney and at the time of registration of the deed there was no objection raised by the authorities. He denied by giving his police statement. Thereafter he has also been declared hostile. In cross-examination by the prosecution he denied by giving his police statement (exhibit P-9). In cross-examination by the accused, he admitted that, after completing the entire formalities to purchase the land, he purchased the same. After its purchase, he got his name mutated in the revenue records

and came into possession of the same. There was no objection from anyone in the entire proceeding.

19. PW-9, Satpal Singh Bhatia is also a purchaser of 1.8 hectares of the land through the power of attorney of Asha Lata. In cross-examination, he too has stated that after completing the entire formalities, he purchased the land and mutated his land in the revenue records. No objection was raised by anyone in the entire proceeding and he is in possession of his purchased land.

20. PW-10, Romnath Sahu has stated in his evidence that he know R.K. Netam and Smt. Nirmala Devi Netam. He also have the knowledge that the relative of Nirmala Devi Agrawal is the resident of America and her relative sent a power of attorney from America for sale of her land. He also have the knowledge that whenever a power of attorney came to India from foreign countries, it has to be validated from the District Collector in India. He came to know that Nirmala Devi Agrawal instead of validating the power of attorney from District Collector Durg, validated the same from District Collector, Bhandara, Maharashtra and she disclosed her resident at Bhandara. As per the rule, the power of attorney was required to be stamped @ 7.5% of the value of the land. To evade the stamp duty, the power of attorney has got validated at Bhandara, by which the State suffered a loss of Rs. 5 to 7 lakhs, therefore, he made a complaint to State Economic Offence Bureau, Raipur, Hon’ble Revenue Minister Mr. Rajesh Mudat and his statement was also recorded at CSP Office, Durg. In cross-examination he admitted that he has not related with Smt. Nirmala

Agrawal or her family members. He also admitted that, he has no adjoining land to the properties of Smt. Nirmala Devi Agrawal or her family members. He is an active member of a political party. He further admitted that he did not know about the law of power of attorney. He was acquainted with the husband of Nirmala Agrawal namely late Laxminarayan Agrawal. He admitted that the Patwari Sushil Kumar Dharmik was caught red-handed by taking bribe from Nirmala Agrawal and the case against Patwari is pending. He did not know about any complaint made by Sushil Kumar Dharmik against the accused Nirmala Agrawal. He admitted that in the present case he made an application for cognizance of the offence by his counsel, who is also a counsel representing Sushil Kumar Dharmik in that case, in which the accused Nirmala Agrawal is the complainant. He further admired that he made a complaint with respect to issuance of power of attorney by Asha Rani @ Asha Lata resident of America in favour of Nirmala Agrawal, which was not properly stamped, but he personally has not seen the said power of attorney. He heard the rumor of the same, when she had gone to Tahsil Office. He also admitted that he also did not saw the domicile certificate of accused Nirmala Agrawal, for which he made complaint. He further admitted that he did not tell as to what was the requisite stamp duty over the power of attorney. He made a statement that the requisite stamp duty was Rs. 5-6 lakhs is on apprehension. He also admitted that he could not tell, as to what is the actual loss caused to the State and he himself is not sufferer by the said transaction through power of attorney. He did not know about any report submitted by Senior

Superintendent of Police, Durg that no offence prima facie is made out.

