KAMD010015132021

IN THE COURT OF II ADDL. DISTRICT & SESSIONS JUDGE, AT MANDYA.

Dated this the 23rd day of June 2026.

PRESENT

***Sri Hattikal Prabhu S.,** M.A., LL.M.*
II Addl. District & Sessions Judge,
Mandya.

Crl. Appeal No.220/2021

APPELLANT	**:**	*Smt. S.N. Prabha,* *W/o Gopala Reddy H.C.,* *Presently working as* *Sub-Registrar, Head Office,* *Bengaluru.*
		(By Sri G.Marigowda, Advocate)

- Vs -

RESPONDENT	**:**	*State by Mandya West Police Station.*
		(By Learned Public Prosecutor, Mandya)

* * *

J U D G M E N T

The appellant preferred this criminal appeal under Section 374(3) of Cr.P.C., 1973 being aggrieved by the conviction judgment dated 29.03.2021 in

C.C. No.832/2009 on the file of I Addl. Civil Judge and JMFC., Mandya.

2. The appellant is the accused no.1 before trial court and the respondent is the complainant/state before trial court. There were other two accused persons before trial court i.e., accused no.2 and 3 and they are not made as parties in this appeal. Hereinafter I would like to refer as per their respective rank before trial court for convenience.

3. Under the impugned judgment the trial court convicted the accused no.1 for the offence punishable under Sections 166, 409 and 420 of IPC and sentenced to pay fine of ₹.5,000/- for the offence punishable under Section 166 of IPC with default sentence for the period of 3 months. Further the trial court convicted this accused no.1 for the offence punishable under Section 409 of IPC to suffer the simple imprisonment for the period of 2 years with fine of ₹.10,000/- and default sentence is, simple imprisonment for the period of 6 months. Further the trial court convicted the accused no.1 for the offence punishable under Section 420 of IPC and sentenced to suffer simple imprisonment for the period of 2 years with fine of ₹.10,000/- with default sentence for the period of 6 months simple imprisonment.

4. For better appreciation of the evidence I would like to reproduce the allegations levelled against the accused no.1 to 3 in the charge-sheet at column no.17.

It reads as under :

17. ದಿನಾಂಕ***:14.09.2004*** ರಂದು ಮಂಡ್ಯ ಪಶ್ಚಿಮ ಠಾಣಾ ವ್ಯಾಪ್ತಿಯಲ್ಲಿರುವ ಮಂಡ್ಯ ಉಪನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಚೇರಿಯಲ್ಲಿ ಆರೋಪಣಾ ಪತ್ರದ ಅಂಕಣ ***12*** ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಆರೋಪಿ***-1*** ರಿಂದ ***3*** ರವರು ಸರ್ಕಾರಕ್ಕೆ ವಂಚಿಸಿ ಮೋಸ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಬಿ.ಗೌಡಗೆರೆ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ***.126/98*** ರಲ್ಲಿರುವ ***24*** ಗುಂಟೆ ಜಮೀನನ್ನು ಸಾಕ್ಷಿ***-7*** ರವರು ಸಾಕ್ಷಿ***-6*** ರವರಿಗೆ ***87,000/-*** ರೂ.ಗಳಿಗೆ ಮಾರಾಟ ಮಾಡಿದ ಬಗ್ಗೆ ಕ್ರಯಪತ್ರ ಬರೆಯಿಸಿ ಇದರ ಬಾಬ್ತು ಸರ್ಕಾರಕ್ಕೆ ಕಟ್ಟಬೇಕಾದ ರಾಜಸ್ವ ಹಣ ***7,870/-*** ರೂ.ಗಳನ್ನು ಬ್ಯಾಂಕಿಗೆ ಕಟ್ಟುವ ಸಂದರ್ಭದಲ್ಲಿ ಆರೋಪಿ***-3*** ರವರು ಸಾಕ್ಷಿ***-6*** ರವರ ಹೆಸರಿನಲ್ಲಿ ದಿನಾಂಕ***:14.09.2004*** ರಂದು ***1,870/-*** ರೂ.ಗಳನ್ನು ಚಲನ್ ಮೂಲಕ ಬ್ಯಾಂಕಿಗೆ ಕಟ್ಟಿ ನಂತರ ***1,870/-*** ರೂ. ಎಂಬುದನ್ನು ***7,870/-*** ರೂ. ಎಂಬುದಾಗಿ ತಿದ್ದಿ ಸದರಿ ಚಲನ್ ಅನ್ನು ನೈಜವಾದುದೆಂದು ಬಳಸಿ ದಿನಾಂಕ***:14.09.2004*** ರಂದು ಆರೋಪಿ***-1*** ರವರ ಹತ್ತಿರ ಆರೋಪಿ***-2*** ಮತ್ತು ***3*** ರವರು ಮೇಲ್ಕಂಡ ಕ್ರಯಪತ್ರವನ್ನು ರಿಜಿಸ್ಟರ್ ಮಾಡಿಸಿದ್ದು, ಆರೋಪಿ***-1*** ರವರು ಜವಾಬ್ದಾರಿಯುತ ಸರ್ಕಾರಿ ನೌಕರರಾಗಿದ್ದು, ತನ್ನ ಕರ್ತವ್ಯವನ್ನು ಸರಿಯಾಗಿ ನಿರ್ವಹಿಸದೆ ಆರೋಪಿ***-2*** ಮತ್ತು ***3*** ರವರ ಜೊತೆ ಶಾಮೀಲಾಗಿ ಮೇಲ್ಕಂಡ ಕ್ರಯಪತ್ರವನ್ನು ರಿಜಿಸ್ಟರ್ ಮಾಡಿದ್ದು, ಆರೋಪಿ***-1*** ರಿಂದ ***3*** ರವರು ಸರ್ಕಾರಕ್ಕೆ ***6,000/-*** ರೂ ರಾಜಸ್ವದ ಹಣವನ್ನು ನಷ್ಟ ಉಂಟು ಮಾಡಿ, ಸದರಿ ಹಣವನ್ನು ತಮ್ಮ ಸ್ವಂತಕ್ಕೆ ಉಪಯೋಗಿಸಿಕೊಂಡು ಸರ್ಕಾರಕ್ಕೆ ಮೋಸ ಮಾಡಿರುವುದು ಈ ಕೇಸಿನ ತನಿಖೆಯಿಂದ ದೃಡಪಟ್ಟಿರುತ್ತದೆ.

