IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No.196 of 2022

Vinod Kumar, male, aged about 66 years, son of Late Fudena Rai, resident of Village & P.S. Agresh, District-Rohtas, a former Junior Engineer, Public Works Department, Government of Jharkhand

…. ….. **Accused-Respondent-Petitioner**

Versus

1. The State of Jharkhand
2. Shambhu Nath Singh (Shiv Sena District Head) S/o Late Lalta Prasad Singh resident of Sector Road, P.O & P.S Gumla District, Gumla. **.... …. Informant-Appellant-Opposite Parties**

With

Cr. Revision No.227 of 2022

Rasbihari Prasad Singh, aged about 66 years, Son of-Hardeo Prasad Singh, the then Assistant Engineer Rural Engineering Organization Branch, Work Division, Gumla, presently residing at H. No.5, Rani Kothi, Bhabha Colony, Hanuman Nagar, Lohianagar, P.O. & P.S.-Kankarbagh, Sampatchak, District-Patna-800020, Bihar **…. ….** **Petitioner**

Versus

The State of Jharkhand **.... ....** **Opposite Party**

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Petitioners : Mr. Jitendra Shankar Singh, Advocate
Mrs. Shabina Perween, Advocate
Ms. Sumitra Kumari, Advocate
Mr. Abhijeet Kumar Singh, Advocate
Mr. Shashank Kumar, Advocate
(In both the revisions)

For the O.P./State : Mrs. Priya Shrestha, Spl. P.P.
(In both the revisions)

C.A.V. on 15.06.2026 ***Pronounced on 07/07/2026***

Per Sujit Narayan Prasad, J.

Prayer

1. Since both the revision petitions arising out of common order/judgment dated 28.02.2022 passed by District & Additional Sessions Judge-IV, Gumla in Criminal Appeal No.

103 of 2013, as such, with the consent of learned counsel for the parties, these cases are being taken up together and are being disposed of by this common order/judgment.

2. Both these revisions, preferred under Section 397 read with Section 401 Cr.P.C., are directed against the common order/judgment dated 28.02.2022 passed in Criminal Appeal No.103 of 2013 by the learned District and Addl. Sessions Judge-IV, Gumla, whereby and whereunder, the learned court has set aside the judgment/order of acquittal dated 28th June, 2013 passed by the CJM, Gumla, by which, the petitioners have been acquitted from all the charges arising out of Gumla P.S. Case No.100 of 2000.

<u>Prosecution case</u>

3. Inasmuch as both the Criminal Revisions involve analogous issues, it is considered expedient, for the sake of convenience, to set forth the prosecution case hereinbelow, so as to avoid repetition.

4. The prosecution case and the factual aspect, in brief, are as follows: -

(i) The prosecution case is based upon the Complaint Case No.63/2000 filed by one Sambhunath Singh, the complainant of the case, wherein, it was alleged that Government scheme was to be executed in the form of Road Construction from Basia B.T. to Juratoli in the year 1998-99 with an estimated cost of Rs. 9,92,000/- and second scheme was also to be executed from

Juratoli to Tapkara river in the year 1998-99 with an estimated cost of Rs. 9,60,700/- and both the schemes were sanctioned on 24.03.1999, for which, all together total Rs. 16,00,000/- was released through cheque by Deputy Commissioner Gumla to Executive Engineer R.E.O. Gumla.

(ii) It was further alleged that on 22.11.1999, a review meeting was called in Zila Parishad, Gumla under the Chairman, Suresh Paswan and in that review, the expenditure of Rs. 2,75,000/- as shown for the “Kalikaran Yojna” from Juratoli to Tapkara road was found unsatisfactory and the Executive Engineer was further directed to complete the work by 31.12.1999. In the “Kalikaran Yojna” from Basia B.T. to Juratoli road, report as to constructions status of Mitti murram at the expenditure of Rs.3,00,000/- was submitted by the Executive Engineer to the Deputy Commissioner Gumla which was alleged to be fake. It was also alleged in the complaint petition that during April 1999 in the above scheme an expense towards Guard walls and the Small Bridge for Rs.2,14,587.17/- were drawn which is false and which is evident from the progress report under the scheme in the month of September submitted by the then Executive Engineer.

(iii) All the above fake payments were cleared vide clearance receipt No. 01 to 22 and 93 to 116 as have been mentioned in measurement book no. 1230 and 1231.

(iv) It was also alleged that the Royalty deductions under the Scheme in Pramanak No. 93 to 116 for Rs. 10795/- and in the Pramanak No. 122 for Rs. 24440/- totaling for an amount of

Rs.33,225/- was not deposited with the Mining Department through Challans till date. Also, the Income Tax deducted in Pramanak No. 1 to 22 for Rs. 3872/- and in Pramanak No. 93 to 105 for Rs. 2975/- total Rs.6847/- were not deposited in the Income Tax Department.

(v) Similarly, the deducted amount of Rs. 3168/ and Rs. 9882/- total Rs. 5,130/- of sale tax was also not deposited in the commercial tax department, despite the fact that the above deduction of Royalty, income tax, sale tax was done before April 1999. Similarly, it is further alleged that the then Assistant Engineer Ras Bihari Singh had handed over Rs. 2,00,000/- through hand receipt no. 40 on 09/04/1999 and Rs.1,90,000/- through hand receipt no. 41 on 10/04/1999 to one Vinod Kumar, the then Junior Engineer, Basia section. Hence, total Rs.3,90,000/- was given to the then Junior Engineer Vinod Kumar against which no work has been done by him and the same has been received and misappropriated on the basis of fake expenditure report/adjustment bills to the concerned department.

(vi) The further case of prosecution is that the total amount under the above schemes of Rs. 16,00,000/- was received by the then Assistant Engineer Ras Bihari Singh, Executive engineer Vidya Sagar Chaudhary and J.E. Vinod Kumar from Deputy Commissioner, Gumla but the same had not been utilized properly. It was further alleged that in the meantime, Assistant Engineer Ras Bihari Singh was transferred from R.E.O, Gumla to NREP, Lohardaga but he had not given charge to his successor.

