

IN THE COURT OF THE CHIEF JUDICIAL, MAGISTRATE-CUM-  
ASSISTANT SESSIONS JUDGE, KHURDA, CIRCUIT AT-  
BHUBANESWAR

P R E S E N T:

***Dr. P.M.Samal, LL.,M,Ph.D, (Law)***

Chief Judicial Magistrate -Cum-  
Assistant Sessions Judge Khurda.

**GR NO. 196 of 2001**

(Arising out of P.S. case no.13 dated 16.01.2001 transferred by JMFC(O),  
Bhubaneswar to this court on 23.07.2013.

S T A T E

-V E R S U S-

Subash Chandra Muni

S/o. Late Bhimasen Muni

At-Housing Board Colony, At Qr No.L-160

Po- Baramunda, Bhubaneswar, PS-Khandagiri,

Bhubaneswar-751003

.....

Accused person

Date of argument 21.01.2015

Date of Judgment 28.01.2015

**Under Section. 409/468/477-A IPC**

Counsel for the State .....Mrs. B.Mohanty (APP.)

Counsel for the defence.....Sri S.S.K.Subudhi & Associates

J U D G M E N T

1. The prosecution was launched against the above named accused on the allegations of Criminal breach of trust of cash of Rs.2,00,000/- (Rupees two lakhs) bearing Cheque No.195/E254(984381) dt.14.09.1998 being an employee of the bank and subsequent making false entries in the official record and for altering cash book etc. U/s.409/468/477-A IPC.

2. A brief narrative of the prosecution case is unfolded hereunder:

One Salpati Rao the then Branch Manager of Central Bank of India Chandrasekharpur Branch lodged a written report before the IIC Chandrasekharpur Police Station on 16.01.2001 alleging inter alia that the accused Sri S.C. Muni, in charge of Chandrasekharpur Extension counter of the Bank committed fraud and criminal breach of trust to the bank by issuing a banker's cheque bearing No. 195/E254(984381) dt.14.09.1998 for Rs.2,00,000/- (Rupees two lakhs) favouring one Shyam Prasad Bahinipati without any supporting debit and credit vouchers. It is next alleged that the accused has also manipulated the records of the bank and the said Bahinipati encashed the banker's cheque causing financial loss to the bank due to such fraudulent and dishonest act of the accused. The accused being the in charge of the extension counter was entrusted with the bank's money and property has dishonestly issued the said banker's cheque in violation of the bank rules and special audit was also conducted where it was pointed out such dishonest act of accused. On such report police registered a case and the IO S.I N.Das took up the investigation. During investigation the IO visited the bank, examined the witnesses and ascertained, the accused being in charge of the extension counter issued said banker's cheque in favour of Sri Bahinipati who had no account in the bank. Further the same was debited to the account of one Arun Kumar Kar vide Account No. 1067 on 14.09.1998 without any documentary voucher or supporting authorisation from Sri Kar. Further the investigating officer seized the banker's cheque and other documents through a seizure list in presence of the witnesses. The documents like cash book, supplementary cash book, banker's cheque, ledger were left in to the zima of one UGKC Santali. Later on, the accused surrendered before the court and by virtue of Hon'ble Court's Order he was released on bail. After completion of the investigation, a chargesheet was submitted against the accused

under aforementioned sections of law occasioning the present trial.

3. The accused Subash Candra Muni took a plea of total denial to the entire prosecution allegation. During his examination U/s. 313 (1) (b) Cr.P.C., he took further plea of implicating him falsely in this case due to Intra Union Rivalry and tussle in between the accused and the Management.

4. In view of such stand taken by the parties to the case it is become obligatory on my part to answer following points for determination:

- (i) Whether the accused on 14.09.1998 being the then in-charge of Chandrasekharapur Extension counter, Central Bank of India was entrusted with Bank's money and property as a public servant and committed criminal breach of trust by issuing a Banker's cheque bearing No. 195/E254(984381) dt.14.09.1998 for Rs.2,00,000/- (Rupees two lakhs) in favour of Sri S.P. Bahinipati without supporting any debit and credit vouchers?
- (ii) Whether the accused on the same date forged the documents like cash book, supplementary cash book, banker's cheque, ledger etc with an intention to cheat the bank?
- (iii) Whether the accused on the same date willfully with an intention to defraud made false entry in all those official records and documents and altered the cash book of the bank?