ಮೇಲ್ಕಂಡ ಆರೋಪಿ***-1*** ರಿಂದ ***3*** ರವರು ಈ ಘನ ನ್ಯಾಯಾಲಯದ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಹಾಗೂ ಮಂಡ್ಯ ಪಶ್ಚಿಮ ಠಾಣಾ ಸರಹದ್ದಿನಲ್ಲಿ ಈ ಕೃತ್ಯವನ್ನು ಮಾಡಿ ಆರೋಪವೆಸಗಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಮೇಲ್ಕಂಡ ಆರೋಪಿ***-1*** ರಿಂದ ***3*** ರವರ ಮೇಲೆ ಮೇಲ್ಕಂಡ ಕಲಂ ರೀತ್ಯಾ ಈ ದೋಷಾರೋಪಣ ಪತ್ರ ಶೃತ.

5. ***The background of the case :***

5(a). The Director of treasury, Bengaluru received the information from unknown person under the letter and informed the same to the Inspector of General of Registration and Commissioner of Stamps. Thereafter, the team headed by one Sri. S.M. Bavikatti, Deputy Registrar of Stamps is directed to conduct enquiry as to alleged misappropriation in the Sub-Registrar office, Mandya and to check the treasury challans. Accordingly, said team checked in the office of the Sub-Registrar, Mandya as well as in treasury for the period from 01.04.2003 to 31.12.2005. Further said team found that, in total in 156 cases challans were remitted to the government for lesser amount and thereafter the challans were forged and higher amount is mentioned to suit the document presented for registration and thereby loss of ₹.16,41,000/- is caused to the government. Accordingly, the team is submitted its report to the Inspector of General, Registration and Commissioner of Stamps, Bengaluru. In turn the District Registrar, Mandya was directed to take action and in turn District Registrar, Mandya directed the CW-1 Narasimhaiah, who was the then Sub-Registrar of Mandya at that point of time to initiate criminal proceedings against concerned Sub-Registrars and others.

5(b). As per the direction dated 15.03.2006 CW-1 lodged the complaint to the SHO, Mandya West Police Station on 27.04.2006. The SHO registered the crime in Cr.No.67/2006 and after investigation the IO found that, the Sub-Registrars, deed writer and his assistant colluding with each other forged the challans and caused loss to the government in 156 cases. Accordingly, the IO submitted separate 156 charge-sheets against the concerned Sub-Registrars, Deed writers and their assistants. The charge-sheet was filed for the offence punishable under Sections 465, 467, 468, 471, 166, 420 r/w Section 34 of IPC.

6. The trial court after taking cognizance has registered the criminal case against accused no.1 to 3 and framed charge against accused no.1 to 3 for the offence punishable under Sections 465, 467, 468, 471, 166, 420 r/w Section 34 of IPC. Subsequently, after altering the charge additional charge is framed for the offence punishable under Section 409 r/w Section 34 of IPC.

7. Out of 156 connected criminal cases, the criminal case in C.C. No.643/2008 is the main case before the trial court. The trial court including the present criminal case clubbed 65 cases along with C.C. No.643/2008 for common trial and recorded evidence of PW-1 to 5 in C.C.

No.643/2008 and thereafter de-clubbed the matters for the reason that, remaining witnesses are not common in all the cases. Copies of deposition of PW-1 to PW-5 are placed in this case. Thereafter, the trial Court recorded the evidence of PW-6 to 14. In all the prosecution got marked documents Ex.P1 to 25 and closed their side.

8. The accused are examined under Section 313 of Cr.P.C. The defence of this accused no.1 is that, she might have signed the challan and its counterpart under rush of work and subsequently she is not aware of forging and creating the counterpart of the challan showing higher amount and she is not having any malafide intention while discharging her duty. It is also defence of the accused no.1 that, the accused no.1 is a public servant and the alleged act of accused no.1 is part of her discharging official duty and the prosecution against the public servant is not permissible without obtaining prior sanction as contemplated in Section 197 of Cr.P.C. The accused no.1 specifically denied her involvement in forging and creating the challan. She denied the allegation that, she took monetary benefit by creating the documents.

9. The trial court, after hearing the arguments under the impugned judgment convicted the accused no.1 to 3 and sentenced the accused no.1 as above mentioned.

The accused no.1 being aggrieved by this impugned judgment, preferred this criminal appeal and urged the following :

GROUNDS :

a) *The trial court failed to appreciate oral and documentary evidence placed on record properly and come to the wrong conclusion.*

b) *The trial court failed to consider that, there is no evidence on record to show that, accused no.1 is involved in forging and creating the counter part of the challan and the accused no.1 is not monetarily benefited.*

c) *The trial Court failed to consider the evidence given by the PW-1 as to the nature of work of the Sub-Registrar and workload and work pressure faced by the Sub-Registrar while discharging her regular duty and the trial Court failed to consider that, there was no intention to commit crime on the part of accused no.1.*

d) *The IO failed to consider the role of person who presented the document for registration and possibility of forging the challan by such person and the trial court also failed to appreciate this material aspect.*

e) The ingredients of the offences under Section 166, 409 and 420 of IPC are not find place on record to hold the guilt of accused no.1 for the said offences and this material aspect is not considered by the trial Court. There is delay in reporting the crime and same is not explained by the prosecution and the trial Court did not properly appreciate this point.

With these grounds, the appellant/accused no.1 prayed for setting aside the impugned conviction judgment.

10. After registering this criminal appeal, Hon'ble Prl. District and Sessions Judge, Mandya made over to this court for disposal.