Thereafter, the successor Assistant Engineer had assumed charge of the post of Assistant Engineer, R.E.O Gumla. In this regard, the complainant had given a letter to Deputy Commissioner, Gumla and copies of which were also forwarded to Commissioner and secretary Gramin Vikas Vibhag Bihar Government Patna, Engineer-in-chief cum Additional Commissioner-cum- Special secretory Gramin Vikas Vibhag Patna, Commissioner South Chhota Nagpur Division Ranchi, DDC Gumla, Executive Engineer, Work Division, Gumla and Assistant Engineer, Work Division, Gumla vide his personal letter no.335-38/99 dated 14/09/1999 but no action was taken till date.

(vii) Thereafter, several letters were written to various authorities regarding the matter but no action was taken so far. Subsequently, another letter was written to D.C. Gumla, D.D.C, Gumla with copies to Commissioner and secretary Gramin Vikas Vibhag Bihar Government Patna, Accountant General, A&E, Ranchi and Executive Engineer, Work Division, Gumla vide letter no. 460/1999 dated 11.12.1999 but no action was taken against the accused persons. Similar letters were also written to the Authorities vide letter no. 7-9/2000 dated 10.01.2000 and letter no. 304-8/2000 dated 23.03.2000 but in vain, no action was taken by the Authorities despite repeated complaint letters. Prima facie, it appears from the site that no work was done by the accused persons and they have misappropriated Rs. 16,00,000/- by the above-named accused persons in the name of constructions of the road, rather they had converted the same to their own use in illegal way.

(viii) After finding merit in the Complaint petition and on the basis of it, the said complaint petition was sent by the learned CJM Gumla U/s 156 (3) Cr.P.C. to Gumla P.S. for lodging of F.I.R and investigation.

(ix) Thereafter, Gumla P.S. case no. 100/2000 was registered U/s 406, 409, r/w u/s 34 I.P.C. against aforesaid accused persons (petitioner/revisionist herein namely Vinod Kumar, the then Junior Engineer, Vidya Sagar Chaudhary, the then Executive Engineer and Ras Bihari Singh the then Assistant Engineer, all posted in R.E.O Works Division, Gumla and after completion of investigation, the I.O. concerned submitted the Chargesheet against them U/s 406, 409 r/w 34 I.P.C. before the learned CJM Gumla.

(x) On consideration of Chargesheet and Case Diary so submitted by the investigating officer, the learned CJM Gumla took cognizance of the offence U/s 406, 409 r/w 34 I.P.C and on appearance of the accused persons before the Court of Chief Judicial Magistrate, Gumla, Police Papers were supplied to them.

(xi) Thereafter, the case record after routing through various courts was made over to the learned court of CJM, Gumla for trial and disposal. Thereafter, after hearing on the points of charge, charges of offences u/s 406, 409 r/w 34 I.P.C were framed on 14.05.2008 and the same was read over and explained to the accused persons (petitioners/revisionist herein) in Hindi to which they pleaded not guilty and claimed to be tried and thereafter the learned CJM court conducted the trial of the case and finally disposed of the case by passing the Judgment and order of acquittal, against which, the State has preferred the Criminal Appeal being Cr. Appeal No.103 of 2013, which was allowed by passing the order of conviction against the present petitioners/revisionist for the offence under Section 409 read with Section 34 of the IPC and sentenced them to undergo R.I. for the period of 10 years along with fine of Rs.2,00,000/- each and in default of payment of fine, they were directed to undergo further S.I. for 36 months.

(xii) Being aggrieved with the aforesaid order/judgment passed by learned District and Addl. Sessions Judge-IV, Gumla in Cr. Appeal No.103 of 2013, the present revision petitions have been filed.

Submission of the learned counsel for the petitioners

5. It has been contended that the learned appellate court has not appreciated the fact that the informant (P.W.4) alone had proved only the signature and writing on all the documents marked as exhibits but, in his cross-examination, he has stated at paragraph-31 to 33 that none of the exhibited documents were either prepared in his presence or the signatures thereon were put in his presence.

6. It has also been contended that the official document as has been produced by the O.P. No.2, who has been examined as P.W.4, has to explain as to how he came in the possession of those official documents, though, he is the political leader and he had nothing to do with the office and taking into consideration those documents, which has been produced by the complainant in the case, the order of acquittal passed by the learned CJM has been converted into conviction by the learned appellate Court.

7. It has been submitted that aforesaid documents were not the public documents, i.e. the measurement books and the judgment as has been passed by the learned appellate court was based upon the document which has been produced by P.W.4, the complainant.

8. However, this vital aspect has not been duly appreciated by the learned Appellate Court. Consequently, the order passed by the learned Appellate Court cannot be sustained in law and is liable to be quashed and set aside.

9. It has further been contended that nothing has come in course of investigation, therefore, the petitioners have been acquitted in the present case by the learned trial Court.

Submission of the learned counsel for the State

10. Learned Spl. P.P. appearing for the State has submitted that the Ld. trial court could not consider and appreciate properly the evidences adduced by the prosecution witnesses examined specially that of the informant.

11. It has been contended that the Ld. trial court could not consider the position of the government schemes in question at the time of lodging of the FIR and that of the inspection report submitted (Ext. 8) as the work done at the worksite at the time of the lodging of the FIR was Zero and it was only then (after lodging of the FIR) that some work was started at the worksite and even at the time of inspection by the Executive Engineers, the work was not in consonance with the released total amount which is evident from the inspection report (Ext. 8) itself which shows a total expenditure to the tune of Rs. 11,05,544/-out of the total released amount of Rs. 16,00,000/-.

12. However, the learned Spl. P.P. appearing for the State has defended the order passed by the learned appellate court but she is fair enough to admit the fact as has been stated by the learned counsel for the petitioner/revisionist that documents produced before the Trial Court by P.W.4 were mere photocopies and, secondly, they did not constitute public documents.

<u>Analysis</u>

13. Heard learned counsel for the petitioners/revisionists as well as learned Spl. Public Prosecutor appearing for the State. This Court has also perused the materials available on record, together with the order dated 28.06.2013 passed by the learned Trial Court and the order dated 28.02.2022 passed by the learned Appellate Court.

