

**IN THE HIGH COURT OF MADHYA PRADESH****AT JABALPUR****BEFORE****HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)****CRIMINAL APPEAL No. 180 OF 2018****BETWEEN:-**

1. SMT. USHA AJAY SINGH, W/O SHRI AJAY SINGH, AGED ABOUT 52 YEARS, OCCUPATION- SERVICE, R/O E-3/034, COLONEL'S CORNER, AIRPORT ROAD, DISTRICT BHOPAL, (MADHYA PRADESH)

....APPELLANT

*(BY SHRI MANISH DATT – SENIOR ADVOCATE WITH SHRI DHIRAJ TIWARI - ADVOCATE)*

**AND**

1. THE STATE OF MADHYA PRADESH, THROUGH DISTRICT MAGISTRATE, DISTRICT BHOPAL (MADHYA PRADESH)

2. J. L. MISHRA, S/O LATE RAMDAYAL MISHRA, CHIEF EDITOR, VYOM GARJANA, DISTRICT BHOPAL (M.P.)

....RESPONDENTS

***(BY SHRI ADITYA GUPTA – PANEL LAWYER FOR THE STATE)***

**&**

***(SHRI ANIRUDDH KU. MISHRA – ADVOCATE FOR THE RESPONDENT/  
OBJECTOR)***

***Reserved on : 02.03.2023***

***Pronounced on : 27.03.2023***

This Criminal appeal having been heard and reserved for judgment, coming on for pronouncement this day, *Hon'ble Shri Justice Rajendra Kumar (Verma)* delivered the following :

**JUDGMENT**

This criminal appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.) against the judgment dated 29.12.2017 passed by Second Additional Sessions Judge to the Court of First Sessions Judge, District- Bhopal (M.P.) in S.T. No.544/2013 whereby, learned Sessions Judge found the appellant guilty for the offence punishable as under :-

CONVICTION			SENTENCE	
UNDER SECTION	ACT	IMPRISONMENT	FINE	IMPRISONMENT
468	IPC	RI FOR 2 YEARS	Rs.1000/-	RI FOR 6 MONTHS
420	IPC	RI FOR 1 YEAR	Rs.1000/-	RI FOR 6 MONTHS
471	IPC	RI FOR 1 YEAR	Rs.1000/-	RI FOR 6 MONTHS

2. The case of the prosecution in nutshell is that a private complaint case under Section 200 of Cr.P.C. was filed by the respondent No.2 wherein, it was so alleged that the complainant is the chief editor of a monthly Magazine by the name of 'Vyom Garjana' and in public interest is filing the instant complaint and in the complaint it was alleged that appellant in the year 1997 is said to have appeared in the examination conducted by the M.P. Public Service Commission on the basis of document issued by Tehsildar, Nasrullaganj, District Sehore dated 29.03.1993. It was further alleged that no such documents dated 29.03.1993 in the form of caste certificate was issued by him and on the basis of aforesaid allegation, the learned Judicial Magistrate, First Class, Bhopal, District Bhopal has taken cognizance of an offence punishable under Section 420, 467, and 468 of IPC against the present appellant and has committed the same to the Sessions Court Thereafter, appellant was charged for offence punishable under Sections 466, 467, 468, 471 and 420 of IPC and as the case was triable by learned Sessions Judge, therefore, it was committed to the aforesaid Court. The appellant abjured her guilt and took a plea that she has been falsely implicated in the present crime and prays for trial.

3. That, thereafter charges were framed by the learned Additional Sessions Judge and the prosecution in order to prove its case examined as many as 9 witnesses namely G.S. Rawat (PW-1), Achal Bihari Dubey (PW-2), G.S. Bhalavi (PW-3), J.L. Mishra (PW-4), Sanjay Kherkar (PW-5), Devraj Birdi (PW-6), Salina Singh (PW-7), Sudheer Kumar Jain (PW-8) and Shailendra Hinotiya (PW-9). Thereafter, examination of appellant was done under Section 313 of Cr.P.C. The appellant has pleaded her false implication in the matter. In support of her defence, no witness has been produced by the appellant.

