

IN THE COURT OF THE SPECIAL JUDGE, C.B.I.-II, BHUBANESWAR.

PRESENT:

**Dr. A.K.Mishra,  
Special Judge, C.B.I.-II,  
Bhubaneswar.**

**T.R.No. 21 OF 2009.**  
R.C. No. 24(A) of 2009.

Date of argument : 12.4.2016.

Date of Judgment : 20.4.2016.

Republic of India.

**Versus.**

Patitapaban Dash, aged about 59 years,  
s/o. late Brajabandhu Dash, Vill. Rudrapur,  
P.O. Tangi, Dist. Cuttack.  
At/P. Bidanasi, P.S. Bidanasi, Dist. Cuttack.

... Accused.

For the prosecution : Sri Sri K.C.Mishra, Sr.P.P.C.B.I.  
Sri A. Jaiswal, P.P. C.B.I.

For the Defence : Sri A.K.Jena & Associates, Advts.

Offences u/s. 409, 477-A IPC and u/s. 13(2) read with  
Section 13(1)(c) and 13(1)(d) of the Prevention of  
Corruption Act, 1988.

### **JUDGMENT**

Accused stands indicted u/s. 409, 477-A Indian Penal Code and section 13(2) read with Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 for having committed misappropriation of Rs.5,441/- by falsification of document as a branch postmaster during the period from 6.9.2004 to 2.6.2005.

2. The gamut of prosecution case would unravel the gravamen of the indictment in specifics. On 24.9.2008

Superintendent of Post office, South Division, Cuttack lodged information, Ext.43 before Supdt. Of C.B.I. Bhubaneswar alleging that accused Patitapaban Das while working as branch post master of Rudrapur branch post office in account with Chhatia Post office under Athagarh Head office during the period from 2000 to 2007 had misappropriated an amount of Rs.3,02,293/- from the 12 savings accounts and 04 recurring deposit accounts by not accounting for the same into government account though he had received money from different account holders. The number of accounts, the name of account holders and the period of fraud as well as amount were mentioned therein which include the S.B Accounts no. 650590 and 650538 in the name of Malati Sahu and Keshab Das & Rama Ch. Lenka respectively alleging misappropriation of Rs. 5441/- during the period from 6.9.2004 to 2.6.2005 .

- (2-A) The Supdt. of Police, C.B.I, Bhubaneswar on 30.9.2008 registered FIR Ext.60 on his own report vide R.C. Case No.24 (A) of 2008 u/s. 409, 468, 477-A of IPC and section 13(2) read with Section 13(1)(c) of P.C.Act, 1988 and directed Sri K.P.Tripathy, Inspector C.B.I for investigation. Later Sri G.K.Pradhan, the then S.I. Of Police, CBI took up investigation taking permission from the court vide order dated 5.11.2008. He examined witnesses and seized documents. It is specifically alleged that during the period from 6.9.2004 to 2.6.2005 accused received the amount for deposit from the account holders but did not make entries in the postal records and thereby misappropriated the amount abusing his official position. The Investigating Officer then obtained sanction order Ext. 42 as required u/s. 19 of the P.C.Act from P.W.3 Supdt. Of Post office

Cuttack South Division for the total period from 2000 to 2007 and submitted ten police reports u/s. 173 (2) Cr.P.C in the form of charge sheets. The court took cognizance on 9.7.2009 The present trial is ensued out of police report u/s. 173(2) Cr.P.C covering the period from 6.9.2004 to 2.6.2005.