14. It is evident from record that prosecution in order to prove its case has examined four witnesses namely PW-1 Subodh Kumar Jaiswal; PW-2 Naveen Kumar Jha; PW-3 Sitaram Mandal and PW-4 Shambhu Nath Singh.

15. For ready reference the relevant part of the testimony of prosecution witnesses are being referred herein.

16. **PW-1 Subodh Kumar Jaisawal** has deposed in his examination in chief that he was posted as Officer-in- Charge of Gumla Police Station on 24- 08-2001 and on that day, he received Investigation works of this case from the then O/C P.C. Roy and thereafter he assigned investigation work of this case to subsequent O/c Shivnath Prasad. In his cross-examination by defense, he stated that he had not done any investigation in this case.

17. **PW-2 Navin Kumar Jha** who was Divisional Accounts Officer deposed that the accused of this case Rasbihari Singh who is at present Executive Engineer was then posted as Assistant Engineer and during his tenure only he got transferred to NREP Lohardagga. During the tenure of Rasbihari Singh, there were two works, being carried away but he cannot state the whole details of the works. He further stated that he does not know whether any advance amount was given to Rasbihari Singh or not? During his tenure only, a new Assistant Engineer joined and took the charge but he was not given charge of cashbook by Rasbihari Singh. He also stated that the Office is inspected in each financial year by the Officials of Accountant General and if there is any irregularity found by them, superior officer is informed. Correspondences related to non-submission of cashbook was made to Rashbihari Singh and he was directed to submit it. He was also warned to submit cashbook otherwise superior officers would be informed accordingly. During his tenure, charge of cashbook was not given.

In his cross-examination by the defense, he stated that he cannot tell whether any work was assigned to Rasbihari Singh or not. Handing over & taking over of the charge does not amount to embezzlement. Correspondences were made by the office of Executive Engineer and he is not related with those correspondences.

18. **PW-3 Sita Ram Mondal** in his examination in chief deposed that He was posted as Head Clerk in Rural Engineering Corporation from 1981 to 31-07-2007 and was placed in the Office of Executive Engineer REO, Karya Pramandal, Gumla. He knows the accused persons Vidya Sagar Choudhary, Rasbihari Singh & Vinod Kumar. Vidya Sagar Choudhary was posted as Executive Engineer in the year 1998- 99; Rashbihari Singh was posted as Assistant Engineer in Gumla Awar Pramandal in the year 1998-99; Vinod Kumar was posted as Junior Engineer Basia Section of REO, Gumla Pramandal in the year 1998-99.

He further stated that an estimate of any scheme is prepared after it gets sanction/approval and its technical approval is obtained from the Executive Engineer and thereafter getting its approval from Executive Engineer, the estimate of same is sent to office of the Deputy Commissioner who issues amount for the scheme. After receiving Estimate, the technical officers who are related to the scheme such as Junior Engineer, Assistant Engineer starts works and submit its progress reports to Executive Engineer which is sent subsequently to the Deputy Commissioner to apprise him about the progress of the work. Estimated amount of the works is released in installments on the basis of progress report of the works. The actual amount of expenditure incurred in the works is submitted by Assistant Engineer through Account Statements. Account Section also submits Royalty, Sale Taxes etc along with Account Statements. He was aware of the current scheme going on. The works of Jura Toli to Tapkara & Basia BT to Jura Toli were going on in the year 1998-99 but he was not aware of what works were going on and the progress of the works. He was not aware of total estimated amount of both the schemes.

At this stage of proceedings, this witness was declared hostile at the request of the Prosecution and he was permitted to cross-examine the witness. In his cross-examination by the prosecution, this witness stated and denied suggestion of the prosecution that he had given statement to the police wherein he stated that there were works of roads constructions of 1.86 KM from Jura Toli to Tapkara & 1.57 KM from Basia BT to Jura Toli. And the amount of Rs. Eight lacs (800000/-) related to Road construction of Basia BT to Jura Toli was obtained in Kalicharan Yojana and it was shown updated expenditure as 4.50 lacs and was shown complete road construction of grade- 1 of one (1) KM & it was also shown supply of other items whereas the amount of Rs. Eight lacs (800000/-) related to Road construction of Jura Toli to Tapkara was obtained in Kalicharan Yojana and it was shown updated expenditure as 4.50 lacs and was further shown as Grade-I supply being done and Morrum works has been shown complete. Progress report of the work is sent through him and no file in this regard is used. He further denied suggestion of the prosecution that since the accused persons are officials of their department that is why he is concealing true facts and he has full information about the scheme.

In his cross-examination by the defense, he stated that the parent department of Assistant Engineer Ras Bihari Singh, Executive Engineer Vidya Sagar Chaudhary and J.E. Vinod Kumar is Road Construction Department and their department is not REO. All these three accused persons were not posted in his Department (REO) at the time of his retirement. In the campus of REO, there were numerous quarters. But he cannot tell whether Shambhunath Singh used to stay in one of the quarters during 1998-99 or not. He has come to depose before the court on being served notice.

19. **PW-4 Shambhunath Singh,** is complainant and informant of this case who in his depositions has stated that He knows Vidya Sagar Chaudhary, Rasbihari Singh, and Vinod Kumar. In Basia Block, during the year 1998-99, construction of concrete roads from Basia to Juratoli & from Juratoli to Tapkara were about to be constructed after getting its approval. The estimated cost of road construction of Basia to Jura Toli for the distance of 1.87 KM was Nine Lacs Ninety-Two Thousand (992000/-) and estimated cost of road construction of Jura Toli to Tapkara for the distance of 1.5 KM was Nine Lacs Sixty-Two Thousand Seven Hundred (9,62,700/-). In both of the schemes, the Deputy Commissioner, Gumla had released eight lacs (8lacs) each totaling to Rs. Sixteen Lacs (16 lacs). Both the schemes were to be completed by 30-04-1999 as per conditions of the administrative approval. As per the estimate, Grade-I, Grade-II and Priming were to be done and murram of 6-inch thickness in the total length of the road was to be laid and one foot of soil was to be put on both sides of the road. A Guard wall & Pulia (Culvert) were also to be built. For the execution of the works, the then Deputy Commissioner, Gumla gave Sixteen Lacs of rupees to Executive Engineer, REO, Gumla.

