

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. 23 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, Advs.

Offences u/s. 409, 420, 467, 471, 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

Pursuant to the charge u/s. 409, 420, 467, 471, 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, the accused is brought to trial for having committed misappropriation of Rs.42,000/- by cheating, forgery and falsification of the postal documents as a branch postmaster during the period from 3.6.2005 to 24.6.2005.

2. The prosecution case is that 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 Post 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 two S.B. A/c No. 648564 and 648565 in the name of Puspalata Sahu and Snehalata Sahu respectively for the period from 3.6.2005 to 24.6.2005 to the tune of misappropriated amount of Rs.42000/-, involved in the present trial.

- (2-A) The Supdt. of Police, C.B.I, Bhubaneswar on 30.9.2008 registered FIR Ext.67 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 3.6.2005 to 18.6.2005 accused had allowed fraudulent withdrawal Rs.10,000/- from S.B. account No.648564 Ext.4 standing in the name of Puspalata Sahu and Rs.32,000/- from S.B. account No. 648565 Ext.3 standing in the name of Snehalata Sahu on the basis of forged withdrawal slips without the knowledge of the account holders. The

Investigating Officer then obtained sanction order Ext.42 as required u/s. 19 of the P.C.Act from the 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 3.6.2005 to 24.6.2005.

3. The plea of defence is denial simplicitor. To substantiate, accused has asserted u/s. 313 Cr.P.C 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 eight 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 3.6.2005 to 24.6.2005 in the capacity of Branch Postmaster of Rurdrapur branch post office?
 - (ii) Whether accused by that time and place was entrusted with Rs.42,000/-?
 - (iii) Whether accused during that period fraudulently and dishonestly used the withdrawal slips knowing or having reason to believe to be forged?
 - (iv) Whether accused by that time and place fraudulently misappropriated Rs.42000/- entrusted to him as a public servant?

- (v) Whether accused by that time and place committed forgery of eight withdrawal slips for the purpose of cheating?
- (vi) 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?
- (vii) Whether accused on 3.6.2005 to 24.6.2005 as a public servant committed misconduct by obtaining pecuniary advantage of Rs.42000/- by corrupt and illegal means?
6. The nature of evidence needs to be addressed with greater circumspection. Out of six P.Ws examined, P.W.3 is the sanctioning authority while P.W.2, P.W.4 and P.W.6 are the postal officials who proved the postal documents seized and inquiry report conducted by them. Specifically P.W.4 is the complainant. P.W.5 is the Investigating Officer. P.W.1 is the father of account holders of Rashmita S.B.A/c No. 650515, Udayanath S.B. A/c No.650856, Snehalata S.B. A/c No. 648565, Puspalata S.B. A/c No. 648564, Madhusmita S.B. A/c No.648536 and Malati S.B. A/c No.650590 vide Ext.1 to Ext.6 respectively.
7. The crux of indictment is withdrawal of Rs.32000/- during the period from 7.5.2005 to 24.6.2005 from S.B. Account No. 648565 Ext.3 of Snehalata and Rs.10000/- during the period from 3.6.2005 to 15.6.2005 from S.B. A/c No. 648564 Ext.4 of Puspalata. The account holders of Ext.3 and Ext.4 are not examined. Their father P.W.1 has stated that he had opened S.B. accounts in the names of his son, daughters namely Puspalta , Snehalata, Madhusmita and Rashmita and his wife Malati at Rudrapur branch post office and he was personally handing over the cash along with the passbook to Patitapaban Das who was making necessary entries in the passbooks, putting his initials in his presence and affixing the postal seal. He has further testified

that there was total balance of Rs.75,767/- in S.B. A/c No.648564 as on 28.7.2005 vide Ext.4 whereas Rs.92955/- was in S.B. A/c No. 648565 as on 3.12.2003 vide Ext.3. He has categorically stated that he has withdrawn Rs.16,000/- on 16.10.2003 and Rs.11,000/- on 11.6.2006 from the S.B.A/c No. 648565 Ext.3. His evidence further reveals that he has withdrawn Rs.3700/- on 11.6.99, Rs.2500/- on 19.6.99, Rs.2200/- on 29.6.99 and Rs.500/- on 11.7.99 from S.B. A/c No. 649564 Ext.4. He has stated that the withdrawals made by his wife and his minor children have been correctly reflected in their respective passbooks and he came to know that some amount was withdrawn from the passbooks by forging his signature and the signature of his wife. This witness is not cross-examined.

(7-A) On scrutiny of Ext.3 passbooks bearing A/c No. 648565, it is found that it was opened on 22.2.2001 and ended with entry on 11.6.2006. It also shows that Rs.16,000/- was withdrawn on 16.10.2003 and on 11.6.2006 Rs.11,000/- and the balance was Rs.92,955.20 paise. The passbook No.648564 Ext.4 in the name of Puspalata Sahu reveals that it was opened on 11.3.99 and ended on 18.5.2004 with balance Rs.64925/- and on that day withdrawal was done Rs.35,000/-. Thus, the evidence of P.W.1 that he withdrew the amount which is reflected in the passbooks gets corroboration from Ext.3 and Ext.4. So, when a person admits to have withdrawn the amount from the passbook Ext.3 and Ext.4, the question of falsifying the withdrawal slips cannot be attributed to another. Further, the account holders are not examined in this case. The amount being more than Rs.2000/- , the procedure of getting it sanctioned from sub-post office was a minimum requirement as per evidence of P.W.2 and P.W.6 and there is no evidence that

any such discrepancy was found while according such permission. There is a long gap between the lip and cup of tea. The distance is not covered by clear , cogent and unimpeachable evidence to implicate accused. If the authorship of the handwriting available in withdrawal slips cannot be attributed to accused, the implication of accused to have committed forgery would be a surmise. Such doubtful exposition is contrary to the concept of beyond reasonable doubt.