21. PW-11, Abdul Rashid Khan was the Additional Superintendent of Police, State Economic Offence Bureau, Raipur. He stated in his evidence that, on the complaint made by Gopal Krishna Agrawal and Sanjay Umre to the ACB Raipur regarding loss of stamp duty, he was directed through the memo dated 29.03.2006 (exhibit P-10), issued by the I.G. Police, Raipur for inquiry and to submit report. After inquiry, he submitted his inquiry report dated 26.04.2006, which is exhibit P-11. On the basis of the inquiry report, an FIR was registered on 28.06.2006 and started investigation. During the investigation, he seized various relevant documents with respect to the registration of the sale-deeds by Nirmala Agrawal through power of attorney of Asha Lata vide seizure memo (exhibit P-12). After seizure of the file, he handed over the same to the Sub-Registrar L.R. Dhruw through the document (exhibit P-13). During the investigation, he recorded the statement of Tushar Basant Kirolikar, Smt. N.P. Uike, Raju Bansod, Syeed Mohammad Ali, Shrikant Nagdeve and M.K. Bandubuche at Bhandara, Maharashtra. He also recorded statements of Somnath Sahu, Durg, D.L. Ratre, District Registrar, Durg, J.S. Armo, District Registrar, Durg, Sanjay Umre, Durg, Gurpreet Singh, Rajnandgaon, Manoj Kumar Waghela, Durg, Vivek Agrawal, Durg, Nalin Kumar Bajpai, Durg, Satpal Singh Bhatia, Raipur, Laxminarayan Agrawal, Durg, accused persons Nirmala Agrawal and R.K. Netam. He also seized the relevant document of certificate of Notary and power of attorney. He also issued memo to

accused Nirmala Agrawal to submit the original document, but she had not made available the same to the ACB Raipur. During the investigation. He also wrote a letter to Asha Rani @ Asha Lata resident of Pennsylvania, USA on 05.06.2006, 22.11.2006 and 30.11.2007, which was returned unserved and the same are exhibit P-26 to P-31. During the investigation, he also received a copy of order (exhibit P-32) with respect to another complaint case No. 538 of 2006 pending before the learned Judicial Magistrate First Class, Durg against Nirmala Devi Agrawal.

In cross-examination, he admitted that after recording statement of Nirmala Agrawal and R.K. Agrawal, he had not conducted any further investigation. He voluntarily stated that before recording their statements, he already conducted the investigation. He further admitted that after sending the letter to Asha Lata, he had not tried to record her statement through the embassy or any other mode. He also admitted that he has not recorded the statement of Gopal Krishna Agrawal and further stated that due to his unavailability, he could not recorded his statement. The FIR was lodged by Gopal Krishna Agrawal through Dr. P.C. Mittal, but he has also not recorded the statement of Dr. P.C. Mittal. He further admitted that he has not recorded the statement of any person, who was having interest or title over the subject land. He also did not tell as to whether in the complaint dated 12.12.2005, the signature was of Gopal Krishna Agrawal or Dr. P.C. Mittal. Sanjay Kumhare, who made the complaint (exhibit P-7) had also not disclosed any interest over the subject property. The original power of attorney has not

been seized by him. He voluntarily stated that a notice was sent to Nirmala Devi to produce the original documents, but she has not produced it. He did not know, as to whether the order passed by the Collector of Stamps was set aside by the Board of Revenue.

He further admitted that the documents on the basis of which he prepared the report (exhibit P-11), has not been annexed along with his report. He also admitted that there is no document submitted by him with respect to revocation of the power of attorney.

22. PW-12, Sushil Khalkho was the District Registrar, Durg who was posted there from 23.08.2017. He brought the original documents with him during his evidence. As per the seizure memo (exhibit P-12) dated 22.05.2006, the seized document was given on Supurdnama to the then Sub-Registrar through the document (exhibit P-13) and the memo (exhibit P-14) was issued by him. The original record of the case was sent to I.G. Registration, Raipur along with the memo dated 19.06.2006, which is exhibit P-15. As per the original record, a sale-deed was executed by Nirmala Agrawal through the power of attorney of Asha Lata on 20.01.2004 in favour of Manoj Waghela and the document is exhibit P-12A. Another sale-deed was executed by her in favour of G.P. Jaiswal, Nalin Kumar Bajpai and Sunil Deshmukh, which are exhibit P-12B(1), P-12B(2) and P-12C. The sale-deed executed in favour of Satpal Singh Bhatia is exhibit P-12D and sale-deed executed in favour of Gurpreet Singh Bhatia is exhibit P-12E, sale-deed executed in favour of Vivek Agrawal, Mamta Tamotia and Smt. Manisha Agrawal is exhibit P-12F. The note sheet