20. He further stated in his examination in chief dated 09-11-2009 that, Scheme Part-2 which is related to Jura Toli to Tapkara in which Guardwall and Culvert were to be constructed has never been constructed. The estimated cost of Guardwall was 1,53,000/- and combined estimate for both was sixteen lacs (16 lacs) which was released by the Deputy Commissioner, Gumla in favour of Executive Engineer, out of total amount of sixteen lacs, twelve lacs eighty thousand (12,80,000/-) amount had been subsequently given to the then Assistant Engineer in five installments during the period 09-04- 1999 to 05-09-1999 by the Executive Engineer through Hand Receipts. The then Assistant Engineer Rashbihari Prasad Singh further gave the amount to the then Junior Engineer an amount of two lacs (2lacs) and one lacs (1 lacs) totaling to Rs. Three Lacs Ninety Thousand (3,90,000/-)

vide Hand Receipt No. 40 dated 09-04-1999 & Hand Receipt No. 41 dated 10-04-1999 respectively. Out of the given amount, an amount of Three Lacs Twenty Thousand (3,20,000/-) was kept by the then Executive Engineer and the said amount did not give it to his subordinate Assistant Engineer for getting the works done. All the three accused persons namely Vidya Sagar Choudhary, Rashbihari Prasad Singh and Vinod Kumar without getting the work of road constructions had shown consuming the items in the work and had shown the work done and had not deposited Royalty Sales Tax and Income Tax to the concerned department thereby caused loss to revenue. The work was shown in the Measurement Book (MB) but no work was actually done at the site.

In his further examination-in-chief dated 15-04-2010 by the prosecution, it is stated by him that at the request of Investigation Officer during the course of investigation, a Technical Team consisting of Two Executive Engineers was constituted by the then Deputy Commissioner to check the works done at the ground who in their report has confirmed Gaban (embezzlement). Thereafter, Sanction for prosecution was obtained by the Deputy Commissioner from the Department of Justice, Government of Jharkhand. During the course of investigation copies of Royalty Income Tax and Challan were given by the accused persons to the Investigation Officer. It was further stated by this witness that the Royalty which was deposited by the Challan is of the Financial Year 1998-1999. Royalty was deposited by accused

Rashbihari Singh in the capacity of Assistant Engineer, REO. The accused persons got the first installment on 01-04-1999 whereas Royalty is supposed to be deducted and deposited after the consumption of items in proportion and it was deposited by the Junior Engineer. The Assistant Engineer did not give the full amount of Rupees Twelve Lacs Eighty Thousand to the Junior Engineer.

In his further examination-in-chief dated 20-12-2010 by the defense, it is stated by him that all the four Divisions' Cash are maintained in Division REO. The First Cashbook is of the period 01-11-1998 to 28-02-2001 which is prepared in the handwriting of Virendra Kumar Sinha and it also bears signatures of Virendra Kumar Sinha & Executive Engineer. The register contains 97 pages wherein each of the pages were signed by the Virendra Kumar Sinha and Executive Engineer Vidyasagar. The same is identified by him and is exhibited and marked as Ext. 1 (with objection).

The other Register is of the period 01-12-1998 to 21-10-2000 is maintained which is also signed by Virendra Kumar Sinha and Executive Engineer Vidya Sagar Choudhary. The register contains 97 pages wherein each of the pages were signed by the Virendra Kumar Sinha and Executive Engineer Vidyasagar Choudhary. The same is identified by him and is exhibited and marked as Ext. 2 (with objection).

The third cash register consisting of pages 1 to 33 is of period from 01-09-2000 to 31-03-2001 and was maintained in the handwriting and signature of cashier Virendra Kumar Sinha. It also bears signature of Executive Engineer Vidyasagar Choudhary. The same is identified by him and is exhibited and marked as Ext. 3.

The fourth cash register consisting of pages 1 to 67 is of period from 01-04-2001 to 30-04-2001 and was maintained in the handwriting and signature of cashier Virendra Kumar Sinha. It also bears signature of Executive Engineer Dudhnath Singh. The same is identified by him and is exhibited and marked as Ext. 4. (with objection).

The measurement book is of 1231 number and is related to construction of road from Juratoli to Tapkara Nadi and was maintained in the handwriting and signature of Junior Engineer Vinod Kumar. It also bears handwriting & signature of Executive Engineer Vidya Sagar Choudhary. The same is identified by him and is exhibited and marked as Ext. 5. It also bears handwriting & signature of Assistant Engineer Rash Bihari. The same is identified by him and is exhibited and marked as Ext. 6. (with objection).

The measurement book is of 1230 number and is consisting of pages 1-95 and is related to construction of road from Basia B. T. to Juratoli and was maintained in the handwriting and signature of Junior Engineer Vinod Kumar. It also bears handwriting & signature of Assistant Engineer Rashbihari. The same is identified by him and is exhibited and marked as Ext. 7. (with objection).

During the course of investigation, a Joint Examination

Team after completing the technical examination of both the schemes submitted its report which bears signatures of Executive Engineer Mritunjay Prasad Singh Jalim and Executive Engineer Krishnanand Choubey. In its report, it is reported that works of Eleven Lacs was done whereas Sixteen Lacs was released for both the schemes. He further identified handwriting & signature of Mritunjay Singh. The same is exhibited & marked as Ext.8. (with objection).

21. In his cross-examination18-02-2011 by the defense, it is stated by him that the estimate of Basia Block situated Juratoli to Tapkara road was prepared in the handwriting and signature of Junior Engineer Vinod Kumar. It also bears signatures of Executive Engineer Vidya Sagar Choudhary & Assistant Engineer Rash Bihari Singh. The same is identified by him and is exhibited and Marked as Ext. 9. He also identified the signatures of Executive Engineer Vidya Sagar Choudhary & Assistant Engineer Rash Bihari Singh in the estimates related to Guard Wall which is exhibited and marked as Ext. 10 & Ext. 10/1 respectively.