3. The plea of defence is denial simplicitor. To substantiate, accused has asserted u/s. 313 Cr.P.C in specifics that he was working as delivery agent at Rudrapur Branch Post office and no specimen signature of him was taken for any comparison to the questioned entries.
4. In order to bring home charge. the prosecution has examined six witnesses. Defence has examined none. Sixty documents are exhibited on behalf of the prosecution as against only one document Ext.A i.e. the copy of suspension order of accused as a G.D.S.M.D dated 6.11.2007 from the side of the defence.
5. The points for determination are :
  - (i) Whether accused was a public servant during the period from 6.9.2004 to 2.6.2005. in the capacity of Branch Postmaster of Rudrapur branch post office?
  - (ii) Whether accused by that time and place was entrusted with Rs.5441/- by Malati Sahu and Keshab Das?
  - (iii) Whether accused by that time and place in the capacity of a public servant as Branch Post master of Rudrapur branch post office fraudulently falsified the records and ledgers of Rudrapur branch post office with intent to defraud?
  - (iv) Whether accused by that time and place fraudulently misappropriated Rs.5441/- entrusted to him as a public servant?

- (v) Whether accused on 6.9.2004 to 2.6.2005 as a public servant committed misconduct by obtaining pecuniary advantage of Rs.5441/- by corrupt and illegal means?
6. From the perspective of prosecution, launched and investigated that culminated more than one trials, the nature of evidence needs to be addressed with greater circumspection. Out of six P.Ws examined, P.W.2, P.W.4 and P.W.6 are the postal authorities while P.W.3 is the sanctioning authority. P.W.5 is the Investigating officer. P.W.1 is the husband of account holder Malati Sahu.
7. The crux of indictment is the non-reflection of money in the relevant postal records after receipt on 6.9.2005, 5.10.2004 and 23.10.2004 in S.B. A/c No.650590 Ext.6. At the outset, it may be said that the account holders of savings bank account no. 650538 namely Keshab Das and Rama Chandra Lenka are not examined in this case. So also Malati Sahu the S.B account holder of which passbook is exhibited through her husband Khirod Kumar Sahu as Ext.6. This witness has proved the passbooks standing in the name of his daughters and his son Ext.1 to Ext.5 which are irrelevant to the period involved in this trial. He has admitted in cross-examination para-3 that he had opened the passbooks through Harihar Brahma who was the branch postmaster and all the passbooks were filled up by the branch postmaster Harihar Brahma and he was getting the counter-foils and he came to know about misappropriation of funds in the year 2011 (one year before the date of deposition). He has categorically admitted that he has received back the amount according to his balance deposit. Thus seen, P.W.1 though not the account holder but having pressed into service to say about the transaction involved in this case has not implicated accused in any manner with any offence.

- (7-A) P.W.2 sub-post master, Chhatia sub- post office has admitted that accused had never worked with him and one Ashutosh Brahma was the post master while accused was working as Extra Departmental Postal Agent. P.W.4 complainant has admitted that accused had never worked with him and he had not seen the documents which were seized by the Investigating officer. P.W.3 sanctioning authority could not say as to who had prepared the sanction order. There is no handwriting expert evidence that handwriting available in the passbook Ext.6 belongs to accused. When the husband of the account holder discloses that one Harihar Brahma was the branch postmaster, the connecting link between accused and passbook is found missing. There is a long gap between the lip and cup of tea. The distance is not covered by clear and cogent evidence to implicate accused.
- (7-B) While the matter stood thus, the evidence of postal authorities including sanctioning authority P.W.3, P.W.4 and P.W.6 does not add any culpability further. The complainant P.W.4 proved complaint Ext.43 which he lodged on 24.9.2008, but in cross-examination he has admitted that neither he had personal knowledge nor was he the custodian of those documents. P.W.6 has conducted an inquiry of Rudrapur branch post office and he has stated that during his inspection in the year 2005, 2006 and 2007 he did not find any misappropriation by accused and none of the account holders of Rudrapur branch post office had made any complaint before him. He has admitted and proved his order dated 6.11.2007 placing accused under put off duty describing his designation as Gramin Dak Sevak Mail Deliveran. Though P.W.6 admits that accused

had never worked with him, he has categorically stated that one Ashutosh Brahma was the postmaster while accused was the Extra Departmental postal agent. He has stated in his cross-examination that he had never come across any discrepancy between the passbook of account holders and ledgers maintained in the post office. P.W.3 sanctioning authority has stated that he had not visited Rudrapur branch post office and he could not say who had prepared the sanction order.