11. The respondent/State appeared through learned Public Prosecutor.

12. The trial Court records secured.

13. Heard the arguments from both sides and perused the written arguments submitted on behalf of appellant.

14. Now the following points that would arise for determination of the court are :

1. *Whether the appellant/accused no.1 made out good and sufficient grounds to interfere with and set-aside the impugned conviction judgment ?*

2. *What Order ?*

15. After considering the arguments from both sides and the material placed on record and appreciating the facts and circumstances of the case on hand, my findings on the above points are as under:-

Point No.1 : In the ***Affirmative.***

Point No.2 : As per the final order,
- for the following:-

R E A S O N S

POINT No.1 :

16. ***Arguments on behalf of accused no.1 :***

During course of arguments learned counsel for appellant/accused no.1 argued that, as per the case of the prosecution, the purchasers of various lands, in order to get their property registered under sale deeds before the Sub-Registrars, have made registration of sale deeds which were written by the deed writers. In order to get their sale deeds registered, they visited the office of the Sub-Registrar for the purpose of registration. The deed writers wrote the challan and the same was presented *before the Sub-Registrar. The Sub- Registrar/Accused no.1 has put her counter signature on voucher and the same was remitted to the bank. Thereafter the accused no.3 colluding with other accused forged the counterpart of the challan/voucher and submitted before the accused no.1 along with the deed and got it registered. The paid voucher/challan amount was not tallied with the challan which was presented before Sub-Registrar at the time of registration. Thereby, the accused persons are alleged to have committed the offences punishable under Section 465, 468, 471, 166, 420 r/w 34 of IPC by defrauding the state treasury.*

16(a). The accused no.1 was working as Sub-Registrar of Mandya from 05.07.2002 to 06.12.2004. She has to affix her signature after verifying the payable fee for registration of deed as per Karnataka Registration Act. In the present case she has acted as per the procedure prevailing and laid down by the government at the time of alleged offences alleged to have been committed. The appellant/accused no.1 has put her counter signature on the challan by verifying the deed which was presented before her. But by the time registration of the deed, the accused no.1 was not able to verify whether the presented challan before her was forged or not, because there was no such procedure laid down by the government to make *verify its genuineness. There was high possibility of changing the deed at the time of registration which was presented in the earlier occasion. For counter signature the deed and challan which was presented for registration before the appellant was tallied with each other as according to payable fee, there was no way to find out the deed which was presented before her at the time of registration was earlier one and not which was presented at the time of verification of challan.*

16(b). The prosecution has not produced any material to show that the deed which was presented before the Sub-Registrar at the time of determination of stamp duty and the deed which was presented after the payment of stamp duty was one and the same which was verified by the appellant earlier for determination of stamp duty.

16(c). The prosecution has not produced any material to show that deed which was presented before the Sub-Registrar at the time of determination of stamp duty and the deed which was presented after the payment of stamp duty was one and the same deed which is verified by the accused no.1 earlier for determination of stamp duty. It has been admitted by PW-1 Narasimhaiah in his cross-examination that it was the duty of the banker to mention amount in words which has been received by the bank along with denominations of the notes received by *the banker. If such acknowledgment would have been done by the banker there is no room for forgery and it is also admitted by PW-1 in the cross-examination that while looking into Ex-P1 to Ex-P28 one cannot see any correction.*

16(d). The trial Court has observed that the person who has signed the challan is only responsible for the whole act and with that observation, the court has acquitted the Sub-Registrar who has only registered the deed including the accused no.1 in one case. If that is the case, if he colluded with the deed writer, when the challan and deed were presented for registration, the Sub-Registrar who has registered the deed would notice the same. But they have registered the deed without noticing the same, because there was no such facility or procedure to find out the alleged forgery. Only on assumption the court came to the conclusion that the accused no.1 without verifying the actual fee payable to the government had signed the challan. Thereby, he is involved in the forgery. But no evidence to show that the challan was forged at the time of verification.

16(e). On the other hand, the prosecution has not adduced any evidence to prove that Sub-Registrar should sign the challan after verifying the deed. There is no evidence on part of the prosecution that the accused no.1 *have not signed the challan without looking into the deed. PW-1 has in the original case in his examination-in-chief has not stated anything about the procedure which should have been followed for registration. The court below only based on his evidence treated him as expert and came to the conclusion that accused no.1 is guilty. Since the evidence regarding method should be followed and how the accused no.1 has committed the offences not available, his evidence cannot be treated as expert evidence. PW-1 may have worked as Sub-Registrar, merely because he worked in very same post, it cannot be considered him as expert without supporting cogent evidence. The accused has been convicted for the offence under Section 166 of IPC along with Section 409 and 420 of IPC, the same is not at all sustainable under law. There is no evidence to show that the appellant being public servant has disobeyed the law. The ingredients of Section 166 of IPC to constitute an offence is clearly missing in the case of the prosecution. The Sub-Registrar cannot be prosecuted if anything done in good faith. Section 86 of Karnataka Registration Act provides that the Registering Officer is not liable for a thing bonafidely done or refused in his official capacity.*

16(f). The accused no.1 was a public servant and the prosecution has not obtained prior sanction to prosecute against the accused no.1 as provided under Section 197 of

*Cr.P.C. The Hon'ble Apex Court in **Srinivasalu Vs. State represented by the Inspector of Police (2023 SCC online SC 900)** has held that previous sanction is necessary to prosecute offence against the public servant while discharging his official duty even in case of criminal conspiracy to commit offence under Section 420 of IPC. In the said case Hon'ble Apex Court has elaborately discussed at para 29, 30, 34, 35, 38, 39, 49, 50 and 51 about obtaining of previous sanction. Accused no.1 was discharging duty and performing her official duty when the alleged offences are claimed to have been committed. The trial Court has not considered the said fact and further the accused no.1 has not committed any offence alleged against him. He is the victim of circumstances. As per the voluntary statement of accused no.2 and 3, they have committed the offence and money accrued by such deception by causing loss to the Estate Exchequer is paid into his KFC loan account of accused no.3. The accused no.1 has discharged her duties with due diligence and has not committed any misconduct in her entire service. The accused no.1 is entitled for the acquittal from the hands of this Court.*

16(g). Accordingly, the counsel for accused no.1 has prayed for acquitting the accused for the offences under Sections 166, 409 and 420 of IPC.