Further the estimate of Basia BT to Juratoli road was prepared in the handwriting and signature of Junior Engineer Vinod Kumar. It also bears signatures of Executive Engineer Vidya Sagar Choudhary & Assistant Engineer Rash Bihari Singh. It also bears signature of Executive Engineer of NREP. The same is identified by him and is exhibited and Marked as Ext. 11. (with Objection). He again states that administrative approval was recommended. He identifies the challans meant for Royalty which were of the year 1998-99 and which bears signatures of Rashbihari Singh. The same are exhibited and marked as Ext. 12, Ext.12/1, Ext.12/2. Income Tax was submitted by Rashbihari for the year 1998-99 which is identified by him and is exhibited and marked as Ext. 13. The case has been registered on the basis of Complaint Petition contents of which has been typed by typist D. Prasad and has been signed by him and one Lohra Nag. The same has been identified by him and is exhibited and marked as Ext. 14 & Ext. 14/1 respectively. All the contents of the Complaint petition have been stated by him in his depositions. He again states that the typing had been done by one K.P. Prasad. He identifies the accused persons Rashbihari Singh & Vinod Kumar present in the Court and further claims that he can identify others also.

He does not get any education of accounts and engineering but he knows about it. He has got his name registered as Contractor 22 years ago. He has also worked as contractor in irrigation department. He does not do anything like that now-a-days but he works as Farmer.

In his further cross-examination dated 25-05-2011, he stated that he did not attach any copy of correspondence to the Complaint Petition nor did present it before the Court. He did not make any correspondence with any of the Officials. He had not gone to the places of occurrences along with IO. But had gone to the places of occurrences before fling of this Complaint Petition but he is unable to remember the date when he had gone to the places of occurrences. He did not have mention this fact in the Complaint Petition that he himself went to the place of occurrence. He cannot tell the date when the technical sanction was given to these two schemes. He is unable to remember the works which were undertaken under District Planning nor he is able to remember what works were being undertaken in REO Department. He has seen estimates of both the schemes. He cannot tell rates of estimates. He cannot also tell the rates of estimates of any schemes.

22. In his further cross-examination dated 05-07-2011, he stated that he cannot tell what were the items included in the amount of Rs. Nine Lacs and Ninety-Two Thousand. He had seen the documents related to the schemes. He denied suggestion of the defense that there was no scheme for which an amount of Rs. Nine Lacs and Sixty-Two Thousand was not earmarked. He has stated so after seeing the estimate. He further denied suggestion of the defense that no such estimate was prepared. He knows about both the schemes and a departmental inquiry has also been initiated against the accused persons. He also denied suggestion of the defense that no such incidence has happened.

He cannot state what are the amount of Royalty & sales tax in both the schemes. He knows about income tax. He denied suggestion of the defense that accused persons have deposited the sales tax, income tax. Both the schemes were given to REO under District Planning. He cannot state the estimates of other schemes. He had perused the files related to these schemes in the Office at the direction of DC, DDC. He denied suggestion of the defense that he did not have doubt about it. He also denied suggestion of the defense that no action was taken on his complaint. He cannot tell when the Technical Team was constituted. He also denied suggestion of the defense that no work had got done by these two officials. He knows on which of the items Royalty and income tax are levied. It is levied on notional consumption and deposited on the head which was subsequently deposited by the concerned department. he denied suggestion of the defense that the Royalty which would be deposited has been deposited under both the schemes. He had given an application to IO to seize the documents. He was not shown documents at the time of fling of Complaint Petition. All the documents exhibited as Ext. 1 to Ext.14 has been shown to him after fling of the Complaint Petition.

In his further cross-examination dated 20-10-2011, he stated that he has not gone to the place of occurrence along with Investigation Officer nor he has gone to the place of occurrence along with departmental Technical Team meant for examination.

Ext.1 & Ext.2 has neither been written in his presence nor it has been signed in his presence. There was no irregularity found in the cashbook. He again states that he identifies signatures made in the cashbook but he does not know contents of it.

23. In his further cross-examination dated 11-11-2011, he stated that He has not seen the files before fling of case nor he has made any application to DC & DDC to obtain permission to peruse it.

He did not receive any complaint as to non-completion of the works. He himself had gone to place of occurrence and had seen the status of the work and after seeing the status of the works filed a complaint to District Administration. He had not given copy of the Complaint to the Investigation Officer. The Executive Engineer had kept an amount of Rupees Three Lacs Twenty thousand related to these two schemes but he cannot tell where he had kept these rupees. He denied suggestion of the defense that he has made a false allegation of keeping Rupees Three Lacs Twenty Thousand against Executive Engineer. He had seen the Measurement Book in the Court but he cannot tell whether all entry made in the MB is correct or not.

He had made enquiry in the income tax department, sales tax department and Mining Department to obtain information related to these two schemes but had not obtained any written information in this regard from the concerned department. He denied suggestion of the defense that he is deposing falsely. None of the documents of Ext. 1 to Ext. 14 has been prepared or signed in his presence.

He denied suggestion of the defense that Deputy Commissioner or Officials of the Department has not found any allegation of embezzlement against accused persons and he has brought a false case against the accused persons due to his personal vendetta. He lastly denied suggestion of the defense that there is any wrong entry in Ext. 1 to Ext. 14 and accused persons has got the work done as per specifications of the schemes.

24. The prosecution has also adduced list of documents and articles in evidence, which are as follows:

Ext. 1 Signature of B.K. Singh the then Executive Engineer in the cash book from 1.11.1998 to 28.02.2000;

Ext. 2 Handwriting of B.K.Sinha and the then Executive Engineer Vidhyasagar Choudhary in the cashbook from 1.12.1998 to 31.10.2000;

Ext. 3 Handwriting of Sri B.K. Sinha Cashier and Signature of Executive Engineer Vidhyasagar Choudhary in cashbook from 01.09.2000 to 31.03.2001;

Ext. 4 Signature of B.K.Sinha and Executive Engineer Dudhnath Singh in cashbook from 01.04.2001 to 30.11.2001;

Ext. 5 Handwriting of Vinod Kumar J.E, signatures of Rashbihari Singh, AE and Vidhya Sagar Choudhary in M.B No. 1231;

Ext. 6 Handwriting of Vinod Kumar J.E, signatures of Rashbihari Singh, AE and Vidhya Sagar Choudhary in M.B No. 1231;

Ext. 7 Handwriting of Vinod Kumar J.E, signatures of Rashbihari Singh, AE and Vidhya Sagar Choudhary in M.B No. 1230;

Ext. 8 Joint Enquiry Report of both the schemes bearing signatures of its members Mritunjay Prasad Singh Jalim, Executive Engineers & Krishnand Choubey, Executive Engineers;

Ext. 9 Handwriting of Vinod Kumar J.E and signature of Rashbihari Pd. Singh A.E and Vidyasagar Choudhary on estimate of Juratoli to Torpa; Ext.