of inquiry proceedings is exhibit P-16. The copy of application forwarded by Rashtriya Lok Dal dated 05.07.2005 to the Superintendent of Police, ACB, Raipur is exhibit P-17. The confidential certificate issued by the Superintendent of Police, ACB, Raipur is exhibit P-18. The memo issued by the State Economic Offence Bureau, Raipur is exhibit P-19. The complaint made by Romnath Sahu dated 24.08.2005 is exhibit P-20 and dated 28.09.2005 is exhibit P-21. The letter dated 01.08.2005 issued by the then District Registrar, Durg is exhibit P-22. The complaint dated 10.02.2005 made by Sanjay Umre is exhibit P-23. The memo issued by the DIG dated 31.03.2006 is exhibit P-24 and the letter dated 05.05.2006 issued by I.G. Registration to District Registrar, Durg is exhibit P-25.

In cross-examination he admitted that he has no personal knowledge of the contents of the documents (exhibit P-12 to P-25). He admitted that there is procedure prescribed under the stamp act for recovery of the deficit stamp duty leviable on the deed and the necessary proceedings are to be drawn by the Collector of Stamps/District Registrar. He also admitted that the order passed by the Collector of Stamps is appealable before the Board of Revenue. There was a proceeding drawn against Nirmala Agrawal with respect to payment of deficit stamp duty. He further admitted that vide order dated 15.05.2007, passed by the Board of Revenue, the order passed by the Collector of Stamps, dated 07.07.2006 is set aside. He also admitted that he has not inquired from Romnath or Smt. Asha Lata and has not recorded their statement.

23. PW-13, Mukesh Kumar Thakur is a Translator posted at Law and Legislative Department Mantralaya, Raipur. He proved the sanction for prosecution, which is exhibit P-33.

24. PW-14, Lorens Khess is the Inspector posted at State Economic Offence Bureau, Raipur. He stated in his evidence that after sanction for prosecution obtained from the concerned department, he issued notice to Nirmala Devi and R.K. Netam for filing of the charge sheet in the case, which are exhibit P-34 and P-35. He arrested the accused R.K. Netam on 13.09.2014 and thereafter filed the charge sheet against them. In cross-examination he admitted that he neither investigated the offence nor recorded the statements of any of the witnesses. He only submitted the charge sheet in the case. He further admitted that the statements of P.C. Mittal, Gopal Krishna Agrawal and land owner Smt. Asha Agrawal are not there in the charge sheet.

25. PW-15, J.S. Gambhir was the then Inspector posted at State Economic Offence Bureau, Raipur. He registered the FIR (exhibit P-37) on the basis of inquiry report. He further stated that since the FIR was registered on the basis of the inquiry report, he had not taken the signature of the complainant Gopal Krishna Agrawal or P.C. Mittal.

26. The charge against the appellant R.K. Netam, who was then posted as Sub-Registrar, Durg, is essentially that he permitted registration of the sale-deeds on the strength of the power of attorney executed by

Smt. Asha Lata @ Asha Rani at Pennsylvania, USA in favour of Smt. Nirmala Devi Agrawal, despite the allegation that the said power of attorney had not been duly stamped in India, and thereby facilitated the alleged loss of stamp duty to the State Government. The prosecution has treated such conduct as constituting criminal misconduct under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and also the offences under Sections 420 and 120-B of the IPC. The material question, therefore, is whether the evidence on record establishes the necessary ingredients of the said offences against the appellant, or whether the evidence, at its highest, establishes only an administrative lapse or dereliction of official duty.

27. At the outset, it is significant that there is no direct allegation against the appellant R.K. Netam that he demanded, accepted or obtained any money or other valuable thing from Smt. Nirmala Devi Agrawal or from any of the purchasers in consideration of registration of the sale-deeds. There is also no evidence showing payment of any amount to the appellant, any transfer of monetary benefit in his favour, or any other pecuniary advantage obtained by him. The prosecution case against the appellant rests substantially upon the allegation that, being the Sub-Registrar, he ought to have scrutinized the power of attorney more carefully and ought not to have permitted registration of the sale-deeds on the basis thereof.