4. Learned trial Court after appreciating the oral as well as the documentary evidence available on record convicted the appellant as mentioned above in Para -1. Being aggrieved by the said judgment and sentence, appellant has preferred this

appeal for setting aside the impugned judgment and sentenced and also from the charges levelled against her.

5. Learned senior counsel for the appellant submitted that learned trial Judge has erred in holding the appellant guilty for offence. punishable under Sections 468, 420 & 471 of I.P.C. The conviction and sentence of the appellant u/s 468, 420 & 471 I.P.C. is bad, improper, incorrect and illegal. The prosecution has failed to establish the essential ingredients u/s 468, 420 & 471 I.P.C, because, there are major contradictions, omissions and improvements in the prosecution evidence and they are inconsistent. The genesis of the entire case is the letter dated 29.03.1993 which now is being claimed as a caste certificate which was never issued by the Tehsildar, K.S. Rai as it was not found in the dispatch register of the office of the said Tehsildar. The said letter dated 29.03.1993 was never issued in the official gazette as a matter of fact it was issued in the personal capacity. It is also submitted that to make a document as forged the present who is said to have issued the same should come to the Court and say that he has not issued the document or that there has to be evidence on record that the document was never prepared by the executant or that some other person should have been examined so as to say that the signatures on the said document are not of the person executing the said document. Until and unless these three conditions are fulfilled the onus lies on the complainant to prove that the document was not in existence. Because, the caste certificate which was issued to the present appellant subsequently in the year 1997 was found to be valid caste certificate as per the report of the High Power Committee. It is submitted that the once the High Power Committee showed that the caste certificate was issued to the appellant was a genuine one and was issued to her in proper capacity, until and unless the said finding was set aside by any competent court of law, the fresh inquiry on the basis of a second complaint was not tenable. It is further submitted that the writ petition was filed before the Hon'ble High Court which was registered as W.P. No.12297/2009 and the

findings of the High Power Committee which was issued on 23.09.2009 was sub-judice and as an interim measure stay was granted. The learned trial Judge has not appreciated the evidence on the touchstone of the evidence, Act and law that is applicable, in spite of the fact that the prosecution has failed to lead and prove any evidence on various aspects.

6. Learned counsel for the appellant has also placed reliance on the judgment of the Supreme Court passed in *Mir Nagvi Askari Vs Central Bureau of Investigation (2009) 15 SCC 643*, *Mohammad Ibrahim and others Vs State of Bihar and Another (2009) 8 SCC 751* & *Sheila Sebastian Vs Jawaharaj and Another (2018) 7 SCC 581*. Further, it is prayed that the impugned judgment of conviction and order of sentence is not sustainable in the eyes of law and the same be set aside and the appellants may be acquitted from the charges alleged against them.

7. Per contra, it is submitted by the learned counsel for the State as well as counsel for Complainant/objector that prosecution has proved beyond reasonable doubt that the forgery and cheating was done by furnishing the false and fabricated caste certificate and it is further submitted that the cogent reasons have been assigned by the learned trial Court by placing reliance upon the evidence of prosecution witnesses.

8. I have heard, learned counsel for the parties at length and perused the materials available on record.

9. In the present case, the learned trial Court framed five points for consideration. In order to prove the alleged allegations of cheating and dishonestly inducing delivery of property, forgery for purpose of cheating and using as genuine a forged document or electronic punishable under section 420, 468 and 471 of IPC respectively, the prosecution has examined 09 witnesses.

10. PW-1 G. S. Rawat, Asst. Prosecution officer of office of the Commissioner, Schedule Caste Development Department (herein after referred as “department”)

stated and proved the service record of the appellant wherein the caste of appellant stated as “Khangaar” as Ex. P-1 Although PW-1 admitted that he is not aware that caste “Khangaar” falls under general or reserved category.