17. ***Arguments on behalf of respondent/State :***

On the other hand, Learned Public Prosecutor representing the State argued that, during the departmental inquiry, the accused no.1 has been found guilty and she has paid the amount to the government and further the documents produced before the court such as vouchers and the challans clearly established that, it has been forged and manipulated. The accused no.1 being the Sub-Registrar is duty bound to verify the records wherein she in collusion with the other accused have committed the offence. The trial Court has considered the entire material on record and has rightly convicted the accused. Accordingly, the prosecution prays for confirming the judgement of conviction passed by the Learned Magistrate.

18. In the background of rival submissions, I have carefully examined and scrutinized the entire oral and documentary evidence and impugned judgment. The offences for which the accused no.1 has been convicted are under Section 166, 409 and 420 of IPC.

19. In order to attract the offence under Section 166 of IPC the prosecution shall prove that accused no.1 is a public servant, there was a direction of law governing his conduct, he knowingly disobeyed such direction, such disobedience was with intention to cause injury or knowing that injury was likely to be caused.

20. In order to attract the offence under Section 409 of IPC, entrustment of property or dominion over the property is most essential and the prosecution must prove that the Sub-Registrar was entrusted with the money or had dominion over the stamp duty, and he dishonestly misappropriated or converted it.

21. Further, in order to attract the offence under Section 420 of IPC, the prosecution must prove that the deception was from the inception, the dishonest or fraudulent intention on the part of the accused no.1 and inducement causing loss or wrongful gain.

22. In the background of settled position of law, this Court has to look into the evidence on record to come to conclusion whether the prosecution has proved the offences alleged against the accused no.1. The main ground on which the conviction judgment has been challenged is, the trial Court has not appreciated the evidence on record. The trial Court has not at all considered the cross-examination directed to the witnesses and the material evidence elicited from the mouth of the witnesses.

23. The records disclose that there is no dispute regarding the fact that, accused no.1 is a public servant *and Sub-Registrar of Mandya from 05.07.2002 till 06.12.2004. Even it is not in dispute that, the sale deed in issue was registered when she was working as such. Even there is no dispute that pre-deposit voucher in issue bears her signature.*

24. Evidence on record would show that PW-1 being the complainant deposed that, on the basis of audit report and direction given by his higher authority to take action, he has given the complaint, he is not having personal knowledge about the allegation of forgery, cheating etc. If his entire evidence is scrutinized carefully it is evident that, no where in his evidence he has stated as to what was the settled procedure which ought to have been followed by the Sub-Registrar what is the said procedure accused no.1 did not follow during his tenure of service as Sub-Registrar at Mandya.

25. During the course of his cross-examination he has admitted that apart from the Sub-Registrar there will be other clerical staff members who verify the correctness of the stamp duty payable on the document. Further he has admitted that only after the document and the stamp duty payable is scrutinize by the concerned clerk it will be placed before the Sub-Registrar for the counter signature.

He has also admitted that previous to the stamp duty started collecting through vouchers, the stamp duty used to be collected through the stamp papers and later the government stopped collecting the stamp duty through the stamp paper and started collecting the stamp duty through vouchers. The evidence given by PW-1 in the chief-examination reads as under :

> 'ಕಚೇರಿಯಲ್ಲಿ ಉಪನೋಂದಣಾಧಿಕಾರಿಯಲ್ಲದೆ ಇನ್ನೊಬ್ಬ ಗುಮಾಸ್ತ ಸಹ ದಾಖಲೆಗಳು ಸರಿಯಾಗಿ ಇದೆಯಾ ಎಂದು ಪರಿಶೀಲಿಸಿರುತ್ತಾರೆ ಅಂದರೆ ಸರಿ. ಮೊದಲು ಅವರು ಪರಿಶೀಲಿಸಿದ ನಂತರ ದಾಖಲೆ ನಮ್ಮ ಬಳಿ ಬರುತ್ತದೆ ಅಂದರೆ ಸರಿ. ದಾಖಲೆಯಲ್ಲಿ ಎಷ್ಟು ಮುದ್ರಾಂಕ ಶುಲ್ಕ, ನೋಂದಣಿ ಶುಲ್ಕ, ಸ್ಕ್ಯಾನಿಂಗ್ ಚಾರ್ಜ್ ಇತ್ಯಾದಿ ಪಾವತಿಸಬೇಕೆಂದು ನಮೂದಿಸಿರುತ್ತಾರೆ ಅಂದರೆ ಸರಿ'.

Further, PW-1, during his cross-examination has deposed that ;

> 'ನಮ್ಮ ಕಚೇರಿಗೆ ಸಾಮಾನ್ಯವಾಗಿ ದಸ್ತಾವೇಜು ನೋಂದಣಿಗಾಗಿ ಬರಹಗಾರರು ಹಾಗೂ ಕೆಲವೊಮ್ಮೆ ವಕೀಲರು ಬರುತ್ತಾರೆ ಅಂದರೆ ಸರಿ. ಆ ರೀತಿ ಬರುವಾಗ ಅವರೇ ದಸ್ತಾವೇಜು ತಯಾರಿಸಿಕೊಂಡು ಚಲನ್ ತುಂಬಿಸಿ ನಮ್ಮ ಬಳಿ ಬರುತ್ತಾರೆ ಅಂದರೆ ಸರಿ. ಅವರು ಬರೆದ ಹಣ ಸರಿ ಇದೆಯಾ ಎಂದು ಪರಿಶೀಲಿಸಿ ನಾವು ಮೇಲು ರುಜಿ ಹಾಕಿ ನೀಡುತ್ತೇವೆ ಅಂದರೆ ಸರಿ. ಚಲನ್ನಲ್ಲಿ ಪ್ರತಿಯೊಂದು ನೋಟುಗಳ ಮುಖಬೆಲೆ ಹಾಗೂ ಎಷ್ಟು ಹಣ ಪಾವತಿಸಿರುತ್ತಾರೆ ಎಂದು ಬರೆಯಬೇಕು ಅಂದರೆ ಸರಿ. ಬ್ಯಾಂಕಿನವರು ಹಣ ಪಡೆದು ಎಷ್ಟು ಹಣ ಪಡೆದಿರುತ್ತಾರೆ ಎಂದು ಅಕ್ಷರಗಳಲ್ಲಿ ಬರೆಯಬೇಕು ಅಂದರೆ ಸರಿ. ನಿಶಾನೆ ಪಿ-2 ರಲ್ಲಿ ಬ್ಯಾಂಕಿನವರು ಎಷ್ಟು ಹಣ ಪಡೆದಿರುತ್ತಾರೆ ಎಂದು ಅಕ್ಷರದಲ್ಲೇ ಬರೆದಿರುವುದಿಲ್ಲ ಅಂದರೆ ಸರಿ'.

