

State Of Orissa vs Nakula Sahu & Ors on 30 November, 1978

Equivalent citations: 1979 AIR 663, 1979 SCR (2) 442, AIR 1979 SUPREME COURT 663, 1979 CRILR(SC MAH GUJ) 64, 47 CUTLT 624, 1979 SC CRI R 224, (1979) 2 SCR 442 (SC), 1979 MADLJ(CRI) 451, 1979 MADLJ(CRI) 456, (1979) 2 SCJ 1, 1979 SCC(CRI) 283, 1979 (1) SCC 328

Author: Jaswant Singh

Bench: Jaswant Singh, P.S. Kailasam

PETITIONER:
STATE OF ORISSA

Vs.

RESPONDENT:
NAKULA SAHU & ORS

DATE OF JUDGMENT 30/11/1978

BENCH:
SINGH, JASWANT
BENCH:
SINGH, JASWANT
KAILASAM, P.S.

CITATION:
1979 AIR 663 1979 SCR (2) 442
1979 SCC (1) 328

ACT:
Code of Criminal Procedure, 1898 - Sections 435 and 439
Scope of jurisdiction of High Court in revision.

HEADNOTE:

The respondents in each of the four appeals were convicted and sentenced under s. 409 IPC by the Sub-Divisional Magistrate. On appeal the Sessions Judge affirmed the conviction and sentences passed against them. In revision the High Court set aside the judgments and orders passed by the trial court and the Sessions Court and acquitted the respondents of all the charges.

On the question of (i) the scope of the power of revision of the High Court under s. 439 read with s. 435 Cr. P.C. 1898 and when it should be exercised; and (ii) whether,

in arriving at a concurrent finding, the trial court and the Sessions judge committed a manifest error on a point of law which had resulted in flagrant miscarriage of justice.

Allowing the appeal,

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HELD: (1) Although the revisional power of the High Court under s. 439 read with 9. 435 of the Code of Criminal Procedure, 1898 is as wide as the power of Court of Appeal under s. 423 of the Code, it is well settled that normally the jurisdiction of the High Court under s. 439 is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice. In Akalu Ahir v. Ramdeo Ram, [1973] 2 SCC 583 this Court held that in spite of the wide language of s. 435 Cr. P.C. 1898 which empowered it to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by any inferior court situate within the limits of its jurisdiction and as to regularity of any proceeding of such inferior court and in spite of the fact that under s. 439 of the Code it can exercise, inter alia, the power conferred on a Court of appeal under s. 423, the High Court is not expected to act under s. 435 or s. 439 as if it is hearing an appeal. The power being discretionary it has to be exercised judiciously and not arbitrarily or lightly. Judicial discretion means a discretion which is informed by tradition, methodised by analogy and disciplined by system. [447H; 448A-B]

Amar Chand Agarwalla, v. Shanti Bose & Anr. etc., [1973] 4 SCC 10 and Akalu Ahir v. Ramdeo Ram, [1973] 2 SCC 583 followed.

(2) Neither the trial court nor the Sessions Court committed any error of fact or of law in arriving at their conclusions and the High Court misdirected itself in upsetting their concurrent findings ignoring the well recognised principles for the exercise of revisional jurisdiction. From the material on record it is clear that the offences with which the respondents were charged were brought home to them beyond reasonable doubt. [456E]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 25-28 of 1972.

Appeals by Special Leave from the Judgment and Order dated the 9th December, 1970 of the Orissa High Court in Crl. Rewn. Nos. 188, 190, 191 and 192 of 1968.

D. Mukherjee, G. S. Chatterjee for the Appellant. Pishori Lal Arora (Not Present) for Respondent in Crl. A. No. 25/72.

Frank Anthony, (Crl. A. 26/72), Har Dayal Hardy (Crl. A. 27-28/72), Mrs. S. Bhandare, A. N. Karkhnis and Miss Malini Peduvel in Crl. A. Nos. 26-28/72 for Respondents.