**11.** PW-2 Advocate Achal Bihari Dubey stated before trial Court that he got personal information about the appellant that she got public employment after procuring false and forged caste certificate. Thereafter, he obtained her certificates under RTI Act and sent a legal notice dated 04.02.09 to her Ex. P-2. Appellant had not replied so that he had filed a complaint case. PW-2 further stated that he obtained requisite documents of the proceedings under RTI Act. PW-2 further stated that a letter dated 18.06.09 issued from The Collector, Sehore, M.P. addressed to Chief Judicial magistrate, Bhopal, M.P. wherein it was stated that such caste certificate dated 29.03.2009 was never issued by office of Nasrulla Ganj the then Tehsildar office. Relevant documents were exhibited before the learned trial court exhibited from Ex. P-8 to P-10. PW-2 further stated that in order to challenge the proceedings pending before CJM Court Bhopal, petition filed before Hon’ble High Court of Madhya Pradesh vide MCRC No. 8786 of 2009 has been already dismissed as Ex. P-11.

**12.** PW-2 further stated that a High Level Scrutiny Committee has also given its order dated 23.09.2009 and held that the caste certificate issued in favour of appellant has forged and fabricated. Order annexed as Ex. P-12. During cross examination PW-2 admitted that he is not aware that the validity of any caste certificate only when determined when it is issued in prescribed format. He was also denied about any knowledge that caste certificate may be issued on recommendation of Representative of people. PW-2 further admitted that he is not aware of the actual procedure about issuance of caste certificate. He further denied about any knowledge that appellant got caste certificate from Tehsil Huzur, Bhopal, M.P.

**13.** PW-3 G.S. Bhalawi stated in his deposition that he was the member of High Level Scrutiny Committee and put his signature on order dated 23.09.2009 as Ex. P-

**14.** He admitted that caste “Khangaar” comes under the category of Schedule caste in Madhya Pradesh. He further admitted that the order dated 23.09.2009 as Ex. P-12 was passed on the basis of report sent by the Collector and the Superintendent of Police (S.P.), Sehore, M.P. He further admitted during the proceedings of Committee it reveals that earlier a High Level Scrutiny Committee in the year 2003 was constituted and wherein it was found that the caste certificate issued in favour of appellant as genuine. He further admitted that it is mandatory to annexed two documents to get caste certificate, one is from gazetted officer and second one is from local Member of Parliament, Member of Legislative Assembly or Councillor (Nigam Parshad). In Para 10 of cross examination, PW-3 categorically admitted that actually the caste certificate was issued in favour of Appellant from Tehsil Huzur, Bhopal, M.P. and that certificate was genuine certificate. It is also admitted that Ex. D-1 certificate is not in prescribed format of caste certificate and the same could not be considered for departmental affairs. It is also admitted that the then Tehsildar of Nasrulla Ganj was never summoned before Committee. Other witnesses PW-5 Sanjay Khedkar, PW-6 Devraj Birdi PW-7 Salina Singh were also examined being member of Committee and their testimony also supported the aforesaid version. PW-8 Sudhir Kumar Jain was examined in order to prove the genuineness the report of Committee which is not in dispute that the said committee was constituted and passed an order as Ex. P-12.

**15.** PW-4 the complainant of present case, J.L. Mishra, Advocate stated before trial Court that he got personal information about the appellant that she got public employment after procuring false and forged caste certificate. Thereafter, he obtained her certificates under RTI Act. He further proved the service record of appellant wherein the caste mentioned as “Khangaar” as Ex. P-1C. He further admitted that it is

mandatory to annexed two documents to get caste certificate, one is from gazetted officer and second one is from local Member of Parliament, Member of Legislative Assembly or Councillor (Nigam Parshad). He denied that that actually the caste certificate was issued in favour of Appellant from Tehsil Huzur, Bhopal, M.P. and that certificate was genuine certificate. He further admitted that the so called caste certificate dated 23.03.2009 was issued in the personal capacity by the then Tehsildar of Nasrulla Ganj. He admitted that there is no verification conducted that the appellant was actually belongs to caste "Khangaar" or not, he has no problem if she belongs to caste "Khangaar".

**16.** PW-08 S.R. Naik has proved the documents which were submitted by the appellant during the examination conducted by the Madhya Pradesh Public Service Commission, Indore wherein the caste of appellant stated as "Khangaar" which is not in dispute. PW-9 has proved the documents as Ex. P-13 mark sheet, application form and verification form of appellant and Ex. D-1 so called caste certificate dated 29.03.93.