Further, PW-1 most importantly has admitted in his cross-examination as follows :

> 'ಸದರಿ ದಾಖಲೆಯನ್ನು ನಮ್ಮ ಮುಂದೆ ಹಾಜರಪಡಿಸಿದಾಗ ಅದರಲ್ಲಿ ಬ್ಯಾಂಕ್ ಹಾಗೂ ಖಜಾನೆಯ ಸಹಿ ಹಾಗೂ ಮೊಹರ್ ಇರುವ ಕಾರಣ ಅದನ್ನು ನಿಜ ಎಂದು ನಂಬಿ ಅವರು ಸರ್ಕಾರಕ್ಕೆ ಪಾವತಿಸಿಬೇಕಾದ ಮುದ್ರಾಂಕ ಶುಲ್ಕ ಹಾಗೂ ನೋಂದಣಿ ಶುಲ್ಕ ಪಾವತಿಸಿರುತ್ತಾರೆ ಎಂದು ನಂಬಿ ನಾವು ಅದರ ಆಧಾರದಲ್ಲಿ ದಸ್ತಾವೀಜು ನೋಂದಣಿ ಮಾಡುತ್ತೇವೆ ಅಂದರೆ ಸರಿ. ಹಾಜರುಪಡಿಸಿದ ದಾಖಲೆಯನ್ನು ಸರಿ ಇದೆಯಾ ಎಂದು ಪರಿಶೀಲಿಸಲು ನಮಗೆ ಬೇರೆ ಯಾವುದೇ ದಾಖಲಾತಿಗಳು ಇರುವುದಿಲ್ಲ ಹಾಗೂ ಆ ಕಾರಣ ನಾವು ಸದರಿ ದಾಖಲೆಯನ್ನು ನಂಬಿ ನೊಂದಣಿ ಮಾಡಬೇಕಾಗುತ್ತದೆ ಅಂದರೆ ಸರಿ'.

26. Further, during the course of cross-examination, PW-1 has deposed that after the stamp duty is deposited with the bank, only one challan will be produced before the Sub-Registrar. After verification that the proper stamp duty has been paid, on the basis of the said voucher, they registered the document and he has also admitted that the staff pertaining to the Sub-Registrar Office does not visit the bank for the verification regarding the payment of challan and they will not be having any mechanism to know the correct amount deposited by the concerned towards the stamped duty.

27. The said evidence given by PW-1 can be read as follows ;

'ಬ್ಯಾಂಕಿಗೆ ಶುಲ್ಕ ಪಾವತಿಸಿದ ನಂತರ ನಮ್ಮ ಮುಂದೆ ಕೇವಲ ಒಂದೇ ಚಲನ್ ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ. ಆ ಚಲನ್ನಲ್ಲಿ ಸರ್ಕಾರಕ್ಕೆ ಪಾವತಿಸಬೇಕಾದ ಮುದ್ರಾಂಕ ಶುಲ್ಕ ಸರಿ ಇರುತ್ತದೆ ಅಂದರೆ ಸರಿ. ಮುದ್ರಾಂಕ ಶುಲ್ಕ ಪಾವತಿಸಲು ನಾವು ಅಥವಾ ನಮ್ಮ ಸಿಬ್ಬಂದಿಗಳು ಬ್ಯಾಂಕ್ ಗೆ ಹೋಗುವುದಿಲ್ಲ ಅಂದರೆ ಸರಿ. ಬ್ಯಾಂಕಿನಿಂದ ನೇರವಾಗಿ ಟ್ರೆಷರಿಗೆ ಹೋಗುವ ಚಲನ್ನಲ್ಲಿ ಎಷ್ಟು ಹಣ ಪಾವತಿಸಲಾಗಿದೆ ಎಂಬುದು ನಮಗೆ ಗೊತ್ತಾಗುವುದಿಲ್ಲ ಅಂದರೆ ಸರಿ. ಬ್ಯಾಂಕಿಗೆ ಮುದ್ರಾಂಕ ಶುಲ್ಕ ಪಕ್ಷಗಾರರೇ ಪಾವತಿಸಿ ಚಲನ್ ನಮ್ಮ ಮುಂದೆ ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ. ದಾಖಲೆ ನೋಂದಣಿ ಮಾಡುವ ಸಮಯದಲ್ಲಿ ಬ್ಯಾಂಕಿಗೆ ಹಾಜರುಪಡಿಸಿದ ಚಲನ್ನಲ್ಲಿ ಎಷ್ಟು ಹಣ ತುಂಬಿಸಿ ಚಲನ್ ಕಟ್ಟಿರುತ್ತಾರೆ ಎಂದು ನಮಗೆ ಗೊತ್ತಾಗುವುದಿಲ್ಲ ಅಂದರೆ ಸರಿ'.

Further in unequivocal terms, he has admitted that none of the members from the office of Sub-Registrar visits the bank to deposit the stamp duty, wherein he has deposed as follows :

'ಯಾವುದೇ ಉಪನೊಂದಣಿ ಅಧಿಕಾರಿಗಳ ಕಚೇರಿಗಳಲ್ಲಿ ಉಪನೊಂದಣಿ ಅಧಿಕಾರಿಯನ್ನು ಒಳಗೊಂಡಂತೆ ಯಾವುದೇ ನೌಕರರು ಚಲನ್ ಹಣ ತುಂಬಲು ಬ್ಯಾಂಕಿಗೆ ಹೋಗುವುದಿಲ್ಲ ಅಂದರೆ ಸರಿ. ದಸ್ತಾವೇಜನ್ನು ನೊಂದಣಿಗೆ ಹಾಜರುಪಡಿಸುವ ಪಕ್ಷಕಾರರೇ ಚಲನ್ ಹಣ ಬ್ಯಾಂಕಿಗೆ ತುಂಬಿ ನೋಂದಣಿ ಅಧಿಕಾರಿಗಳ ಕಚೇರಿಗೆ ಚಲನನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ ಅಂದರೆ ಸರಿ'.