(7-C) The evidence of account holder falls short to implicate accused clearly. So also the evidence of postal authority. Only because the accused was working in Rudrapur branch post office during the relevant period, they have attributed the authorship of such handwriting to the accused. It is already stated by Sub-postmaster P.W.2 that one Ashutosh Brahma was the postmaster while accused was Extra Department Postal Agency. P.W.6, the Asst. Supdt. of post office who had conducted an inquiry has admitted to have placed accused under suspension on 6.11.2007 vide Ext.A mentioning his designation as Gramin Dak Sevak Mail Deliveran Agent. If that is so, the prosecution cannot be said to have proved that accused was working as branch post master of Rudrapur branch post office during relevant period . So fact remains proved that accused was serving in Rudrapur branch post office but that he was the branch postmaster of said branch post office during relevant period is not established.

8. On anatomical survey of the oral and documentary evidence, it transpires that prosecution has failed to prove the charge by clear, cogent and unimpeachable evidence.

9. The peculiarities of the prosecution are ingrained in the infirmities potential to jeopardize the fair trial. These are sufficient to corrode the substratum of prosecution case.

Following facts would unfold the same.

On 24.9.2008 Asst. Supdt. of post lodged a written complaint before S.P.C.B.I. Ext.44. The same was not registered as an F.I.R. On 30.9.2008 the S.P. C.B.I. lodged F.I.R on his own report and i.e. marked Ext.60. The evidence of Investigating officer discloses that S.D.Entry was made after registration of case by S.P. C.B.I. It is on record that I.O has submitted ten charge sheets basing upon one F.I.R, one sanction order and same evidence. The I.O has admitted that he has deposed in T.R. 18/09, T.R. 20/09, T.R.22/09 against the accused. There is no dispute that on submission of charge sheet for the allegation running for seven years , the accused faced trial in ten cases and till date he has been acquitted in all the four trials bearing No.T.R. 17/09, T.R.18/2009, T.R. 20/2009 and T.R. 22/09. The earliest report disclosing cognizable offence has to be registered as an FIR u/s.154 Cr.P.C. Law does not admit any exception.

**1. In the decision reported in 2001 (1) S.C.C. T.T.Antony -vs- State of Kerala and others (judgment dated 12.7.2001) ratio runs in the following words:-**

*“An information given under sub-section (1) of [Section 154](#) of Cr.P.C. is commonly known as First Information Report (F.I.R.) though this term is not used in [the Code](#). It is a very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law into motion and marks the*

*commencement of the investigation which ends up with the formation of opinion under [Section 169](#) or 170 of [Cr.P.C.](#), as the case may be, and forwarding of a police report under [Section 173](#) of Cr.P.C. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in [Section 154](#) of Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report - F.I.R. postulated by [Section 154](#) of Cr.P.C. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under [Section 162](#) of Cr.P.C. No such information/statement can properly be treated as an F.I.R. and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the [Cr.P.C.](#) "*

**2. In the decision reported in (2013) 8 S.C.C. 384 Anju Choudhury -vs- State of U.P and another (date of judgment dated 13.12.2012) it is said-:**

*“On examination, the scheme [of the Criminal Procedure Code](#) does not provide for any right of hearing at the time of registration of the First Information Report. As already*

noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer in charge of the police station."

**3.** On the point as to whether more than one police report can be filed u/s 173 (2) Cr.P.C ,Their lordships have reiterated **In the decision reported in (2011) II SCR Page-281 State of Punjab -v- C.B.I & others that-**

"Sub-section (1) of [Section 173](#) of the Cr.P.C. provides that every investigation by the police shall be completed without unnecessary delay and sub-section (2) of [Section 173](#) provides that as soon as such investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. Under sub-section (2) of [Section 173](#), a police report (charge sheet or challan) is filed by the police after investigation is complete".