The Judgment of the Court was delivered by JASWANT SINGH, J.-By his judgment and order dated November 30, 1965, the Sub Divisional Magistrate, Bhubaneswar convicted Gopinath Patra, respondent in Appeal No. 26 of 1972 under section 409 of the Indian Penal Code and sentenced him to two years rigorous imprisonment and a fine of Rs. 2,000/-. By the same judgment. the Sub Divisional Magistrate also convicted Nakula Sahu, respondent in Appeal No. 25 of 1972, Brahmananda Misra, respondent in Appeal No. 27 of 1972 and Niranjana Naik, respondent in Appeal No. 28 of 1972 under section 409 read with section 109 of the Indian Penal Code and sentenced each one of them to two years rigorous imprisonment and a fine of Rs. 2,000/- . By the same judgment, the Sub Divisional Magistrate also found all the four respondent guilty of the offence under sections 120B of the Indian Penal Code but in view of the fact 'that they were found guilty of the offence of criminal breach of trust for which they had entered into conspiracy, no separate sentence was awarded to them for that offence. By the same judgment and order the Sub Divisional Magistrate acquitted Nakula Sahu of the charge under section 420 of the Indian Penal Code. On appeal, the Sessions Judge, Cuttack upheld the judgment and order of the Sub- Divisional Magistrate and affirmed the conviction and sentence of the respondents by his judgment and order dated May 1, 1968. On the matter being taken in revision before it, the High Court of Orissa set aside the aforesaid judgments and orders passed by the trial court and the Sessions Judge and acquitted the respondents of all the charges by its common judgment and order dated December 9, 1970. [It is M against this judgment and order that the aforesaid appeals have been filed by special leave.

The facts giving rise to these appeals are: During the year 1961-62, the Public Health Department had a budget provision of Rs. 1,95,420/- for purchase of wash hand basins and other sanitary fittings required for four items of work. Though as Controlling Officer, the Superintending Engineer, Public Health Department was required under the financial Code to watch the expenditure against the budget allotments Of the circles under him, it was the Executive Engineer, Public Health Department, who was the drawing and disbursing officer for the aforesaid budget provision of Rs. 1,95,420/- and was responsible for any wastage or excess of appropriation. At the request of the Executive Engineer, Public Health Department, Bhubaneswar, Lingaraj Das (P.W.7), the then Public Health Engineer, Orissa issued circular letter C(Exh.1) dated September 30, 1961 to several dealers in sanitary goods inviting quotations for supply of 2,000 best Indian make earthen ware wash hand basins with white glazed, straight front, smooth top, and one tap hole and waste holes. In response to the said invitation, twelve firms including the Cuttack Plumbing Stores of which Nakula Sahu, respondent was the proprietor submitted their tenders. In his tender (Exh. 2), Nakula Sahu quoted the following rates: -

1. Wash Hand Basins 22" X 16" Barang make First Quality: Rs. 70/- each

2. Wash Hand Basin 22" X 16" Barang make Second Quality: Rs. 58/- each On the comparative statement (Exh. 33 of the quotations received in response to the aforesaid circular letter being put up before him, P.W.7 accepted the quotation of the Cuttack Plumbing Stores for supply of 1000 22" X 16", Barang make, First Quality, wash hand basins vide Exhibit 3(4) at the rate of Rs. 70/- per wash hand basin plus sale tax at 7% which meant that the basins should be free from all manufacturing defects like dents, fire cracks, warpage or other undulation on the surface etc. Under Exhibit (4) dated October 13, 1961, the Cuttack Plumbing Stores was asked to supply the wash hand basins to the sub Divisional Officer, Project Sub Division No. 1 and submit the bills in triplicate to the Executive Engineer, Public Health Department, Bhubaneswar for payment. Under Exhibit 4(4), copies of the aforesaid order (Exh. 4) were forwarded to Gopinath Patra, respondent and Brahmananda Misra, respondent the then Executive Engineer and Sub Divisional Officer, Project No. I Sub Division, Bhubaneswar respectively for information and necessary action. The supplies were to be received by the Overseer, Niranjana Naik, who was the Section Officer, according to the specifications noted in the order of supplies. Pursuant to work order (Exh. 5), Nakula Sahu, proprietor of the Cuttack Plumbing Stores supplied 1000 wash hand basins in three instalments representing them to be of first quality Barang Make and submitted bills in regard thereto as detailed below:

----- No. Of the wash Date of supply
Exh. No. Of Amount of the Bill hand basins supplied the bill accord-
ing to which payment demanded

494	27-10-1961	19	Rs .	37,000.60
400	13-11-1961	22	Rs .	29,960.00
106	3-1-1962	25	Rs .	7,939.40

On receipt of the supplies at the Public Health Department Store, Niranjana Naik, respondent, who was incharge of Store, took delivery thereof and entered the same in the Measurement Book certifying therein that the supplies were according to the specifications of the order. thereafter respondent, Brahmananda Misra, Sub Divisional Officer checked the supplies according to the specifications in the supply order and signed the Measurement Book in token of the fact that the supplies had been correctly made. Simultaneously with the supplies, Nakula Sahu submitted running bills on behalf of the Cuttack Plumbing Stores on each of which Niranjana Naik, Section Officer appended the following certificate:-

"Verified the materials received on .. and found correct, entered in M.B. (Measurement Book) No..... in Page Taken into stock A/C in (Date and

Year)."