**17.** PW-09 Shailendra Hinotiya, Tehsildar of Nasrulla Ganj, Sehore, M.P. stated that the said certificate date 29.03.93 was never issued by the office of the then Tehsildar and with respect he sent a letter no. 245/08 dated 09.09.2009 as Ex. P-10. He confirmed that the said certificate was never issued and had confirmed vide letter dated 09.06.2009 as Ex. P-09. He admitted that the caste certificate was never issued without prescribed Proforma. He further admitted that it is mandatory to annexed two documents to get caste certificate, one is from gazetted officer and second one is from local Member of Parliament, Member of Legislative Assembly or Councillor (Nigam Parshad). He admitted that no information sought by the then Tehsildar namely Sh. K. S. Roy regarding the issuance of such so called certificate dated 29.03.1993. He stated that he had no knowledge about that the then Tehsildar namely Sh. K. S. Roy had issued such certificate in his personal capacity. He further admitted that there



would be no entry in official record in case the then Tehsildar namely Sh. K. S. Roy had issued such certificate in his personal capacity.

**18.** After appreciation of aforesaid evidence, it emerges that the whole case is based on falsification of so called caste certificate dated 29.03.1993 issued by the then Tehsildar Sh. K.S. Roy and such certificate was under the scrutiny. The High Level committee scrutinized such caste certificate dated 29.03.1993 and found to be forged and fabricated on the sole basis that there was no official record available in the office of Tehsildar of Nasrulla Ganj, Sehore, M.P as Ex.P-12. Moreover, the report submitted by the then Collector and the Superintendent of police was on the same basis since there was no official record available in the office of Tehsildar of Nasrulla Ganj, Sehore, M.P.

**19.** The learned trial Court totally relied upon the report of High Level Committee dated 23.09.2009 as Ex. P-12. After minute perusal of such report, it reveals that the appellant had submitted her response against the show cause notice dated 29.07.2008. By virtue of her response dated 24.09.08 she stated in nutshell that the so called caste certificate dated 29.03.1993 was not actually a caste certificate rather than there was a certificate only and issued by the then Tehsildar Sh. K.S. Roy in his personal capacity. She submitted that that she had never obtained any caste certificate from the office of Tehsildar Nasrulla Ganj, Sehore, M.P, therefore, it is quite natural that there was no official record that could be available for the same. Moreover, she stated in her response that the alleged caste certificate is only “certificate” not a caste certificate in order to fulfil the requirement of Madhya Pradesh Public Service Commission as prescribed the Format-IV since she had not any caste certificate at the time of applying for such post. Thereafter, she had obtained the caste certificate from Tehsil Huzur, Bhopal vide bearing no. 797/B/121/98-99, dated 05.07.1999 in the prescribed format of caste certificate. Admittedly, that certificate bearing no. 797/B/121/98-99, dated 05.07.1999 was earlier also scrutinized by the High Level

Committee and found valid and genuine caste certificate vide report dated 29.01.2003.

**20.** However, the High Level Committee held that there was no entry in the inward – outward register pertaining to the alleged caste certificate dated 29.03.1993 in office of Tehsildar Nasrulla Ganj, Sehore, M.P that is why it was not a valid and genuine caste certificate. Subsequently, appellant had obtained caste certificate dated 05.07.199 from Tehsil Huzur, Bhopal on the basis aforesaid forged certificate, therefore, such caste certificate issued by Tehsil Huzur, Bhopal automatically deemed to be forged and fabricated. The learned trial court heavily relied upon the report of the High Level committee dated 23.09.2009 as Ex. P-12 and pronounced the impugned judgement.

**21.** The core basis of impugned judgement is that since there was no official record available and no entry in the inward –outward register in office of Tehsildar Nasrulla Ganj, Sehore, M.P, therefore, caste certificate dated 29.03.1993 was forged and fabricated. Before parting further, it is desirable to understand the legal position for cheating and dishonestly inducing delivery of property, forgery for purpose of cheating and using as genuine a forged document or electronic punishable under section 420,468 and 471 of IPC respectively.