10 Signature of Vidyasagar Choudhary E.E on the estimate of Guardwall. Ext. 10/1 Signature of Rashbihari Singh A.E on estimate of Guardwall.

Ext. 11 Handwriting and signature on estimate of Basia B.T to Juratoli;

Ext. 12 Signature of Rasbihari Singh on royalty slip of year 1998-1999;

Ext. 12/1 Signature of Rasbihari Singh on royalty slip of year 1998-

1999; Ext. 12/2 Signature of Rasbihari Singh on royalty slip of year 1998- 1999;

Ext.13- Signature of Rasbihari Singh in the cashbook receipt for the year 1998 to 1999;

Ext. 14 Signature of Shambunath singh on complaint petition;

Ext. 14/1 Signature of Lohra Nag on complaint petition.

25. The learned Trial Court concluded the trial after hearing arguments of both the parties and on consideration of materials on record passed judgment thereby acquitted the accused persons(petitioners/revisionist) namely Vinod Kumar, Vidhyasagar Choudhary and Rashbihari Prasad Singh charged u/s 409, 406 r/w 34 of the IPC by giving benefit of doubt.

26. Thereafter, appeal against the said order of acquittal has been preferred before the Court concerned wherein the learned Appellate Court while reversing the order of Acquittal has convicted the accused persons (petitioner/revisionist herein) by observing that the accused persons were having dishonest intention and they had misappropriated the amount and their dishonest intention has been proved by a number of circumstances viz, entries made in MBs, estimates of the schemes, report of joint inspection team, depositions of witnesses and documentary evidences etc. from which a reasonable inference can be drawn that the accused persons herein were involved in the commission of the misappropriation of the government amount.

27. Against the said order of conviction present revision applications have been filed.

28. Before adverting into merit of the instant revision application, it would be apt herein to discuss herein the core of revisional jurisdiction under Section 397 Cr.P.C. read with Section 401 Cr.P.C.

29. The object of the provisions of revision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional Jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but merely indicative. Each case would have to be determined on its own merits. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460.*** The relevant paragraphs of the aforesaid judgment are being quoted as under:

> *"**12.** Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this*

provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

***13.** Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC.*

20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section

482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused."

30. Relying upon its earlier decision in the case of ***Amit Kapoor Vs. Ramesh Chander (supra)*** the Hon'ble Supreme Court, in the case of ***Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762***, has ruled that normally, revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

31. Thus, from the aforesaid settled position of law, it is evident that while the appellate jurisdiction is co-extensive with the original court's jurisdiction as appreciation and re-appreciation of evidence is concerned, the revisional court has simply to confine to the legality and propriety of the findings and as to whether the court acted within its jurisdiction. Sections 397 to 401 CrPC confer only limited power on revisional court to the extent of satisfying the legality, propriety or regularity of the proceedings or orders of the lower court and not to act like appellate court for other purposes including the recording of new findings of fact on fresh appraisal of evidence. Reference in this regard be made to judgment rendered by the Hon'ble Apex Court in the case of ***Munna Devi vs. State of Rajasthan, AIR 2002 SC 107***. The relevant paragraph of the aforesaid order is being quoted as under:

> *"3.-----The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged. This Court in Kanti Bhadra Shah v. State of W.B. [(2000) 1 SCC 722 : 2000 SCC (Cri) 303] has held that there is no legal requirement for the trial court to write a reasoned or lengthy order for framing the charges."*

32. In the backdrop of the aforesaid settled position of law this Court is now adverting to the contention of the learned counsel for the parties.

33. It has been contended by the learned Counsel for the petitioners/ revisionist that the official document as has been produced by the O.P. No.2, who has been examined as P.W.4, has to explain as to how he came in the possession of those official documents, though, he is the political leader and he had nothing to do with the office of the Government and taking into consideration those documents, which has been produced by the complainant in the case, the order of acquittal passed by the learned CJM has been converted into conviction by the learned appellate Court.

34. It has been submitted that aforesaid documents were not the public documents, i.e. the measurement books and the judgment as has been passed by the learned appellate court was based upon the document which has been produced by P.W.4, the complainant. It has further been contended that nothing has come in course of investigation, therefore, the petitioners have been acquitted in the present case by the learned trial Court, but ignoring the said facts the learned appellate Court has passed the order of conviction which is not sustainable in the eye of law.

35. Learned Special Public Prosecutor appearing on behalf of the State has submitted that the learned trial court failed to properly consider and appreciate the evidences adduced by the prosecution witnesses, particularly the testimony of the informant, which was material to the adjudication of the case.

36. It has further been contended that the learned trial court did not take into account the position of the government schemes in question as prevailing at the time of lodging of the First Information Report, nor did it properly appreciate the inspection report (Ext. 8). The submission is that, at the time of lodging of the FIR, no work had been executed at the worksite, and only subsequent thereto some work was commenced. Even at the stage of inspection by the Executive Engineers, the work executed was not commensurate with the total amount released, which is evident from the inspection report (Ext. 8) itself, showing expenditure of Rs. 11,05,544/- against the released sum of Rs. 16,00,000/-.

37. However, while defending the order passed by the learned appellate court, the learned Special Public Prosecutor has fairly conceded the contention advanced by the learned counsel for the petitioner/revisionist that the documents produced before the trial court by P.W.4 were mere photocopies and, further, that such documents did not constitute public documents within the meaning of law.

38. In the backdrop of the aforesaid factual aspect and settled position of law the question of determination before this Court is:

> "*Whether the learned Appellate Court has rightfully appreciated the evidences on record and, upon such appreciation, has correctly arrived at the conclusion in convicting the accused persons/petitioners/revisionist for the charges framed against them?"*

39. The principal thrust of the contention advanced by the learned counsel for the petitioners is that the documents relied upon by the learned Appellate Court is not the character of public documents within the meaning of law and the said documents are merely xeroxing copy of the original document. It is urged that, notwithstanding the fact that such documents were marked as exhibits, mere marking of a document as an exhibit does not, ipso facto, amount to proof of its contents, and the evidentiary value of the same cannot be elevated in the absence of proper foundational proof.