Underneath the certificate of Niranjana Naik, Section Officer Brahmananda Misra Sub Divisional Officer appended his certificate and signed the same. Therefore, the bills were checked in the office of the Executive Engineer who made the payments by means of the cheques.

On November 16, 1961 i.e. after the first two supplies but before the third supply, Lingaraj Das (P.W.7) addressed confidential communication (Exh. 6) to Gopinath Patra hinting to him that according to the information received by him the supplies made by Nakula Sahu were not according to the specifications in the supply order but were of lower class and requiring him to 'verify the quality of each and every wash hand basin and to give a certificate if they were of first class quality as per specification in the tender. By means of the aforesaid confidential letter, Gopinath Patra was also told to submit a detailed report about the quality of the wash hand basins within four days in case he found that they were not of first quality as per specifications in the tender. Gopinath Patra was also asked to intimate the number of wash hand basins supplied by the Cuttack Plumbing Stores and the amount paid to it. As Gopinath Patra did not comply with the aforesaid communication within the aforesaid time, P.W. 7 sent him a reminder to expedite the reply but it was not before December 9 1961 that the former sent the reply (Exh. 7) certifying that 894 wash hand basins which had been supplied by then by the Cuttack Plumbing Stores were all of first quality. By means of Exhibit (7), Gopinath Patra further informed the Public Health Engineer, Orissa that the Cuttack Plumbing Stores had so far been paid Rs. 66,960.60, including sales tax, for the aforesaid 894 wash hand basins. On December 19, 1961, P.W. 7 placed order (Exh. 5) with Cuttack Plumbing Stores for further supply of 500 wash hand basins of the aforesaid quality and make at the rate of Rs. 68/- per basin to be delivered to the Public Health Department's Godown at Bhubaneswar and sent intimation thereof to Gopinath Patra. Accordingly, Nakula Sahu supplied 50 wash hand basins on January 4, 1962, 410 wash hand basins on October 1, 1962 and 40 wash hand basins on October 14, 1962 and submitted bills (Exhibits 29, 32 and 35) for Rs. 3,638.00, Rs. 29,831.60 and Rs. 2,910.40 respectively. On these three bills also, Brahmananda Misra, Sub Divisional Officer and Niranjana Naik, Section Officer appended certificates similar to those which they had given on the previous bills. On the basis of the said certificates, running account bills were prepared and signed by Gopinath Patra, Executive Engineer, and payments were made to Nakula Sahu. On March 28, 1963, the Inspector of Police, Vigilance, Cuttack seized vide seizure Memo (Exh. 73) from the Public Health Godown Bhubaneswar, of which Niranjana Naik, Section Officer was incharge, 593 Barang Make wash hand basins alleged to have been supplied to the Department by the Cuttack Plumbing Stores and A.B. Ghosh (P.W.8), Executive Engineer, Stores Verification Division, attached to the Works Department inspected these basins under the orders of the Secretary, Works and Transport Department and submitted his report (Exh. 49) dated September 9/13, 1963 enclosing therewith statements (Exhibits 50 and 51) containing his remarks in respect of each and every one of 593 basins examined by him. In his report (Exh. 49) A.B. Ghosh inter alia stated: "Not a single basin of first quality could be found during verification. Three type of basins with manufacturer marks II and III class and with no marks are found. All the basins which have been verified have different types of defects as noted against each number in the enclosed statements. In several cases major defects have been noticed in all the type of basins and the nature of major defects have also been noted in the statements." Thereupon the authorities made an inquiry from M/s Orissa Industries Ltd.