**22.** Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "**cheating**" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there

should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

**23.** Now examine the ingredients of the offences punishable either under section 468 or Section 471 of Penal Code. Section 468 (in so far as it is relevant to this case) provides that whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery.

“9. The term "**forgery**" used in these two sections is defined in section

463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below :

**"464. Making a false document.--**A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any digital signature on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature

was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

The condition precedent for an offence under sections 468 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof)."

24. An analysis of the facts of the case clearly demonstrate that initially alleged certificate dated 29.03.1993 issued by the then Tehsildar Sh. K.S. Roy posted at Nasrulla Ganj, Sehore, M.P. Thereafter, on basis of this certificate and another acquaintance certificate issued by the then M.L.A. another caste certificate issued from Tehsil Huzur, Bhopal vide bearing no. 797/B/121/98-99, dated 05.07.1999 in the prescribed format of caste certificate. Admittedly, that certificate bearing no. 797/B/121/98-99, dated 05.07.1999 was earlier also scrutinized by the High Level Committee and found valid and genuine caste certificate vide report dated 29.01.2003. It is also admitted by the aforesaid PW's being members of the High Level Committee that it is mandatory requirement for obtained a valid caste certificate in prescribed format that to annexed two documents, one is from gazetted officer and second one is from local Member of Parliament, Member of Legislative

Assembly or Councillor (Nigam Parshad). It is also on record as well as described in Ex. P-12 that the caste certificate bearing no. 797/B/121/98-99, dated 05.07.1999 is valid and genuine.

**25.** In order to fix the criminal liability of cheating and forgery, it is desired to examine the author i.e. the then Tehsildar Sh. K. S. Roy of the document in question who can depose before the court and tell about the truth for execution of such document. Admittedly, Sh. K.S. Roy who had executed the alleged certificate dated 29.03.1993 was neither examined before the learned trial court nor any other expert evidence produced before the trial court which could be disputed about execution of alleged certificate. Therefore, it is not in dispute that the said certificate was not issued by the then Tehsildar namely Sh. K.S. Roy. Moreover, there is nothing on the record that the prosecution has ever tried to examine Sh. K.S. Roy who was the best evidence in this case.

**26.** It is also on record that there was no enquiry ever conducted by the High Level Committee that the appellant is actually belongs to “Khangaar” caste or not. Therefore, unless and until it is not proved, the appellant is actually not belonging to the “Khangaar” caste; it is highly injustice with the appellant to convict on basis of mere no entry found in the register maintained in the office of the Tehsildar, Nasrulla Ganj, Sehore. Moreover, there are two report issued by the High Level Committee firstly dated 29.01.2003 wherein it was held that the caste certificate bearing no. 797/B/121/98-99, dated 05.07.1999 issued by Tehsil Huzur, Bhopal is valid and genuine. Secondly, the report of the High Level committee dated 23.09.2009 as Ex. P-12 wherein it was held that certificate dated 29.03.1993 is forged and fabricated. Therefore, it is also a legal impediment in this case whether subsequent High Level Committee can be scrutinized such certificate without set aside the previous findings qua the caste certificate of same person. It is also admitted position the findings of the High Level Committee firstly dated 29.01.2003 has not yet been challenged

before any forum and hence attained the finality. The findings of this Committee dated 23.09.2009 has been challenged before the Hon'ble High Court vide W.P. No. 12297/ 09 and the Hon'ble High Court has passed an order dated 25.11.2009 and provide the interim protection in favour of the appellant. The said writ petition is still pending. Therefore, during the pendency of such writ, it's highly incorrect, illegal and improper to convict the appellant mere on the basis that there was no official record available and no entry in the inward –outward register in office of Tehsildar Nasrulla Ganj, Sehore, M.P.