28. In this regard, Section 13(1)(d) of the Prevention of Corruption Act, 1988, as it stood at the relevant time, cannot be attracted merely

because a public servant is alleged to have committed an irregularity or failed to perform an official duty in the manner expected of him. The statutory requirement was that, by corrupt or illegal means, or by abusing his position as a public servant, the accused obtained for himself or for any other person a valuable thing or pecuniary advantage, or, while holding such office, obtained for any person a valuable thing or pecuniary advantage without public interest. Thus, the prosecution was required to establish not merely abuse or misuse of official position, but the consequential obtaining of a valuable thing or pecuniary advantage in the manner contemplated by the statutory provision.

29. The Hon'ble Supreme Court in ***A. Sivaprakash v. State of Kerala***, (2016) 12 SCC 273, while considering Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 has expressly held that the prosecution is required to establish that the public servant abused his position and, by such abuse, obtained for himself or for any other person a valuable thing or pecuniary advantage. In that case also, although misuse of official position was alleged, the Hon'ble Supreme Court found that the prosecution had failed to establish what pecuniary advantage had been obtained by the accused and consequently held that the mandatory ingredients of Section 13(1)(d)(ii) were not satisfied. The court observed in paragraphs 18 and 19 as under:-

> "18. The prosecution has sought to cover the case of the appellant under sub-clause (i) of Section 13(1)(d) and not under sub-clause (1)

> and sub-clause (iii). Insofar as sub-clause (ii) is concerned, it stipulates that a public servant is said to commit the offence of criminal misconduct if he, by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage. Thus, the ingredients which will be required to be proved are:
>
> > (1) The public servant has abused his position.
> >
> > (2) By abusing that position, he has obtained for himself or for any other person any valuable thing or pecuniary advantage.
>
> 19. It was not even the case set up by the prosecution that the appellant had taken that money from some person and had obtained any pecuniary advantage thereby. It was the obligation of the prosecution to satisfy the aforesaid mandatory ingredients which could implicate the appellant under the provisions of Section 13(1)(d) (ii). The attempt of the prosecution was to bring the case within the fold of sub-clause (ii) alleging that he misused his official position in issuing the certificate utterly fails as it is not even alleged in the charge-sheet and not even an iota of evidence is led as to what kind of pecuniary advantage was obtained by the appellant in issuing the said letter."

30. The aforesaid principle assumes considerable significance in the present case. The prosecution may be justified in contending that the appellant, as Sub-Registrar, was required to examine the documents

presented before him in accordance with the applicable statutory procedure. However, a failure to undertake such scrutiny, even if assumed to constitute an administrative or procedural lapse, cannot by itself satisfy the ingredients of Section 13(1)(d) unless it is further established that such abuse of position resulted in the obtaining of a valuable thing or pecuniary advantage by the appellant or by some other person in the manner contemplated by the provision. In the present case, there is no evidence that the appellant obtained any pecuniary advantage for himself. More importantly, there is no cogent evidence establishing that the alleged registration was the result of any corrupt or illegal arrangement between the appellant and Smt. Nirmala Devi Agrawal.

31. The decision of the Hon'ble Supreme Court in ***C.K. Damodaran Nair v. Government of India***, (1997) 9 SCC 477, is also relevant. The Hon'ble Supreme Court explained that for an offence corresponding to Section 13(1)(d), the prosecution has to prove that the accused obtained the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant. Explaining the expression "obtained", the Court held that it means to secure or gain something as a result of a request or effort and observed that, in the context of such obtainment, the initiative vests in the person receiving the advantage and a demand or request from him is a primary requisite. The Court observed in paragraph 12 as under:

> “12. The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) - and not under Section 5(1)(c), (d) or (e) of the Act. "Obtain" means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either "acceptance" or "obtainment".