Further, he has deposed in his cross-examination that,

'ನಮ್ಮ ಮುಂದೆ ಹಾಜರುಪಡಿಸುವ ಚಲನ್ನಲ್ಲಿ ನಿಗದಿತ ಹಣ ನಮೂದಾಗಿದ್ದರೆ ನಾವು ದಸ್ತಾವೇಜನ ನೋಂದಣಿ ಮಾಡುತ್ತೇವೆ ಅಂದರೆ ಸರಿ'.

28. From the entire cross-examination of PW-1, it is evident that there is no mechanism available before the Sub-Registrar to know what is the exact amount/stamp duty deposited by the purchaser/deed writer at the bank except the voucher having seal of bank and further he has clearly admitted that in the voucher produced before the Sub-Registrar the bank has failed to mention the denomination of the notes received.

29. Apart from the evidence of PW-1, there is an evidence of the bank official by name Girish B./PW-6. During the course of his cross-examination, he has admitted that he has not mentioned amount in words received by the bank. The said evidence given by bank official Girish B./PW-6 can be read as follows :

> 'ನಮ್ಮ ಕಚೇರಿಯ ಉಪಯೋಗಕ್ಕೆ ಎಂದು ಬರೆದಿರುವ ಭಾಗದಲ್ಲಿ ಹಣದ ಮೊತ್ತವನ್ನು ಪದಗಳಲ್ಲಿ ಬರೆಯಲು ತೊಂದರೆ ಇರಲಿಲ್ಲ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ಬ್ಯಾಂಕಿನಲ್ಲಿ ತುಂಬ ರಶ್ ಇದ್ದ ಕಾರಣ ಬರೆಯಲು ಆಗಿರುವುದಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ನಾವು ಎಲ್ಲಾ ಸರ್ಕಾರಿ ಕಚೇರಿಗಳಿಂದ ಬರುವ ಚಲನ್ ಗಳಲ್ಲಿ ಹಣದ ಮೊತ್ತವನ್ನು ಪದಗಳಲ್ಲಿ ಬರೆಯುವುದಿಲ್ಲ. ಯಾವುದೇ ಉಪನೋಂದಾಣಾಧಿಕಾರಿ ಹಣ ಕಟ್ಟಲು ಬಂದಿರುವುದಿಲ್ಲ ಅಂದರೆ ಸರಿ'.

30. Manager/official of the bank has admitted that though it is mandatory to mention the amount in words and the denomination of the notes in the voucher, they have not mentioned the same. He claims excuse that due *to rush of work he has not mentioned the same. When such being the fact, the Sub-Registrar on the basis of the voucher produced before him definitely cannot ascertain as to what exactly the stamp duty deposited by the purchaser in the bank. He can rely only on the voucher produced before him. He cannot make out whether the voucher produced before him is corrected or forged one. He is not a person who is depositing the amount to the treasury or to the bank. The purchaser or any agent on his behalf any mediator will fill the voucher and deposit the amount. There are every chances that the person who has deposited the amount through voucher to the bank might have manipulated and has produced the same before the Sub-Registrar. Since the Sub-Registrar is not having any mechanism to ascertain regarding the correct amount of stamp duty paid by the purchaser to the bank, in a good faith he might have registered the deed.*

31. PW-1 has clearly admitted that none of the voucher prima-facie reflects that it has been altered. PW-1 has admitted that only after verification that the stamp duty mentioned in the voucher is the correct stamp duty on the document, the Sub-Registrar registers the sale deed.

32. Apart from the evidence of the Bank Manager/ official, the prosecution has led the evidence of Accountant *of District Treasury by name Ashokkumar/ PW-11. During his evidence he has deposed that, after the receipt of challans from the bank, he separates the challans pertaining to the particular departments and tallies the same with the challans and scrolls every day, he mention the same by tallying the challans in the schedule, every end of the month challans as well as the schedule copy will be submitted to the AG.*

33. Now the question is if the challans were verified i.e., pre-deposit challan as well as the challan sent by the Sub-Registrar after registration were verified and tallied. When at the end of every month it was sent to the AG, then why it was not come to their notice that such discrepancies have been taken place, why the same was not brought to the notice of Sub-Registrar.

34. It is not the case of prosecution that once the stamp duty is deposited by the purchaser/deed writer at the bank to the treasury account, immediately the bank authorities will inform directly to the Sub-Registrar regarding the amount received by the bank towards the stamp duty to treasury code.

35. In coming to the conclusion that the accused has committed the offence of cheating or forgery, the trial Court has not at all assigned reasons as to on what basis the *trial Court say that the accused has committed the offence. The trial Court has not at all discussed the evidence on record.*

36. It is admitted fact that neither Sub-Registrar has received the stamp duty amount nor she has deposited the stamp duty amount to the bank directly. Further it is admitted fact that she has not filled the voucher. Merely because she has countersigned the pre-deposit voucher she cannot be held liable. Moreover, even for obtaining the Counter signature on the pre-deposit voucher, it is the duty of the clerical staff of the Sub-Registrar to scrutinize the document and place the same before the concerned authority and obtained counter signature. Thereby, the probability cannot be ruled out that there might have been collusion between the clerical staff of the Sub-Registrar and the deed writer or purchaser in obtaining the counter signature of the Sub-Registrar.