5. The prosecution has examined only six witnesses to prop up the allegations made against the accused. Of the witnesses examined in this case are P.W.1 is Asst. Manager Central Bank of India, P.W.2 is a Clerk , Central Bank of India, P.W.3 is the Branch Manger Central Bank of India, P.W.4 is the Chief Manger Central Bank of India, P.W.5 is one Arun Kar and P.W.6 is the investigating officer. The documents relied upon by the prosecution are marked as Exts. 1 to 7 and the details of the same are given at the foot of the judgment. The accused did not prefer to examine any witness on his behalf or any documents.

6. Since all those points delineated for determination are so inter linked and intertwined, I do feel it proper to discuss the evidence on record taking all the points together as follows:

7. It is quite clear from the prosecution case that the informant P.W.3 and the documents proved by him are most vital to testify the points at hand. The informant P.W.3 states on solemn affirmation that on 08.10.1998 he joined as Branch Manager Central bank of India Chandrasekharpur Branch, the accused was the then Branch Manger of Extension Counter and subsequently converted to a regular branch. Further he verified the register and documents of the bank after resuming the duties as Branch Manager and found a Banker's cheque prepared on 14.09.1998 in favour of Sri Bahinipati for Rs. 2,00,000/- (Rupees two lakhs) though he had no account in the branch. Then he informed the matter in writing to the Regional office and the officers from regional office came to the branch for verification on 26.04.1999. As per instruction of the authority he lodged the report against the accused vide Ext.1 which has been proved through his signature vide Ext.1/1.

8. During his cross examination at Para-2 he admits that one Arun Kumar Kar holds an account in the said branch. He received one authorisation letter from him on 01.05.1999 authorising the accused for issuance of one Banker's cheque in favour of his known person for land deal and to debit the account to his account immediately. Accordingly the bank frozeed the account of Arun Kar in respect of amount of Rs.2,00,000/- (Rupees lakhs) and bank sustained no loss as the said amount was freezeed from the account of Arun Kar.

9. At Para-3 of his cross examination further he admits that he belongs to Union of All India Bank Officers' Association whereas the accused belongs to Bank employees Federation of India. But he expressed his inability to say in the same para if the accused was General Secretary of the said Association at the relevant time. Further he states in the same para that the Regional Office had sent a draft FIR to the office.

10. Except the FIR Ext.1 no other document proved through P.W.1 from the side of the prosecution. As the P.W.1 himself admits in his cross examination that a draft FIR was sent to him by the regional office which is not available in the case record. Rather it reveals from his testimony that he received a letter from one account holder Arun Kar on 10.05.1999 authorising him to debit the cash from his account towards the banker's cheque issued in favour of Sri Bahinipati immediately. The said Arun Kumar Kar examined in this case as P.W.5 has also

deposed in a clear term that he requested the branch manager to prepare a banker's cheque of Rs.2,00,000/- (Rupees two lakhs) in favour of S.P. Bahinipati under an intimation in writing vide Ext.6 and Ext.6/1 is signature therein. His unchallenged testimony provides much impetus to the claim of the branch manager on receipt of an intimation from P.W.5 to debit such an amount from his account towards banker's cheque issued in favour of Sri Bahinipati. P.W.1 further admitted that the bank has not sustained any loss that itself indicates about no ill intention of the accused in issuing of banker's cheque in favour of Sri Bahinipati causing any wrongful loss to the bank or its misappropriation. An employee of the Central Bank of India examined as P.W.1 states that on 14.09.1998 he was working as Clerk and the informant showed him one banker's cheque amounting to Rs.2,00,000/- (Rupees two lakhs) has been allegedly prepared fraudulently and the signature of the accused was appearing on that cheque. Similarly another employee P.W.2 has stated that accused issued a banker's cheque of Rs.2,00,000/- (Rupees two lakhs) in the name of Sri Bahinipati which was cleared from his office and the cash was debited from the general ledger of the bank. Both P.Ws. 1 and 2 have denied to have verified the account and cash book regarding actual transaction of the banker's cheque. P.W.1 however admitted in his cross examination at Para-3 about entry of cash of Rs.2,00000/- (Rupees two lakhs) in the cash book but there was no voucher in support of the same.