Barang (Producers of the Basins) which revealed that the Cuttack Plumbing Stores had during its entire transactions with the former purchased only three first quality wash hand basins and the rest of the wash hand basins purchased by it by auction or otherwise from the Company and dishonestly passed not to and accepted by respondents, Niranjana Naik, Brahmananda Misra and Gopinath Patra as first quality wash hand basins were either second quality or rejected ones which did not at all conform to the specifications mentioned in the tender quotations (Exh. 23 and the supply order (Exh. 4). On these facts, the respondents were charged with and proceeded against for commission of various offences of criminal conspiracy, abetment of and commission of the offence of criminal breach of trust in respect of a sum of Rs. 1,11,280/- entrusted by the State to Gopinath Patra, respondent for purchase of best quality wash hand basins with the result as stated above. In these appeals, it has been urged by counsel for the State of Orissa that the facts and circumstances proved in the case are incompatible with the innocence of the respondents and are incapable of explanation on any hypothesis other than the guilt of the respondents for the offences with which they were charged and that the order of their acquittal passed by the High Court in exercise of revisional jurisdiction which as acknowledged by this Court is a limited one has resulted in grave failure of justice. On the other hand, it has been contended by counsel for the defence that there is no infirmity in the impugned order and the High Court was justified in acquitting the respondent in exercise of its plenary revisional power as the material on record was not sufficient to sustain their conviction. On the submission of counsel for the parties, two principal points arise for consideration by us (1) the scope of the power of revision under section 439 read with section 435 of the Code of Criminal Procedure, 1898 and when it should be exercised and (2) whether in arriving at concurrent findings, the trial court and the Sessions Judge committed any manifest error on a point of law which had resulted in flagrant miscarriage of justice.

So far as the first point is concerned, it is to be emphasized that although the revisional power of the High Court under section 439 read with section 435 of the Code of Criminal Procedure, 1898 is as wide as the power of Court of Appeal under section 423 of the Code, it is now well settled that normally the jurisdiction of the High Court under section 439 is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice. Reference in this connection may be made to the decisions of this Court in *Amar Chand Agarwalla v. Shanti Bose & Anr. etc.*(1) and *Akalu Ahir v. Ramdeo Ram*(2), In the latter case viz. *Akalu Ahir v. Ramdeo Ram* (supra) this Court following its earlier decision in *Amar Chand Agarwalla v. Shanti Bose & Anr etc.* (supra) held that in spite of the wide language of section 435 of the Code of Criminal Procedure, 1898 which empowered it to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by any inferior court situate within the limits of its jurisdiction and as to the regularity of any proceeding of such inferior court and in spite of the fact that under section 439 of the Code it can exercise inter alia the power conferred on a court of appeal under section 423 of the Code, the High Court is not expected to act under section 435 or section 439 as if it is hearing on appeal. The power being discretionary, it has to be exercised judiciously and not arbitrarily or lightly. Judicial discretion, as has often been said, means a discretion which is informed by tradition, methodised by analogy and disciplined by system.

This takes us to the consideration of the second point. In relation to this point, it may be observed that nothing has been brought to our notice on behalf of the respondents to indicate that there was any glaring defect in the procedure adopted by the lower courts or that there was a manifest error on a point of law in the judgments and orders passed by them which had resulted in flagrant miscarriage of justice which needed to be set right by the High Court.

A scrutiny of the evidence which we have made at the request of the counsel for the parties shows that there was not even any misappreciation of evidence on the record by the lower courts which could be said to have resulted in gross failure of justice warranting interference by the High Court.

We may at this stage indicate that while adverting to the evidence, we shall be confining ourselves to the case against Gopinath Patra and Niranjan Naik, respondents in Appeals Nos. 26 and 28 of 1972 respectively, as the other two appeals Nos. 25 and 27 of 1972 against Nakula Sahu and Brahmananda Misra have abated due to their death during the pendency of the appeals in this Court.

Out of the 17 witnesses examined by the prosecution to bring home the aforesaid offences to the respondents, the evidence of (1) [1973] 4 S.C.C 10.

(2) [1973] 2 S.C.C. 583.

P. Ws. 2, 14, 5, 7, 8, 11, 12, 13, 15 and 17 deserve special mention.

P. P. Bahuguna (P.W. 2) who is the Sales Manager of Orissa Industries Ltd., Barang, since 1956 has deposed that accused Nakula Sahu used to transact business with his Company as proprietor of N. C. Sahu & Sons and Cuttack Plumbing Stores; that detailed entries showing the date, invoice No. and total bill amount of every sale effected by his Company are made in the Sales Day Book, cash book and ledger of the Company and that in the ledger, the transactions with different customers are mentioned in separate folios. The witness has by reference to copies of invoices existing on file No. C. 157 (Exh. 11) consisting of 391 pages containing the record relating to all the transactions of Orissa Industries Ltd. with the Cuttack Plumbing Stores and Nakula Sahu & Sons and ledgers [Exh. 12 to 12(4)] evidencing all transactions with Nakula Sahu, Cuttack Plumbing Stores and N. C. Sahu & Sons and containing cross references to invoices testified that it was for the first time in June 8, 1959 that the Cuttack Plumbing Stores purchased three wash hand basins 22" X 16" of Class I quality from his Company; that from June, 1961 to February, 1962, the Cuttack Plumbing Stores purchased 1704 Class II and 300 Class III wash hand basins 22"X16" from his concern; that apart from these sales there has been no other sale of wash hand basins to accused Nakula Sahu or Cuttack Plumbing Stores or N. C. Sahu & Sons; that Nakula Sahu was transacting business with his Company in respect of all the aforesaid invoices; that in the years 1961 and 1962, the price of class I wash hand basin 27"X16 was about Rs. 53/- per piece and price of Class II and Class III wash hand basin 27"X16" was about Rs. 38.50 and Rs. 23/- per piece respectively; that glass and ceramic products became subject to Central Excise duty for the first time with effect from the mid-night of February 28, 1961 and that from that date marking of gradations by stamp and indelible ink were given on wash hand basins produced by his Company; that wash hand basins produced by his