32. The prosecution case is further weakened by the fact that the alleged deficit stamp duty itself was the subject matter of independent proceedings under the Stamp Act. The Collector of Stamps, Durg had initially passed an order dated 07.07.2006 fastening liability for additional stamp duty upon Smt. Nirmala Devi Agrawal; however, the said order was subsequently set aside by the Chhattisgarh Board of Revenue by order dated 15.05.2007. The evidence of the prosecution witnesses themselves acknowledges this position. Consequently, the very foundation of the allegation that the appellant, by permitting registration, caused a quantified loss of Rs.6,08,115/-

towards deficit stamp duty becomes doubtful. Once the competent appellate revenue authority set aside the order determining such liability, the prosecution could not proceed on the assumption that the said amount was conclusively payable as deficit stamp duty and that its non-payment constituted an established loss to the State.

33. It is true that the setting aside of the order of the Collector of Stamps, by itself, may not automatically determine the criminal liability of the appellant. Nevertheless, it is a material circumstance which has to be considered while examining whether the prosecution has established, beyond reasonable doubt, the foundational fact that any legally recoverable deficit stamp duty had in fact accrued on account of the transaction. The criminal charge against the appellant cannot be sustained merely on the basis of an earlier order which no longer survived after being set aside by the competent appellate authority.

34. The evidence on record also does not establish that the appellant had prior knowledge that the power of attorney was invalid or fraudulently obtained. The power of attorney had admittedly been executed in Pennsylvania, USA and was thereafter produced before the competent authority at Bhandara, Maharashtra. The defence case was that, once the document had been validated in India by the competent stamp authority, the appellant, as Sub-Registrar at Durg, was not required to reopen or adjudicate upon the validity of the document. The evidence of PW-5, the Notary at Bhandara, also assumes significance, as he stated that the document relating to the power of attorney executed at Pennsylvania was produced before

him within time and that, after his satisfaction, he had issued the certificate. He further admitted that he did not know whether the requisite stamp duty had in fact been paid by Smt. Nirmala Agrawal.

35. Thus, even assuming that there was some defect in the payment of stamp duty on the power of attorney, the evidence does not establish that the appellant knowingly participated in such defect or that he deliberately facilitated it pursuant to any corrupt or illegal arrangement. The distinction between an erroneous or negligent exercise of official duty and criminal misconduct is material. The Hon'ble Supreme Court in ***C. Chenga Reddy & Ors. v. State of A.P.***, (1996) 10 SCC 193, held that even established codal violations, irregularities and departmental lapses do not, by themselves, establish criminal liability unless the circumstances conclusively establish the criminal charge beyond reasonable doubt. The Court emphasized that suspicion, however strong, cannot substitute proof. The Court has observed that:-

> "22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the

> irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence. In Abdulla Mohd. Pagarkar v. State (Union Territory of Goa, Daman and Diu) under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and the High Court to the requirements of proof in relation to a criminal charge was not proper."

36. Applying the aforesaid principle to the present case, even if it is assumed that the appellant ought to have made a more detailed inquiry regarding the stamp-duty status of the power of attorney before registering the sale-deeds, such omission may, at the highest, constitute an administrative or departmental lapse. In the absence of evidence of corrupt motive, illegal gratification, prior arrangement, dishonest participation or obtainment of pecuniary advantage, the said omission cannot, without more, be elevated to the level of criminal misconduct punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

37. The same evidence also falls short of establishing the offence of cheating under Section 420 of the IPC. The essential ingredients of cheating include deception and fraudulent or dishonest inducement, accompanied by the requisite dishonest intention. The Hon'ble Supreme Court has repeatedly held that the dishonest or fraudulent intention must exist at the inception of the transaction and cannot be presumed merely from a subsequent breach, omission or irregularity. In ***V.Y. Jose v. State of Gujarat***, (2009) 3 SCC 78, and in subsequent decisions, the Hon'ble Supreme Court has reiterated that:-

> "14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:
>
> (i) deception of a person either by making a false or misleading representation or by other action or omission;
>
> (ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.
>
> For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable

> intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out."

