

# **HIGH COURT OF ORISSA, CUTTACK**

## **GOVERNMENT APPEAL NO.14 OF 1987**

From the judgment dated 21.11.1986 passed by Sri B.N. Das,  
J.M.F.C., Talcher in G.R. Case No.134 of 1980/Trial No.154 of 1984.

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State of Orissa .....  
Appellant

Versus

Bhaktaram Puruhita & another ..... Respondents

For appellant : Addl. Govt. Advocate

For respondents : Miss Rehena Khatun

**PRESENT :**

**THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY**

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Date of hearing and judgment : 12.07.2006  
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**PRADIP MOHANTY, J.** In this Government Appeal, the appellant challenges the judgment dated 21.11.1986 of the Judicial Magistrate First Class, Talcher in G.R. Case No.134 of 1988/Trial No.154 of 1984 acquitting the respondents of the charges under Section 420/468/34, IPC.

2. The case of the prosecution is that on 23.03.1980 the Executive Engineer, E.I. Division (Expansion), T.T.P.S. submitted a written report (Ext.13) at Chainpal Out-post alleging that respondent no.1, who was the Sectional Officer in Electrical

Maintenance Division at T.T.P.S., approached the Superintending Engineer (Electrical), Circle Expansion Project of T.T.P.S., for placing orders for supply of materials in respect of Ashoka Electricals at Shop No.4 which he had opened in the name of his son. Accordingly, the Superintending Engineer placed orders with M/s Ashoka Electricals through respondent no.1 for supply of some materials for a total value of Rs.70,298.00 as per Order No.WK-16/79/50 dated 07.01.1980. Thereafter, respondent no.1 handed over a letter dated 23.01.1980 to the informant intimating that goods as per orders have been dispatched by train and requested him to release R.R. by making payment of 90% of the bill amount to him. He also showed a bank intimation to him which revealed that Bijoya Electricals was the consignor and M/s Ashoka Electricals was the consignee. The informant did not agree to such request as the bank intimation did not show that Ashoka Electricals was the consignor and he himself was the consignee. Subsequently, the informant got an intimation on 29.01.1980 from the U.Co. Bank, T.T.P.S. to the effect that R.R. No.182561 in which M/s Ashoka Electricals was the consignor and he himself was the consignee may be released by making payment of Rs.66,445.60. As the collection of the price of the goods for which the purchase order was placed tallied, the said amount was paid to the U.Co. bank, T.T.P.S. and the R.R. with bill copy and the demand note of M/s Ashoka electricals were taken from the bank. But the Sub-Assistant Engineer, Sub-Division No.3, intimated the informant in writing that the materials mentioned in the R.R. did not tally with the bill. Then he was asked to contact with respondent no.1 about the discrepancies. The informant learnt from the said Sub-Assistant Engineer that respondent no.1 expressed before him that by mistake the actual goods had not been booked and he undertook to re-book the same free of cost. But, respondent no.1 did not send the same.

Thereafter, a notice was sent by registered post with A/D to M/s Ashoka Electricals Shop No.4 in the Shopping Centre, T.T.P.S., but it was returned with endorsement of postal department "no such shop at Shop No.4". After due enquiry, the informant came to know that the shop was already closed and the respondent no.1 started his business in the name and style of M/s Ashoka Electricals. Further, respondent no.1 had taken delivery of a cheque for Rs.66,345.66 issued by the U.Co. Bank, T.T.P.S. drawn on the United Bank of India, T.T.P.S. on 31.01.1980, when a sum of Rs.66,445.66 paise was deposited by Talcher Thermal Expansion Project, and respondent no.1 might have withdrawn this money through his banker United Bank of India, T.T.P.S. on that very day. Thus, respondent no.1 had deceived T.T.P.S. authority to the extent of Rs.66,445.66 paise. Therefore, the informant lodged a report before the police and ultimately final form was submitted under Sections 420/468/34, IPC.

3. The plea of the respondents was denial of the allegation.

4. In order to prove its case, the prosecution examined as many as twenty witnesses and defence examined two witnesses in support of its plea.

5. Learned Magistrate, who tried the case, by his judgment dated 21.11.1986 acquitted the respondents of the above charges. Against the said judgment, the appellant has preferred this appeal.

6. Mr. Behera, learned Additional Government Advocate submits that there are overwhelming evidence on record to show that the accused-respondents took away the amount in question and did not despatch the goods as per the contract and thereby they have cheated the order supplier. He further submits that the

essential ingredients of Section 420, IPC having been established by the prosecution, the order of acquittal is bad.

7. Perused the impugned judgment and the evidence available on record. In the instant case, the concerned Class-IV employee, on whose report the entire episode started, has not been examined. There was no material before the trial court that the materials sent and reached at Talcher Railway Station did not tally with the purchase order. Furthermore, the I.O. did not seize the wooden case lying in the railway station for production of the same before the court for inspection. The said wooden case would have been the best piece of evidence to speak what it really contained. Taking into consideration such laches on the part of the prosecution and considering the facts and circumstances of the case, the trial court held that the prosecution has not been able to establish any of the offences charged against the respondents. This Court does not find any reason to take a different view and interfere with the impugned judgment of the trial court.

8. In the result, the Government appeal being devoid of any merit is dismissed.

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**PRADIP MOHANTY, J.**

Orissa High Court, Cuttack  
 July 12, 2006 / *Samal*