Company are marked with rubber stamp as 1st, or 2nd or Com. Or 3rd according to the different gradations of the products; that in some cases, the wash hand basins are marked as I, II, Com., or III, in place of 1st, 2nd, Com. Or 3rd respectively; that of all the gradations 1st or I are the best quality; that first quality products are those which have no blemish; that the second quality basins are those having minor defects without affecting their utility; that the third quality products are those having major defects either affecting or not affecting their utility; that by II submitting quotations his Company had made known to the Government Departments that there were wash hand basins of different gradations in his concern; that the gradation marks on the wash hand basins made by his concern are the surest guide to the customers regarding the quality of goods. The witness has further affirmed that during the years 1961 and 1962 i.e. from February 28, 1961 to the end of 1962, only 70 to 80 first quality i.e. Class I wash hand basins were produced by his Company and were stamped as such; that from February 28, 1961 to the end of February, 1962 only 54; Class I (first quality) wash hand basins 22"X16" were produced by his Company; that in November, 1961 and December, 1961, no First quality wash hand basins were manufactured in the factory of his Company and that though his Company has been attempting to produce first quality wash hand basins, it has not succeeded in producing them in large numbers.

K. L. Sigtia (P.W. 14) who is the Secretary, Orissa Industries Ltd., Barang, since 1951 has corroborated the statement of P. P. Bahuguna (P.W. 2) in all material particulars with regard to all the business transactions made by his Company with the Cuttack Plumbing Stores, Nakula Sahu and M/s Nakula Sahu & Sons including 200 numbers of wash hand basins 26"X16" which as per invoice 1] (24) were sold in auction by the Company to the Cuttack Plumbing Stores at Rs. 15/- per piece. He has also stated that the wash hand basins produced in his factory prior to March 1, 1961 (when the Central Excise duty was levied on the potteries including the wash hand basins) were sorted out and stocked separately according to their grades; that after the introduction of excise duty, his Company graded the wash hand basins into three classes viz. First, Second and Third and the markings were given on the said wash hand basins as I, II or III according to the gradations as directed by the Central Excise office; that after six months, the Excise staff told them to change the markings as 1st, IInd or IIInd according to the aforesaid three gradations and accordingly for first grade, they gave marking 1st, for second grade, they gave marking IInd and for third grade, they gave marking IIInd and that 'Orissa' is the trade mark of their firm. The witness has by reference to file Exhibit (II) affirmed that it was on June 8, 1959 that the Cuttack Plumbing Stores for the first time purchased three 22" X 16"

wash hand basins for 'first quality from his concern vide Exhibit 11 (2) which bears the signature of Nakula Sahu; that during the period 1959 to 1962 Nakula Sahu or Nakula Sahu & Sons or Mis Cuttack Plumbing Stores did not purchase any wash hand basins from his Company's factory except those entered in Sales Day Book [Exh. 65 to Exh. 65 (18)]. He has further affirmed that his Company does not produce any wash hand basins called the best quality wash hand basins. The witness A; has denied that his concern ever sold any second class wash hand basins representing them to be of best quality.