37. Normally, officer in authority works with the assistance of the staff working under them, they would ought to have some trust on the staff. By looking into the material on record, the probabilities cannot be ruled out by taking advantage of the trust on the staff, the staff might have obtained the counter signature of the Sub-Registrar on the pre-deposit voucher, because it is not case of *prosecution that, the deed writer or purchaser directly come to the Sub-Register and obtains her counter signature on the pre-deposit voucher. Wherein the evidence on record would show that, prior to obtaining the counter signature of the Sub-Registrar, the document/deed will be placed before the concerned case worker/clerk, who verify the document and the voucher and thereafter place the same before the Sub-Registrar and obtains her counter signature. When the office claimed to have verified the pre-deposit challan, by believing the action or having trust on the staff she might have signed or countersigned the pre-deposit receipt. There may be negligence on the part of the Sub-Registrar in not verifying the document prior to pre-fixing her counter signature on the pre-deposit voucher. The said negligence may amount to dereliction of her duty, that cannot be amount to an offence punishable under IPC or offences alleged against her.*

38. Merely because a public servant countersigned a pre-deposit voucher which was later altered by some third person without her knowledge or consent of the said public servant, when the public servant had no dishonest intention or conspiracy or collusion, she cannot be held responsible for fraud. No doubt there might be some carelessness in verification. At most, as stated earlier she may have to face the departmental or disciplinary enquiry.

She cannot be said to have committed the offence alleged against her.

39. There is absolutely no evidence on record to say that, accused no.1 knowingly ignored obvious alteration in order to help or facilitate the fraud. Prosecution has miserably failed to prove that accused no.1 had the knowledge of alteration of voucher and she had intentionally accepted or approved and registered the sale deed. The prosecution has absolutely failed to prove that the action of accused no.1 in countersigning the pre-deposit voucher was intentional and she had collusion with other accused persons or purchasers, because purchaser has turned hostile before the court.

40. The purchaser of the land CW-6 Shankar, who examined as PW-8 in his chief-examination deposed that, he has purchased the land under Ex.P181 sale deed, but he do not know about this case and accused. Learned PP is permitted to cross-examine the witness. The lengthy cross-examination on behalf of prosecution does not disclose any suggestion as to involvement of accused no.1.

41. Mere registration of the sale deed by the Sub-Registrar, believing that proper stamp duty has been deposited on the basis of the corrected voucher produced *before her, will not by itself constitute offence under Section 166, 409 and 420 of IPC, unless there is material showing her dishonest intention, knowledge or active participation in the manipulation of the vouchers.*

42. To attract the offence under Section 166 of IPC that, there must have evidence on record that there was a dereliction of law governing her conduct. She knowingly disobeyed such direction and such disobedience was with intent to cause injury or knowing that injury was likely to be caused. If the Sub-Registrar honestly believed that a proper stamp duty has already been deposited and the corrected voucher appears genuine. Mere negligence or failure to verify the bank deposit independently would not amount to an offence under Section 166 IPC.

43. Prosecution must prove that she knowingly accepted or forged or altered voucher, intentionally ignored obvious discrepancies or acted in collusion with purchaser or others. But here in this case, it is very much clear that the prosecution has miserably failed to prove that the accused no.1 had intentionally ignored any obvious discrepancies. During the course of cross-examination of PW-1, he has clearly admitted that by looking into the altered voucher in issue, one cannot say that it has been altered and there is no prima-facie discrepancies in the *said altered voucher unless and until it is compared with the pre-deposit voucher retained by the bank on deposit of stamp duty which has been recovered from the treasury send by the bank. Sub-Registrar/Accused no.1 is not the expert to say that copy of voucher produced by the purchase/deed writer was forged or has been altered.*

44. In order to attract offence under Section 409 of IPC, entrustment of property or dominion over property is essential. Stamp duty amount was allegedly deposited in the bank by some third person. The Sub-Registrar was not entrusted with that money personally. Therefore unless and until it is shown that Sub-Registrar had dominion over the stamp duty amount and dishonestly misappropriated or converted it, Section 409 of IPC cannot be attracted. Mere procedural irregularity or negligence in performance of official duty does not constitute criminal breach of trust.

45. In order to attract the offence under Section 420 of IPC, prosecution must prove deception from the inception, dishonest or fraudulent intention, and inducement causing wrongful loss or wrongful gain. If the Sub-Registrar herself was deceived by the altered voucher and acted under the belief that correct stamp duty had been paid, the ingredients of cheating against her are absolutely absent.

46. The prosecution has to establish prior meeting of minds, intentional felicitation of undervaluation, conscious acceptance of false voucher or sharing of wrongful gain, then only Section 420 of IPC, with common intention or conspiracy, may arise. In the present case in hand, the prosecution has failed to establish that there was any prior meeting of minds or the accused no.1 had intentionally felicitated and has consciously accepted the false voucher to attract the offence under Section 420 of IPC.

47. So, mere negligence, omission or failure to verify properly would not amount to offence under Sections 166, 409 and 420 of IPC. prosecution has failed to establish knowledge, dishonest intention, collusion or active participation of accused no.1 with other accused persons.

48. The prosecution has not at all established the procedure which has to be followed by the Sub-Registrar prior to the registration of any document. On the basis of the material placed on record, the procedure can be gathered is that the purchaser/proposed purchaser or a deed writer may have to prepare sale deed and voucher of the proposed stamp duty and place the same before the concerned case worker/clerk working in the Sub Registrar's Office for proper determination of stamp duty *payable on the document/deed and the same is said to have been verified by the officials from the Sub-Registrar Office may be SDA or FDA. Thereafter, the concerned case worker obtains the counter signature of the Sub-Registrar which is the premature stage of registration of document. On the basis of the said counter signed voucher the deed writer/purchaser or any third person acting as a mediator, proceed to the bank and deposit the less amount and thereafter alleged to have altered the voucher by prefixing one numeric number to show the proper stamp duty has been deposited and present before the Sub-Registrar showing that he has deposited the correct stamp duty. On the basis of the said alleged forged voucher Sub-Registrar has acted and has registered the deed.*

49. No procedure has been established or elicited by the prosecution to say that the Sub-Registrar had a mechanism to know what is the exact stamp duty deposited by the proposed purchaser at the bank. The Bank Manager/official who has given evidence before the court in unequivocal terms has accepted that in the voucher they have not mentioned the amount in words/denomination of notes having received by them, except they have put seal and signature on the voucher.

50. The prosecution has failed to prove that the Sub-Registrar knowingly disobeyed the procedure and such disobedience was intentional with knowledge to cause wrongful loss to the government or revenue. The counter signature at the premature stage of registration of document was merely a routine practice.