10. The accused for the facts alleged in the present case faced trial and vide judgment dated 28.1.2013 in T.R. No.18 of 2009 for the period from 29.8.2002 to 28.6.2003 he was acquitted of the charge of offences u/s. 409 IPC and Section 13(1)(c) & 13(1)(d) of the P.C.Act. Similarly vide judgment dated 30.1.2013 in T.R.22/09, the accused was acquitted for the self same offences but for the period from 18.4.2002 to 3.4.2003. In the judgment dated 29.1.2013 in T.R.20 of 2009 accused was acquitted for the self same offences but for the period from 30.4.2003 to 21.2.2004. . Vide Judgment dated 19.3.2016 in T.R.No.17 of 2009 , the accused was acquitted for offence u/s. 409, 420, 477-A IPC and u/s. 13(1)(c) and 13(1)(d) of the P.C.Act for the accusation covering period from 23.12.2006 to 30.3.2007. The said acquittals are in force. Some of the offences having no time

stipulation , could have been charged u/s. 221(1) Cr.P.C that is what illustration-a of Section 221 and 300 Cr.P.C pre-supposes. Subsequent prosecution on the same facts for any other offence can be had only if the offence sought to be tried subsequently is one for which charge would not have made in the previous prosecution.

(10-A) In the decision reported in **(2011)2 S.C.C. Page-703 Kolla Veera Raghav Rao -vrs- Gorantala Venkatshwar and others (decided on 1.2.2011)** ,their Lordships have stated that:-

*"Thus, it can be seen that [Section 300\(1\)](#) of Cr.P.C. is wider than [Article 20\(2\)](#) of the Constitution. While, [Article 20\(2\)](#) of the Constitution only states that 'no one can be prosecuted and punished for the same offence more than once', [Section 300\(1\)](#) of Cr.P.C. states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts. "*

(10-B) The Hon'ble Apex Court vide judgment dated 5.4.57 in the case of **State of M.P. -vrs- Veerashwar Rao Agnihotry** have also reiterated that :

*"In view of the above pronouncement, the view taken by the learned Judge of the High Court that the two offences are one and the same, is wrong, and if that is so, there can be no objection to a trial and conviction under a. [409 of the Indian Penal Code](#), even if the respondent has been acquitted of an offence under s. 5(2) of the Prevention of Corruption Act II of 1947. [Section 403\(1\)](#) of the Criminal Procedure Code only prohibits a subsequent trial for the same offence, or on the same facts for any other offence for which a different charge from the one made against an accused person might have been made*

*under [s. 236](#) of the Criminal Procedure Code, or for which he might have been convicted under [s. 237](#) when the earlier conviction or acquittal for such an offence remains in force. "*

(10-C) Our Hon'ble High Court has considered the plea of double jeopardy in the back drop of harassment observing in a decision reported in **AIR 1958 Orissa 141 Narasingh Rout -vr- Rameswar Rout (judgement dated 10.3.1958 )** in the following words:-

*"There may be occasions when it would not be appropriate to order a second trial even though the second trial may not be barred by the letter of [Section 403](#), Criminal P. C. To quote an extreme instance, supposing in a petition of complaint, two or three distinct offences are alleged and the trying Court frames a charge only in respect of one of the offences though he might have validly framed separate charges under Sub-section (1) of [Section 235](#), Criminal P. C., for all the offences. When that trial ends in acquittal, the Magistrate may legally start a fresh trial in respect of the second offence and when that trial also ends in acquittal he may start a third trial in respect of the third offence, even though all the offences took place in the course of one transaction. Such successive trials will be extremely harassing and highly prejudicial to the accused and should not be permitted. "*

(10-D) The same view was also reiterated by our Hon'ble High Court in the subsequent decision dated 23.1.1978 in the case of **Gangadhar Panda -vrs- the State reported in 1978 Cri.L.J 863** wherein it is stated that:-