Nabaghan Misra (P.W. 5) who is the Head Clerk in the office of the Executive Engineer, Public Health Department, Bhubaneswar has stated that on receipt of copy of the work order, The concerned Executive Engineer of the Public Health Department directs his subordinates to receive the commodities; that after the commodities are supplied, the suppliers submit their bills to the authority who receives the commodities. Ultimately, the Executive Engineer of the concerned Division makes payment by cheques. He has further stated that the commodities supplied are physically received by the Overseer who is the Section Officer of the concerned Division; that the Section Officer is required to receive the supplies according to the specifications noted in the order for supply, to enter the commodities received by him in the Measurement Book and to give a certificate in that book that the supplies are according to the specifications of the order; that thereafter the Sub Divisional Officer of the Division has to- check the supplies with reference to the specifications given in the order and put his signatures in the Measurement Book; that the stock registers of the supplies received are maintained in the office of the Sub Divisional Officer; that Section Officer and the Sub Divisional Officer endorse certificates on the order as to the correctness of the supplies in terms of the specifications in the order; that thereafter the bill is checked in the office of the concerned Executive Engineer and after payment order is made by the Executive Engineer on duplicate voucher prepared by the Section Officer and countersigned by the Sub Divisional Officer, payment is made by cheque issued by the Executive Engineer; that Exhibit 19 is the bill for Rs. 37,060/- submitted by the Cuttack Plumbing Stores of which the accused Nakula Sahu is the proprietor, in respect of the supply of wash hand basins, 494 in number of the specifications and quality mentioned therein; that the corrections in ink are made by accused Niranjana Naik, the then Section Officer and are initialled by him; that the endorsement and the certification at the bottom are in the writing of the accused Niranjana Naik and contain his signature dated October 28, 1961; that the corrections in the endorsement have been initialled by accused Niranjana Naik; that Exhibit 20 is the running account bill prepared in the office of Niranjana Naik, the then Section Officer in relation to Exhibit 29 and bears the signatures of both Niranjana Naik, Overseer and Brahmananda Misra, Sub Divisional Officer. The witness has also identified the signature and initial of the accused Gopinath Patra on Exhibit 20(4) and has stated that after compliance with all the formalities, cheque for the aforesaid amount was made over to accused Nakula Sahu on October 28, 1961. The witness has likewise proved bills (Exhibits 22 and 25) in regard to payment of Rs. 29,960/- and Rs. 7,939.40 respectively.

Lingaraj Das (P.W. 7) who was the Public Health Engineer and also the Controlling Officer of the Public Health Department during the relevant time has stated that on receipt of the quotations called by him vide Exhibit 1, he accepted the quotations of the Cuttack Plumbing Stores and placed an order (Exh. 4) with the latter for supply of wash hand basins of the make, specifications and quality and at the rate and on the conditions noted therein. The witness has also proved the aforesaid letter (Exh. 6)

addressed by him to Gopinath Patra and the reply (Exh. 7) received from the latter certifying that 894 wash hand basins were of first quality. He has further stated that by first quality, he meant that the wash hand basins should be without any manufacturing defects.

A. B. Ghosh (P.W. 8) who has passed the examination in Sanitary Engineering and Water Supply as a special subject has stated that he was working as Executive Engineer, Verification Officer, for all departments under the Public Works Department; that under orders of the Secretary, Sanitary Works Department, he inspected and verified 593 numbers of "Orissa" 22" X 16" wash hand basins supplied by accused Nakula Sahu and stocked inside the Public Health Department Godown at Bhubaneswar, the key of which was with accused Niranjana Naik; that the inspection and verification was commenced by him on August 30, 1963 and completed on August 31, 1963 in the presence of accused Niranjana Naik who pointed out the 593 wash hand basins, which were in a separate stock, as having been supplied by accused Nakula Sahu; that on verification, he did not find any class I wash hand basins in the said 593 wash hand basins and that almost all the said wash basins had manufacturing defects and bore markings II or IIInd or III and only a few had no marks as stated by him in his inspection and verification report (Exh. 49). During his deposition before the courts also, the witness examined the said wash hand basins and gave in detail the manufacturing defects observed by him on each one of them. He has further stated that fire cracks, dents, blisters, uneven surface, unglazed patches, undulating surface and uneven holes in any place of basins are the manufacturing defects and those defects cannot occur after manufacture is over; that on verification, he found almost all the aforesaid wash hand basins bearing the marks II or III which led him to presume that those were the marks of classification. The witness has denied that glazed patches will become unglazed due to bad storage and handling or that any wash hand basin would become unglazed by friction.

Pursottam Kar (P.W.10) who, took over as Sub Divisional Officer, Project I., Public Health Department, Bhubaneswar in January, 1963 has on the basis of monthly stock register (Exh. 45) of Project I stated that 22"X16"

wash hand basins numbering 494, 400, 106, 410 and 40 were received at the godown of the Public Health Department, Bhubaneswar from the Cuttack Plumbing Stores on October 28, 1961, November 13, 1961, January 3, 1962, January 31, 1962 and February 13, 1962 respectively. He has further stated that in 1957 only thirty 22"X16" wash hand basins were received; that in 1958 and 1959, no 22"X16" wash hand basins were received and that in 1960 only eight 22"X16" wash hand basins were received. He has further stated that at the time of verification, accused Niranjana Naik told him that the wash hand basins verified vide Exhibits 50 and 55 were supplied by accused Nakula Sahu.