51. It is not the case of prosecution that voucher will be prepared by the Sub-Registrar and required stamp duty will be received directly by the officials of Sub-Registrar or Sub-Registrar and they deposit the stamp duty to the treasury through bank and thereafter they alleged to have altered the voucher by correcting stamp value by mentioning or pre-fixing one numeric and proceed to register the document. It is only an administrative lapse or bonafide mistake without a dishonest intention, when such being the facts offence alleged under Section 166 of IPC is not proved.

52. Counter signing before deposit alone does not automatically establish cheating unless and until it is established before the court that the Sub-Registrar was knowing that the amount has not been actually deposited and he intentionally felicitated production of corrected voucher later, or he acted in collusion with purchaser or staff. Mere premature counter signature does not attract *the offence unless and until entrustment or dominion over government money is shown.*

53. It is not the case of prosecution that, the stamp duty directly came into the custody of the Sub-Registrar or her staff and it was deposited directly by her in the bank. Thereby ingredients of criminal breach of trust has not been proved.

54. As I have above discussed in detail there are reasons to believe that, the accused no.1 registered the document without knowing the fact that, the challan is forged. Further after getting information from the unknown person and after receiving enquiry report from the committee, the department came to know that, stamp duty paid was deficit. ***Section 80-A of Registration Act 1908, (Karnataka Amendment)*** *reads as under :*

> ***Karnataka***.*-(1) After Section 80, Section 80-A, shall be inserted as follows :*
>
> ***80-A. Recovery of registration fee not levied or short levied etc.***-*(1) If on inspection or otherwise, it is found that the fee payable under this Act in relation to any document which is registered has been paid or has been insufficiently paid, such fee may on a certificate of the Inspector-General or Registration, be recovered, from the person who presented such document for registration, as an arrear of land revenue. The certificate of the Inspector-General shall be final and shall not be called in question in any Court or before any authority:*

55. In view of this specific provision of law it is duty of the Sub-Registrar to take steps to recover the deficit stamp duty, after coming to know that, deficit stamp duty was paid. In this present case on hand the CW-1 Sub-Registrar did not take any steps to recover the deficit stamp duty and did not issue notice to the purchaser, who presented the document for registration with challan. If the notice was issued to the purchaser he might have initiate legal action against the person if any who played fraud on him. In this present case on hand the purchaser of the property did not support the case of prosecution. It is not forthcoming on record for what reasons the Sub-Registrar failed to take action for recovery of deficit stamp duty or to take appropriate steps, this aspect creates serious doubt.

56. In this present case on hand the accused no.1 is admittedly public servant and admittedly sanction to prosecution is not obtained. At this juncture I feel it is relevant to reproduce Section 197 of Cr.P.C.

It reads as under :

197. Prosecution of Judges and public servants.-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government :

57. In this present case on hand as I have above discussed in detail there are reasons to believe that, the accused no.1 put her counter signature on the challan, but the evidence is not sufficient to hold that, the accused no.1 intentionally forged the challan by colluding with other accused persons. Such being the circumstances it is clear that, the accused no.1 put her counter signature while acting or purporting to act in discharge of her official duty. On close scrutiny and consideration of the facts and circumstances of the case this court come to the opinion that, the protection available to the public servant under Section 197 of Cr.P.C. is available to the accused no.1 also. Hence the prosecution cannot prosecute the accused no.1 without sanction from the competent authority.

58. This court judicially noticed that, as per judgment dated 18.05.2026 my predecessor-in-office disposed off 19 connected criminal appeals by passing *separate judgments. Under the said judgments the conviction judgment passed against the accused no.1 by name H.S. Chaluvaraju, Sub-Registrar is set-aside and this court acquitted the accused no.1/Sub-Registrar. The evidence of PW-1 to 5 in said 19 criminal appeals and the evidence of PW-1 to 5 in this present case is one and the same. The criminal appeal numbers in said 19 cases are as under :*

1. *Crl.A.No.241/2021*
2. *Crl.A.No.242/2021*
3. *Crl.A.No.243/2021*
4. *Crl.A.No.244/2021*
5. *Crl.A.No.245/2021*
6. *Crl.A.No.246/2021*
7. *Crl.A.No.247/2021*
8. *Crl.A.No.248/2021*
9. *Crl.A.No.249/2021*
10. *Crl.A.No.250/2021*
11. *Crl.A.No.251/2021*
12. *Crl.A.No.252/2021*
13. *Crl.A.No.253/2021*
14. *Crl.A.No.254/2021*
15. *Crl.A.No.255/2021*
16. *Crl.A.No.256/2021*
17. *Crl.A.No.257/2021*
18. *Crl.A.No.258/2021*
19. *Crl.A.No.358/2021*

59. From the above said reasons and discussion, it is very much clear that the trial Court has not at all considered the evidence on record and even has not appreciated the facts of the case in accordance with law and has wrongly come to conclusion that the prosecution has proved the offence against the accused no.1 beyond *the reasonable doubt. Thereby, the interference of this Court in the conviction judgment passed by the trial Court against the accused no.1 is necessary. Accordingly, I answer* ***Point No.1 in the Affirmative.***

60. ***<u>Point No.2 :</u>*** *In view of holding Point No.1 in Affirmative, I proceed to pass the following:*

ORDER

The Criminal Appeal filed by the accused no.1 under Section 374 of Cr.P.C. is hereby ***allowed.***

The judgment of conviction and sentence passed by the trial Court in C.C. No.832/2009 by the I Addl. Civil Judge and JMFC., at Mandya <u>against the accused no.1</u> is hereby set aside relating to the accused no.1.

Accused no.1 is acquitted for the offences under section 166, 409 and 420 of IPC.

The fine amount deposited by the accused no.1 before the trial Court is ordered to be returned to the accused *no.1 after the appeal period is over. Her bail bond stand cancelled.*

Office is directed to retain the trial Court records in connected appeal preferred by accused no.2 and 3 in Crl.A.No.49/2021.

(Dictated to the Stenographer-III, transcript typed by her, corrected, signed and then pronounced by me in the Open Court, on this the ***23rd day of June, 2026****)*

(Hattikal Prabhu S.)
II Addl. District & Sessions Judge,
Mandya.