38. In the present case, there is no evidence that the appellant himself made any false representation to the owner of the property, to the purchasers, or to the State Government; nor is there evidence that he dishonestly induced any person to deliver property or valuable security. The sale-deeds were presented before him for registration, and the allegation against him is essentially that he ought not to have accepted the power of attorney for the purpose of registration. Such an allegation, without proof of deception or dishonest inducement attributable to the appellant, does not satisfy the essential ingredients of Section 420 IPC.

39. Likewise, the charge under Section 120-B IPC requires proof of an agreement or meeting of minds to commit an illegal act or to commit a legal act by illegal means. The existence of a mere association, official interaction, or the fact that an official act ultimately facilitated another person's transaction cannot, in the absence of circumstances establishing a prior agreement, constitute criminal conspiracy. The Hon'ble Supreme Court has reiterated that a conspiracy requires an agreement between the parties for commission of an unlawful act, and where the substantive offence itself is not established against the accused, the charge of conspiracy must also be examined with corresponding caution.

40. In the present case, there is no direct evidence of any prior meeting of minds between the appellant R.K. Netam and Smt. Nirmala Devi Agrawal. There is no evidence of any communication, monetary transaction, promise, demand, receipt of benefit, or other circumstance from which an agreement to commit cheating or to cause wrongful loss to the State can safely be inferred. The prosecution has essentially invited the Court to infer conspiracy from the fact that the appellant registered the sale-deeds despite the alleged defect in the power of attorney. Such an inference, standing alone, would amount to drawing a conclusion of criminal conspiracy from an official act without proof of the underlying agreement.

41. The evidentiary position is also relevant. The record indicates that several prosecution witnesses did not support the prosecution case and that the investigation did not produce the original power of attorney. The Investigating Officer admitted that he had not recorded the statements of the land owner and certain material witnesses and that the original power of attorney had not been seized. Further, PW-10, Romnath Sahu, upon whose complaint much of the allegation regarding avoidance of stamp duty appears to have been based, admitted that he had personally not seen the power of attorney, did not know the actual amount of stamp duty payable, and could not state the actual loss caused to the State. These circumstances materially affect the reliability of the inference sought to be drawn against the appellant.

42. Therefore, on an overall assessment of the evidence, the prosecution may have raised a question regarding the manner in which the appellant discharged his official duties as Sub-Registrar; however, the evidence does not establish the additional ingredients necessary to convert such alleged dereliction into criminal misconduct under Section 13(1)(d) of the Prevention of Corruption Act. There is no evidence of any pecuniary advantage obtained by the appellant, no evidence of illegal gratification, no reliable evidence of corrupt or illegal means, and no cogent circumstance establishing that he knowingly abused his position pursuant to a prior arrangement with Smt. Nirmala Devi Agrawal.

43. Similarly, the ingredients of Sections 420 and 120-B IPC have not been established beyond reasonable doubt. The prosecution has failed to establish the necessary dishonest intention, deception, inducement or prior agreement constituting criminal conspiracy. The mere registration of sale-deeds on the basis of a power of attorney, even if the appellant could be said to have committed an error or omission in examining the document more closely, cannot by itself establish the commission of the aforesaid penal offences.

44. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof. The Hon'ble Supreme Court in ***C. Chenga Reddy*** (supra) has specifically held that even codal violations and administrative lapses, though they may justify departmental action in an appropriate case, cannot by themselves establish criminality in the absence of circumstances

conclusively connecting the accused with the alleged offence. The principle applies with greater force where the alleged pecuniary loss itself was the subject of statutory proceedings and the order determining the alleged deficit stamp duty was subsequently set aside by the Board of Revenue.

45. In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has failed to establish its case beyond reasonable doubt against the appellant R.K. Netam (since deceased) and his conviction and sentence cannot be sustained.

46. Accordingly the appeal filed by the appellant **R.K. Netam** (since deceased) is **allowed**. The impugned judgment of conviction and sentence are hereby **set aside**. The appellant is acquitted from all the offences.

47. Registry is directed to transmit the trial Court record along with a copy of this order to the Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

ved