D. N. Singhdeo (P.W. 11) who is the Executive Engineer, Public Health Department has stated that in April, 1963, he went to the Store of the Public Health Department, Bhubaneswar with Misra,

Assistant Pottery Manager of Orissa Industries, Rao, Inspector of Central Excise and Dass, Intelligence Officer and verified some of the wash hand basins. The stock of the wash hand basins which were to be verified were shown to him by accused Niranjana Naik, the then Overseer incharge of the Store.

Sachidananda Misra (P.W. 12) who was Incharge of Production in Konark Ceramics, Athgarh from 1960 to 1964 has affirmed that the first quality wash hand basins mean wash hand basins having no manufacturing defect.

P. Ram Krishna Rao (P.W. 13) who is the Central Excise Inspector, Mauza Jaipur has stated that during the time he was working in Orissa Industries Ltd., Barang as Assistant Pottery Incharge, rubber stamp marks were put on the wash hand basins produced in the factory showing their quality and gradation such as I or IInd or only II or IIIrd or only III or IVth or only 'IV' as the case was; that very small number of first quality wash hand basins were being produced and that at the time of the aforesaid verification, rubber stamp marks II or III were there.

Abdul Rasid Khan (P.W. 15), L.D.C. in Sales Tax Office, Cuttack, West Circle has by reference to the record stated that in the application (Exh. 68) made by the Cuttack Plumbing Stores, Nakula Sahu has signed as proprietor/Manager/Partner/Principal Officer of the said firm; that on the said application, Registration Certificate No. CU 12681 dated December 27, 1956 showing Nakula Sahu as Proprietor of the Cuttack Plumbing Stores and that Exhibit 69 is the office copy of the said certificate and that on October 20, 1963, the said certificate was renewed for the year 1963-64.

Prasanta Chandra Das (P.W. 17) who is the Inspector of Police attached to Vigilance Branch has stated that on March 28, 1963 he seized 593 wash hand basins of Barang Make bearing 'Orissa' Trade Mark from Public Health Department Stores, Bhubaneswar as pointed out by Niranjana Naik, accused.

From the resume of the prosecution evidence as given above, it is abundantly clear that quotations in regard to the supply of first quality, barang make, 22"X16" wash hand basins submitted by the Cuttack Plumbing Stores, of which Nakula Sahu was the proprietor were accepted by P.W. 7 and work order for supply of 100 wash hand basins of the aforesaid quality, make and size was issued to the former by the latter; that Gopinath Patra who as Executive Engineer, Public Health Department Bhubaneswar, was entrusted with and had dominion over Rs. 1,95,420/- for purchase of wash hand basins and other sanitary fittings entered into criminal conspiracy with Niranjana Naik, who was Section Officer of Project No. 1 Sub Division, Public Health Department, Bhubaneswar and other accused for commission of criminal breach of trust punishable under section 409 of the Indian Penal Code; that in pursuance of the said conspiracy, Gopinath Patra committed criminal breach, of trust in respect of a huge amount of Government funds by dishonestly purchasing between October, 1961 and February, 1962 wash hand basins from the Cuttack Plumbing Stores which were not of first quality, barang make as specified in the tender but were substantially inferior in quality and value to those basins; that pursuant to the said conspiracy, Niranjana Naik, accused dishonestly accepted and took delivery of sub standard wash hand basins differing materially in quality and value from those which were contracted to be supplied and indented for knowing pretty well from their gradation

marks which were a sure guide about their quality that they were of inferior quality and appended false certificates in the Measurement Book and on the aforesaid bills Nos. 19, 22 and 25 presented by the Cuttack Plumbing Stores to the effect that the supplies of wash hand basins made by it were correct according to the specifications mentioned in the order and consequently abetted Gopinath Patra in the commission of the offence of criminal breach of trust punishable under section 409 of the Indian Penal Code and thereby committed an offence under section 409 read with section A 109 of the Indian Penal Code; that from February 28, 1961 to the end of 1962 A.D. Only seventy to eighty first quality wash hand basins were produced by Orissa Industries Ltd., Barang; that except for three first quality wash hand basins purchased by the Cuttack Plumbing Stores in June, 1959 from Orissa Industries Ltd., Barang, the rest of the wash hand basins purchased by Nakula Sahu either in his individual capacity or as proprietor of N. C. Sahu & Sons or as proprietor of the Cuttack Plumbing Stores from the said Company were all of II or III gradation and as such were substantially inferior in quality and value to the specifications mentioned in the tender (Exh. 2) and the work order (Exh. 4) and that save and except the number of wash hand basins detailed in their depositions before the Court by P.Ws. 2 and 14, who are Sales Manager and Secretary respectively of Orissa Industries Ltd., Barang, no other wash hand basins were purchased by Nakula Sahu or N. C. Sahu & Sons or Cuttack Plumbing Stores, of which Nakula Sahu was the proprietor.