27. In this regard, the Supreme Court in *Mir Nagvi Askari vs C.B.I , (2009) 15 SCC 643* held that:-

*“However, since we have already held that the commission of the said offence has not been convincingly established, the accused could not have been convicted for the offence of forgery. The definition of "false document" is a part of the definition of "forgery". Both must be read together. [Dr. Vimla v. Delhi Administration, [1963] Supp 2 SCR 585] Accordingly, the accused could not have been tried for offence under Section 467 which deals with forgery of valuable securities, will etc. or Section 471, i.e., using as genuine a forged document or Section 477-A, i.e, falsification of accounts. The conviction of the accused for the said offences is accordingly set aside.”*

28. The Supreme Court in *Sheila Sebastian Vs R. Jawaharaj an another , (2018) 7 SCC 581*

*“26. The definition of “false document” is a part of the definition of “forgery”. Both must be read together. ‘Forgery’ and ‘Fraud’ are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that ‘false document’. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High*

*Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.*

*27. A reasonable doubt has already been thoroughly explained in the case of **Latesh @ Dadu Baburao Karlekar Versus The State of Maharashtra, (2018) 3 SCC 66** wherein 'reasonable doubt' has been enunciated by this Court as "a mean between excessive caution and excessive indifference to a doubt, further it has been elaborated that reasonable doubt must be a practical one and not an abstract theoretical hypothesis." In this case at hand, the imposter has not been found or investigated into by the concerned officer. Nothing has been spilled on the relationship between the imposter and respondent no.1. Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the Courts to ensure that suspicion does not take place of the legal proof. In this case, the trial Court as well as the appellate Court carried away by the fact that accused is the beneficiary or the executant of the mortgage deed, where the prosecution miserably failed to prove the first transaction i.e PoA as a fraudulent and forged transaction. The standard of proof in a criminal trial is proof beyond reasonable doubt because the right to personal liberty of a citizen can never be taken away by the standard of preponderance of probability."*

**29.** In the backdrop of aforesaid discussion, the arguments raised by the learned Senior Counsel of appellant is accepted and convincing that the alleged certificate dated 29.03.1993 was actually issued by the then Tehsildar Sh. K. S. Roy not in his official capacity but in his personal capacity. Therefore, it is obvious that the record of such certificate could not be available and there was no entry found in the inward and outward register in the office of Tehsildar, Narsural Ganj, Sehore, M.P. Therefore, the question about forgery committed by the appellant and cheating by using such forged document cannot be arisen at all. The prosecution has unable to prove beyond reasonable doubt that alleged certificate was forged and fabricated certificate.

**30.** That now this court has considered view that the appellant can be convicted and punished only when by leading cogent evidence, the prosecution proved its case

to the hilt. As noticed above, the prosecution could not establish its case beyond reasonable doubt. The evidence must be of sterling quality and should be of a nature that a conclusion can be drawn that appellant and appellant alone 'must' have committed the offence and not that appellant perhaps/might have committed the offence. The prosecution could not satisfy the aforesaid litmus test in the instant case.

***In Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622***, this Court held as under:

*"The facts so established should be consistent only with the hypothesis of the guilt of the accused. There should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

*"Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt or the accused is sought to be established by circumstantial evidence."*

31. After perusal of evidence on record, this court has considered view that the prosecution has utterly failed to meet out the essential ingredients of section 420, 468 and 471 of IPC since the evidence lead by prosecution is mostly based on report as Ex.P-12. In the absence of essential ingredients of convicted section, the learned trial court has ignored the other vital aspects of the case. Thus, considering the evidence which has been led by the prosecution as the learned trial court committed grave error in ignoring and glossing over other legal aspects, this Court is of the considered opinion that the prosecution has failed to establish any charge against the appellant, beyond reasonable doubt, accordingly, She is acquitted of charges under Sections



420, 468 and 471 of IPC. The appellant is acquitted from all the charges appended against them.

32. Resultantly, the judgment and sentence sentenced dated 29.09.2017 passed by Second Additional Session Judge to the Court of First Additional Session Judge, District Bhopal (M.P.) in ST No.544/2013 is hereby set aside.

33. The appellant is on bail. His bail bonds and surety bonds stand discharged and the fine amount paid, if any, be returned to the appellant.

34. The appeal succeeds and is hereby **allowed**.

35. A copy of this order is sent to the court below concerned.

36. Record is sent back to the concerned trial court.

37. Certified copy, as per rules.

**(RAJENDRA KUMAR (VERMA))**

**JUDGE**

DevS