*"But if there is nothing on record to show that the items of defalcation for which the accused had been*

*subsequently charged were not within the knowledge of the prosecution and why these items were not included in the previous trial, and in the absence of any adequate explanation for their non-inclusion in the previous trial in spite of resort to [Section 222\(2\)](#) it will not be conducive to justice; rather it will be vexatious, to have a piecemeal trial. "*

11. In fact, this court dealt with the principle of double jeopardy and recorded acquittal of accused in T.R. 17 of 2009, this is hold good with all potent to the present trial. The trial against accused is barred u/s. 300 Cr.P.C for the acquittal in T.R. No.18/09,T.R. 20/2009, T.R.22/2009 and T.R. 17 of 2009 in force.
12. In the result, accused is held not guilty of the offences u/s. 409, 477-A IPC and u/s. 13(2) read with Section 13(1)(c) & 13(1)(d) of the P.C.Act,1988 and is acquitted therefrom u/s. 248 (1) Cr.P.C. He be set at liberty forthwith.

The seized documents, if any, be returned from whom seized. Zimanamas be cancelled after two months of the appeal period, if no appeal is preferred against this judgment and in case of appeal, the same shall be subjected to appeal.

Special Judge, C.B.I.-II, Bhubaneswar.

Typed to my dictation and corrected by me. The Judgment is pronounced in the open court today this the 20<sup>th</sup> April,2016.

Special Judge, C.B.I.-II, Bhubaneswar.

**LIST OF WITNESSES EXAMINED FOR THE PROSECUTION.**

P.W.1	Khirod Kumar Sahu.
P.W.2	Mahendranath Sahu
P.W.3.	Lokanath Sahani.
P.W.4.	Maheswar Sethi.
P.W.5	Girish Kumar Pradhan.
P.W.6	Balakrishna Kara.

**LIST OF WITNESSES EXAMINED FOR THE DEFENCE.**

None.

**LIST OF EXHIBITS MARKED FOR THE PROSECUTION.**

Ext.1 to 16	Passbooks.
Ext.7/1 to 16/1	Initials of accused.
Ext.17 and 18	R.D. journals of Rudrapur B.P.O.
Ext.19 to 33	Branch office journals of Rudrapur BPO
Ext.34 to 41	Account book of Rudrapur B.P.O
Ext.42	Sanction order.
Ext.42/1	Signature of P.W.2.
Ext.43	C.C of report dt.24.9.08.
Ext.44	C.C of seizure list dt.23.5.09
Ext.45	C.C of seizure listdt.15.1.09
Ext.46	C.C of seizure list dt.21.11.08
Ext.47	C.C of charge report dt.26.5.1981
Ext.48	C.C of charge report dt.1.6.2000.
Ext.49	C.C of charge report dt.18.1.2000.
Ext.50	C.C of letter dt.30.5.2000.

Ext.51	C.C of service particulars of accused dt.27.5.1981
Ext.52	C.C of memo No. A-240/PF dt.18.4.2000
Ext.53	C.C of fraud report dt.21.5.2008
Ext.54	C.C of fraud report dated 28.9.2007
Ext.55	C.C S.B. & R.D fraud report dated 14.1.2008
Ext.56	C.C of S.B. and R.D fraud report dt.12.4.2008
Ext.57	C.C of fraud report dated 26.11.2007
Ext.58	C.C of fraud report dated 26.11.2007.
Ext.59	C.C Rule 31, 38 and 67 of Post office, Saving Bank Manual Vol-I.
Ext.60	Formal FIR
Ext.60/1	Signature of S.P. C.B.I. M.S. SundarRajan.

**LIST OF EXHIBITS MARKED FOR THE DEFENCE**

Ext.A.	Relevant put off duty order.
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Special Judge, C.B.I.-II, Bhubaneswar.