The plea of Gopinath Patra that he acted bonafide on the certificates of the Section Officer and Divisional Officer whose duty it was to verify the quality of each and every wash hand basins on receipt of the consignments and passed bills Nos. 19, 22 and 25 in a casual manner and that 894 wash hand basins which he inspected under orders of the Public Health Engineer conveyed to him vide Exhibit 6 were of Barang Make, first quality, and 593 wash hand basins which were seized by P.W. 17 under Exhibit 73 were not from 894 wash hand basins verified by him in Exhibit 7 is totally falsified by the clinching evidence furnished by Exhibit 7 dated December 9, 1961 which. it will be recalled was sent by Gopinath Patra in reply to the confidential communication addressed to him by P.W. 7. In this Exhibit 7 Gopinath Patra clearly informed P.W. 7 that he had inspected each and every one of the 894 wash hand basins which had up to that date been supplied by the Cuttack Plumbing Stores and found them all of Class 1 Barang make. The conclusion is, therefore, irresistible that Gopinath Patra actively connived at the delivery and acceptance of inferior quality of wash hand basins by the supplier which did not at all conform to the specifications given in the tender submitted by it or in the supply order placed by him and dishonestly passed orders for payment of first quality goods knowing that the wash hand basins supplied were of inferior quality and thus committed criminal breach of trust in respect of a huge amount of Government funds and that in order to conceal his guilt he purposely gave false certificate vide Exhibit 7 that 894 wash hand basins supplied by the Cuttack Plumbing Stores (out of which 593 were seized by P.W. 17 and verified by P.W. 8 to be defective and of II or III quality) were all of first quality and conformed to the specifications in the supply order although in the proved facts and circumstances, none could be of first quality. That this was so and he furnished the aforesaid certificate even without caring to visit the Public Health Department Store, Bhubaneswar for physical verification as directed by his superior is further evident from the fact that he omitted to make even a mention in Exhibit 7 about the quality of 106 numbers of wash hand basins which had been indisputably received in the Store before he sent reply Exhibit 7 to the aforesaid confidential query made by P.W. 7 vide Exhibit 6.

The further plea of the accused that 593 wash hand basins seized from the Public Health Department Store by P.W. 17 were not from amongst those supplied by the Cuttack Plumbing Stores also stands negatived from the evidence of P.W. 8 (who verified the said wash hand basins at the pointing out of Niranjana Naik) as also from the evidence of P.Ws. 10, 11, 12, 13 and 17.

Thus it is manifest that neither the trial court nor the Sessions Judge committed any error of fact or of law in arriving at their conclusions and the High Court misdirected itself in upsetting their concurrent findings ignoring the well recognised principles for the exercise of revisional jurisdiction. From the material on the record, we are satisfied that the offences-with which Gopinath Patra and Niranjana Naik were charged were brought home to them beyond any reasonable doubt.

From the foregoing reasons, we set aside the aforesaid judgment and order of the High Court acquitting Gopinath Patra and Niranjana Naik and convict them for the offences with which they were charged and held guilty by the trial court. Keeping however, in view the fact that the said respondents are likely to lose their jobs and must have gone through a lot of mental and financial strain during the prolonged proceedings before the courts lasting for over fourteen years, we think that a consolidated fine of Rs. 10,000/- in case of each of the respondents will meet the ends of justice. Accordingly while remitting the substantive sentence of imprisonment, we impose a sentence of fine of Rs. 10,000/- on each one of the said respondents viz. Gopinath Patra and Niranjana Naik. In default of payment of fine, each one of the said respondents shall undergo imprisonment for a period of six months. The fine shall be deposited within a period of two months from today failing which the aforesaid respondents shall surrender themselves to their bail bonds to undergo the aforesaid imprisonment imposed on them in default of payment of fine.

P.B.R.

Appeal allowed.