40. It needs to refer herein that if the document which is sought to be proved is itself inadmissible in evidence, then merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the first case, acquiescence would be no bar to raise the objection in a superior Court.

41. It is imperative to acknowledge that the admissibility of photocopies as evidence is contingent upon several factors, including the authenticity of the original document, the circumstances surrounding its creation, and the photocopy's accuracy as a representation of the original document. Before deciding whether to use the photocopy in the resolution of the relevant matter, the court will carefully examine the photocopy's authenticity and dependability.

42. The circumstances under which secondary evidence pertaining to documents is acceptable are outlined in Section 65 of the Evidence Act. It is possible to refer to Section 63(2), which permits the admission of a document as secondary evidence, provided that its accuracy is verified. This includes copies created by mechanical processes such as Photostats. Verifying the accuracy of a photostat copy is crucial when presenting it in court. A photostat copy of a document cannot be accepted as secondary evidence if it is presented without evidence of its accuracy, without a comparison with the original, or without verification that it is a true reproduction. Put more simply, a photostat copy's admissibility depends on the other party's acknowledgment or proof of its authenticity. Thus, a photostat copy of a document may only be introduced into evidence in situations where it is claimed and proven that the original document was once there but has since been lost, destroyed, or is in the possession of the other party and they refuse to produce it, among other situations listed in Section 65 of Evidence Act. In case of a conflict between secondary evidence and primary evidence, it is settled law that the primary evidence will prevail.

43. Thus, mere marking of a document cannot be said to be the proof of said document. The document has to be proved in accordance with law and the same has to be appreciated in order to ascertain the genuineness of the document with other materials available on record. In that context, both the parties would get ample opportunity to counter those documents as well to submit their arguments with reference to the evidence already recorded by the court. Normally, any party who wants to prove the content of the document is required to lead evidence by production of the original document before the court through its author. Under Section 61, the original document can be presented before the Court through the author, who created the document and it can be proved.

44. The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the evidence of those persons who can see also. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Alamelu vs. State represented by Inspector of Police, 2011 (2) SCC 385: AIR 2011 SC 715.***

45. The recitals in the document do not become a part of the evidence. They are assertions by a person who is alive and who might have been brought before the Court if either of the parties to the suit had so desired. This distinction is frequently overlooked and when a document has been admitted in evidence as evidence of a transaction the parties are often apt to refer to the recitals therein as relevant evidence.

46. Section 62 of Evidence Act deals with Primary evidence. Explanation 2 says that where a number of documents are made by one uniform process, each is primary evidence of the contents of the rest. Under Explanation 2, all the documents must be taken at a time under one uniform process in which case, each of such documents is primary evidence of the contents of the rest. Printing, cyclostyle, lithography are some mechanisms which are recognized under law through which documents can be obtained under a uniform process. Thus, documents prepared under the uniform process of either printing or cyclostyle or lithography cannot be mere copies in strict legal sense of the term, in fact, they are all counterpart originals and each of such documents is primary evidence of its contents under Sections 45 and 47 of the Evidence Act.

47. Secondary evidence of the contents of private documents is admissible only if the original document is not in existence or not available. Therefore, it is usually necessary to account for the absence of the original and for this purpose, proof of primary evidence is not available may be required.

48. In the decision reported in ***2010 AIR SCW 6362*** - ***M.Chandra vs. M. Thangamuthu***, it has been held by the Hon'ble Apex Court that:

> *"It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which lit may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasized that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where party is genuinely unable to produce the original through no fault of that party".*

49. The photocopies which are exhibited were not public documents.

Therefore Section 65 (e) does not apply. Though the seal and signature of the manager on those photocopies mention it as 'certified copy', in fact it does not fall within the meaning of certified copy as referred under Section 65(e) or 65(f), nor such certificate found on the exhibits satisfies the mandate of Section 4 of Banker's Book Evidence Act

50. In the case of ***H.Siddiqui vs. A. Ramalingam***, ***AIR 2011 S C 1492*** it has been observed by the Hon'ble Apex Court that:

> *"In a case where original documents are not produced at any time, nor, any factual foundation has been led for giving secondary evidence, it is not permissible for the Court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in S. 65. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The Court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. Where the respondent had merely admitted his signature on the photocopy of*

the power of attorney and did not admit the contents thereof and the trial Court without examining whether contents thereof had probative value decreed the suit for specific performance, the approach of trial Court was held to be improper."

51. In the backdrop of the aforesaid settled position of law this Court is now adverting to factual aspects of the present case.

52. This Court has carefully examined the order impugned, whereby the order of acquittal passed by the learned trial court has been reversed, and the petitioners/revisionists have been convicted for the charges framed against them.

53. It is evident from order impugned that the learned appellate court heavily relied upon the deposition of complainant and found the corroboration of the same from the Ext. 5, Ext. 6 & Ext. 7 which are measurement Books No. 1231 & 1230.Further the learned court has observed that from perusal of the Cash Registeres exhibited as Ext.1, Ext.2, Ext.3 and Ext.4, it is found that the entries made in the cash registers did not match with the corresponding works as shown in the MB. No. 1230 & MB. No. 1231.

54. In order to verify the aforesaid reasoning, we have gone through the record of the case wherefrom it is evident that except PW.4 who is the complainant, none of the witnesses examined by the prosecution have stated anything incriminating against the petitioners.

55. **PW-1 Subodh Kumar Jaisawal**, Officer-in- Charge of Gumla

Police station has stated that he had not done any investigation in this case.