(7-B) The anatomical survey of the testimony of account holder P.W.1 does not implicate the accused as author of any forged document used on his behalf in withdrawing amount from her daughters' passbooks. While the matter stood thus, the evidence of postal authorities including sanctioning authority P.W.3, P.W.2, 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, he further proved the service bio-data of accused as well as the inquiry reports submitted by the Inspector. But in cross-examination he has admitted that he had no personal knowledge about the documents seized and he had not proved those documents. He also admitted that he was not the custodian of those documents. P.W.6 has conducted an inquiry of Rudrapur branch post office and he has stated that he collected the specimen signatures of depositors and forwarded the same to the Divisional Office for verification of Govt. Examiner of Questioned documents. In cross-examination he has admitted that during his inspection 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 on put off duty describing his designation as Gramin Dak Sevak Mail Deliveran. He has stated that in case of withdrawal of Rs.2000/- by branch post office, the proposal is submitted to the sub post office with original slip and passbook and after permission is accorded the same would be given effect, otherwise in case of discrepancy an inquiry would be ordered. The same procedure is stated by P.W.2 who was the sub-postmaster of Chhatia during the relevant period and had controlled over Rudrapur branch post office. Though he admits that accused had never worked with him, he has categorically stated that one Ashutosh Brahma was the postmaster while accused was Extra Departmental postal agent. This witness P.W.6 admitted in cross- examination para-12 that his inquiry did not reveal that accused was serving as Branch Postmaster as well as Gramin Dak Sevak Mail Deliveran at Rudrapur Branch Post Office. P.W.3 sanctioning authority has stated that he had not visited Rudrapur branch post office and he could not say who has prepared the sanction order. The totality of evidence of postal staffs who conducted inquiry and accorded sanction reveal that for the withdrawal of Rs.42000/- during the period from 3.6.2005 to 24.6.2005 from the account of the daughters of P.W.1 the procedure for taking permission from sub-post office was required. If that is so as no such inquiry was ordered, it cannot be said that prosecution has unfolded the cogent evidence to connect accused with the withdrawal Rs.42000/- particularly when P.W.1 has admitted to have withdrawn the same amount.

(7-C) Only because the accused was working in Rudrapur branch post office during the relevant period, the postal officials have attributed the authorship of withdrawal slips 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. After conducting inquiry and all such verification, the complaint Ext.43 was lodged by P.W.4 on 24.9.2008. 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 during relevant period as branch post master of Rudrapur branch post office. 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. 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.43. 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.67. The evidence of investigating officer discloses that S.D.E 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 dated 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 should have been registered as an FIR u/s.154 Cr.P.C. Law does not admit any exception. The settled law in this regard is to be referred to as follows:-

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. In the decision reported in (2011) II SCR Page-281 State of Punjab -v- C.B.I & others (date of Judgment 2.9.2011) ,it is reiterated 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. "

9. 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. In para-11 of the judgment dated 30.1.2013 T.R. 22 of 2009, it was found that accused was prosecuted twice for the same offences. 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 ,charge could have framed 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- 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-A) 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-B) 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-C) 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 Cr.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, 420, 467, 471, 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 20th April,2016.

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

LIST OF WITNESSES EXAMINED FOR THE PROSECUTION.

P.W.1	Khiron 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 Kar

LIST OF WITNESSES EXAMINED FOR THE DEFENCE.

None.

LIST OF EXHIBITS MARKED FOR THE PROSECUTION.

Ext.1 to 16	Passbooks.
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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.3.
Ext.43	C.C of letter dt.24.9.08
Ext.44	C.C of fraud report dt.29.4.09
Ext.45	C.C of fraud report dt.23.5.08
Ext.46	C.C of rule 31,38 and 67 of post office saving manual Vol.I.
Ext.47	C.C of seizure list dt.21.11.08
Ext.48	C.C of seizure list dt.15.1.09
Ext.49	C.C of joining -cum- charge report of P.Das dt.26.5.1981
Ext.50	C.C of another joining -cum- charge report of P.Das dt.1.6.2000.
Ext.51	C.C of charge report dt.18.1.2000.
Ext.52	C.C of letter No.A-240/PF dt.30.5.2000.
Ext.53	C.C of service particulars dt.27.5.1981
Ext.54	C.C of memo No.A-240/PF dt.18.4.2000.
Ext.55	C.C of forwarding letter enclosing examiner report of GEQD
Ext.56	Opinion of GEQD
Ext.57	C.C of forwarding letter No. 487 dt.7.1.2009
Ext.58	C.C of opinion of Asst. Govt. Examiner Sri K.B.Jena.
Ext.59	C.C of fraud report dt.21.5.08 of Rudrapur BPO

Ext.60	C.C of another fraud report dt.21.1.08/5.2.08
Ext.61	C.C of fraud report dt.28.9.07.
Ext.62	C.C of fraud report dt.14.11.07.
Ext.63	C.C of fraud report dt.26.11.07
Ext.64	C.C of fraud report dt.26.11.07.
Ext.65	C.C of fraud report dt.14.1.08
Ext.66	C.C of application of P.Das dt.12.4.08
Ext.67	Formal FIR
Ext.67/1	Signature of S.P. C.B.I. M.S. Sundar Rajan
Ext.68	C.C of forwarding letter dt.12.5.09.

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.