11. The Chief Manage of the Central Bank of India examined as P.W.4 states that he went to the branch office along with one Harihar Jena for enquiry where he noticed the accused had issued one banker's cheque of Rs.2,00000/- (Rupees two lakhs) in favour of one S.P. Bahinipati who had no account in the bank. They seized the records and brought it to the regional office and the IO seized those documents on 24.01.2001 through a seizure list Ext.2 and Ext.2/1 is signature therein. After seizure he received back the documents into his zima vide Zimanama Ext.3. On 27.02.2001 the IO further seized some documents through seizure list Ext.4. He has also admitted in his cross examination at Para-2 that the account holder Arun Kar has given an authorisatioan letter for issuing banker's cheque in favour of Sri Bahinipati and the bank subsequently freezed the said account of Arun Kar and the bank actually sustained no loss. Such admittance of the P.W.4 lends assurance to

the bank, has sustained no loss and the accused acted upon the instruction given by one of the account holder Arun Kumar Kar. It is pertinent to note here that an account holder like Arun Kar authorised the bank authority to debit such an amount of Rs.2,00,000/- (Rupees two lakhs) from his account in favour of Sri Bahinipati unless there is any inter se transaction in between them and to meet any liability. Such authorisation of Arun Kar vide Ext.6 and subsequent debit of such amount by the bank authority and freezing of the account shows a clear transaction taken place as no contrary documents proved from the side of the prosecution. The IO examined in this case as P.W.6 also deposed that he examined the branch manager Premakanta Mishra of central Bank of India on 13.01.2001 requesting him to furnish the admitted hand writing of the accused to which he received a reply from him that no admitted hand writing available in the office vide Ext.7. Finally he submitted the chargesheet against the accused on the basis of the investigation conducted by his predecessor and the documents available with him.

12. To prove an offence U/s. 409 IPC it is incumbent upon prosecution to place all the relevant documents to show that the accused was entrusted with bank's money and property and committed criminal breach of trust in respect of Rs.2,00,000/- (Rupees two lakhs) issued through a Banker's cheque in favour of Sri Bahinipati. It was held by the **Hon'ble High court of Orissa in a case Upendranath @ Upendra Sahu versus Lokanath Panda and others reported in (1995) 9 OCR-332 that:**

**“criminal breach of trust is a species of criminal misappropriation defined under Section-403 . Essential ingredients are (a) entrustment of property or dominion over property, (b) dishonest misappropriation or conversion by person to his own use or dishonest use or disposal of that property in violation of any direction of law prescribing mode of discharge of the trust or in violation of any legal contract, express or implied or the accused person must have willfully suffered any other person to do so.**

**In order to be dishonest, there must be intention of causing wrongful loss or gain to a person.”**

13. From the deposed testimony of the informant and other witnesses it is apparent that the accused was the Manager of the extension counter Chandrasekharpur Central Bank of India on the alleged date of incident. Therefore

there was entrustment of bank's property and domain over the property as required U/s. 409 IPC is well established. With regard to the criminal breach of trust, there is no document proved by the prosecution except mere exhibiting the alleged banker's cheque as Ext.5. The said document Ext.5 is not sufficient to say that the accused misappropriated the amount. Admittedly, the banker's cheque was issued in favour of one Sri Bahinipati and nothing established in this case the nexus in between the accused and Sri Bahinipati to hold that the accused had any intention to issue such banker's cheque in favour of Sri Bahinipati dishonestly. As it was held by Hon'ble court quoted supra that in order to be dishonest there must be an intention of causing wrongful loss or gain to a person. In the present case almost all the bank employees examined so far in this case P.W.1 to 4 have categorically stated about no loss to the bank due to such alleged transaction. Rather it establishes that at the instance of P.W.5 vide his authorisation letter Ext.6 the said banker's cheque was cleared and debited from his account and subsequently freezed. Thus the prosecution failed to prove misappropriation of any mount by the accused.