56. **P.W.2 Navin Kumar Jha, Divisional Accounts Officer in REO office, Gumla** has stated that during the tenure of Rasbihari Singh, there were two works, being carried away but he cannot state the whole details of the works. He further stated that he does not know whether any advance amount was given to Rasbihari Singh or not? During his tenure only, a new Assistant Engineer joined and took the charge but he was not given charge of cashbook by Rasbihari Singh. He also stated that the Office is inspected in each financial year by the Officials of Accountant General and if there is any irregularity found by them, superior officer is informed. Thus, from the deposition of this witness, it is evident that he has not stated any substantial aspect about the case, further from his cross-examination it is evident that he has no idea about the work which has been assigned to the Rasbihari Singh,

57. **PW-3 Sita Ram Mondal** has been declared hostile by the prosecution. However, he has specifically stated that the works of Jura Toli to Tapkara & Basia BT to Jura Toli were going on in the year 1998-99 but he was not aware of what works were going on and the progress of the works. He was not aware of total estimated amount of both the schemes. In his cross-examination by the prosecution, this witness stated and denied suggestion of the prosecution that he had given statement to the police wherein he stated that there were works of roads constructions of 1.86 KM

from Jura Toli to Tapkara & 1.57 KM from Basia BT to Jura Toli. He further denied suggestion of the prosecution that since the accused persons are officials of their department that is why he is concealing true facts and he has full information about the scheme.

58. Thus, upon a careful consideration of the testimonies of P.W.1, P.W.2 and P.W.3, it becomes evident that nothing substantial or incriminating has been deposed by these witnesses against the revisionists, and their evidence does not advance the prosecution case in any material respect.

59. Even P.W.4 the complainant himself accepted and produced the deposit challan of Royalty and taxes for the year 1998- 99 i.e. exhibited as Ext. 12 to 12/2 and Ext.3. It is also pertinent to mention here that the alleged complaint petition of complainant vide his own Patrank No. 335-38/1999 dated 14/09/1999, Patrank 460/99 dated 11/12/1999, Patrank 07-09/2000 dated 10/01/2000 and Patrank 104-08/2000 dated 23/03/2000 stated about the embezzlement but the same has not been produced by complainant either along with his complaint petition and the same has also not been produced during the course of his examination-in-chief or during the course of his cross examination.

60. These facts deposed by P.W.4 during his cross examination at para 12 wherein it is stated by him that he had not annexed any correspondences made in this regard with the Complaint Petition and during the course of investigation also nor any correspondence was made by the officials. Nothing has been adduced by the

Complainant before the Court. It is worthwhile to mention here that technical assessment has been conducted by the joint team after lapse of approximately 5 years and for which the alleged charges cannot be made against the revisionists in any manner at the such belated stage. Further, the statement of P.W.4 has also not been corroborated by any oral testimony of witnesses.

61. On the basis of above discussion, it is clear that the ingredients of the offences U/s 406/409/34 I.P.C were not attracted in any manner and the prosecution has miserably failed to establish the prosecution case beyond all reasonable doubt and for which the learned Chief Judicial Magistrate after appreciating the evidences led on behalf of the prosecution has rightly acquitted the accused persons/revisionists. Further, the accused persons/revisionist were Government employee at the relevant time but the prosecution has failed to bring prosecution sanction order in proper way during the course of trial.

62. It needs to refer herein that although admissibility of evidence, and not manner of its collection, matters: The Indian Evidence Act does not necessitate procedural morality during evidence collection. The general rule continues that if the evidence is admissible, it does not matter how it has been obtained. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Umesh Kumar Vs State of AP, (2013) 10 SCC 59.***

63. But at the same time, it is also settled proposition of law that even if a document or evidence is procured by improper or illegal means, there is no bar to its admissibility provided it is relevant to the matter in issue and its genuineness is duly established. The manner of procurement does not, by itself, render such evidence inadmissible. However, as a matter of judicial caution, the Court, in exercise of its discretion, may exclude certain evidence in a criminal trial if the strict application of admissibility rules would operate unfairly against the accused. More importantly, before acting upon such evidence, the Court must be satisfied that it is genuine, authentic, and free from tampering or mutilation. In the instant case question has already been raised about the genuineness of the documents based upon which the judgment of conviction has been passed.

64. Further, it is evident that in the instant case as regards the legal and valid oral evidence to prove the guilt beyond doubt is one and the only evidence that of the complainant / informant as P.W-4 and in the name of documentary evidence the joint report prepared in course of investigation but on examination of the two that is the evidence of PW.4 and Ext. 8 none is legally acceptable. It is an admitted fact that the so called joint report was prepared in course of investigation by two persons Mrityunjay Singh and Krishna Nand Choudhary, but when the document was marked as exhibit 8, PW4 identified only the writings of Mritunjay Singh and not of other signatory nor proved the contents; however, his statements as recorded by the Appellate Court in paragraphs 31, 32, 33 of judgment are sufficient to sustain the objection raised as to very admissibility of those documentary evidences still marked as Ext. 1 to 14/1 particularly Ext. 8, and the appellate Court relied and referred to those exhibits.

65. From perusal of the Exhibit, it is evident that the informant (P.W 4) alone had proved only the signature and writing on documents marked as Exhibit-I to 14/1 some of them with objections but in his cross-examination, he had stated in paragraph 31-33 of his evidence that none of those exhibited documents were either prepared in his presence or signatures thereon put in his presence.

66. Further, it is evident from perusal of the impugned order that Appellate Court failed to appreciate that neither the contents of cash registers nor the entries and contents of measurement books were legally proved by the author of those documents; even as they did not explain the reason for withholding the official witness who had prepared or had custody of those documents EXT 1 to 4; and as such was admitted in evidence in complete violation of settled proposition of law as stipulated in the Evidence Act/BSA which has already been discussed and referred hereinabove in the preceding paragraphs.

67. On the basis of the discussion made hereinabove, it is manifest that the learned Appellate Court, while reversing the order of acquittal passed by the learned Trial Court, has failed to appreciate the evidences available on record in their proper perspective. Consequently, this Court is of the considered view that the impugned order suffers from perversity and patent error, and therefore warrants interference in exercise of revisional jurisdiction.

68. Accordingly, the order/judgment dated 28.02.2022 passed by the learned District & Additional Sessions Judge-IV, Gumla in Criminal Appeal No. 103 of 2013 is hereby quashed and set aside.

69. In the result, the instant revision petitions stand allowed.

70. Pending interlocutory application(s), if any, stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

07/07/2026

Rohit/-**A.F.R.**

Uploaded on 09.07.2026