14. It is argued by the learned counsel for the accused that if such misappropriation pointed out by the bank in the year 1998 whereas the report was lodged in the year 2001 January and the delay of lodging such FIR without any reasonable explanation creates grave doubt in the veracity of the prosecution case. It is next addressed that due to union rivalry the accused has been falsely implicated in this case though there is no basis to file any such FIR or chargesheet by the police. As there is no documentary evidence available against the accused in any of the offence allegedly he faced the trial, it is argued to acquit the accused from the charges levelled against him.

15. The learned Addl. PP has submitted that on the basis of the audit report the prosecution was lunched against the accused and such delay was not intentional or deliberate and simply an official procedure followed for which the same is not basis to doubt the prosecution case. Further she drew my attention to the deposition of P.Ws. 1 and 2 that both have stated about the issuance of banker's cheque by the accused amounting to Rs.2,00,000/-(Rupees two lakhs) in favour of Sri Bahinipati fraudulently by the accused and the Ext.5 along with their statement are sufficient to hold that the accused had committed criminal breach of trust. In fact no

reasonable explanation from the side of prosecution for lodging report in such an inordinate delay and the draft FIR received by P.W.3 from the regional office also suppressed.

16. Accordingly, no evidence produced to show that the accused fraudulently or dishonestly prepared any forged document or made any alteration in the cash book in order to attract either the offence U/s. 468 or U/s. 477-A IPC allegedly the accused faced the trial. It is known to all that a case is decided on the basis of the fact which comes in the shape of evidence from the stage of investigation till the stage of trial and solely on the basis of provision of law.

17. The evidence as well as documents collected right from the stage of investigation till completion of trial the prosecution has failed to bring any cogent document to establish either the offences U/s. 409 IPC or U/Ss. 468/477-A IPC. The fact is fact and it cannot be disappeared either on like or dislike of anybody. None of the fact established by the prosecution against the accused and no endeavour from the side of prosecution to clear the doubt arose in the mind of the court which are reflected here-in-before in the preceding paragraph. Consequently I hold the accused is not guilty of offence U/s. 409/468/477-A IPC and acquit him U/s.248(1) Cr.P.C.

He be set at liberty forthwith being discharged from the bail bond.

The documents left into the zima of the bank employee vide Ext.3 be retained by him and the original documents seized through the seizure list Ext.4 be returned to the person concerned after four months expiry of the appeal period if no appeal is preferred or it shall follow the order of the appellate court.

The case be declared as mistake of fact.

CJM-Cum-A.S.J.- Khurda, camp at Bhubaneswar

Dictated and corrected by me and pronounced in open Court today i.e. 28<sup>th</sup> day of January, 2015, under my hand and seal of this court.

CJM-Cum-A.S.J.- Khurda, camp at Bhubaneswar.

**List of witnesses examined on behalf of the prosecution**

P.W.1	Trailokyanath Pradhan
P.W.2.	Suchita Dilung
P.W.3.	Salpati Rao
P.W.4	V.G.K.C. Santaji
P.W.5	Arun Kar
P.W.6	Biswanath Tarini

**List of witnesses examined on behalf of the defence.**

N o n e

**List of documents Exhibited on behalf of the prosecution.**

Ext.1	FIR
Ext.1/1.	Signature of P.W.3 in Ext.1
Ext.2	Seizure list
Ext.2/1	Signature of P.W.4 in Ext.2
Ext.3	Zimanama
Ext.3/1	Signature of P.W.4 in Ext.3
Ext.4	Seizure list
Ext.4/1	Signature of P.W.4 in Ext.4
Ext.5	Banker's cheque
Ext.6	Letter
Ext.6/1	Signature of P.W.5 in Ext.6
Ext.7	Reply of Bank Manager

**List of documents Exhibited on behalf of the defence.**

N I L.