

**IN THE COURT OF THE SPECIAL JUDGE, C.B.I., COURT NO.III,
BHUBANESWAR.**

PRESENT : **Sri B.N. Das,
Special Judge, C.B.I.,
Court No.III, Bhubaneswar.**

T.R. No. 34/15 of 2013/2009
(Arising out of R.C. 21(A)/ 2008)

Date of argument : 19.6.2014
Date of Judgment : 28.6.2014

REPUBLIC OF INDIA

Versus.....

Pulin Kumar Das, aged about 60 years,
Son of Late Girindra Nath Das,
Vill. Govindpur, P.O. Bamara,P.S. Govindpur,
Dist. Sambalpur, Orissa.

... ... Accused

For the Prosecution : Sri K. C.Mishra,Sr. P.P.,CBI,
Sri Ashish Jaiswal, P.P.CBI.

For the Accused : Shri G. Acharya & Associates,
Advocates.

J U D G M E N T

The accused stands charged Under Sec. 409 of Indian Penal Code and Under Sec. 13 (2) read Sec. 13(1)(c) and Sec. 13(1)(d) of Prevention of Corruption Act, 1988 for committing criminal breach of trust in respect of amount of Rs.35010/- and obtaining himself pecuniary advantage to the tune of Rs.35010/- by corrupt and illegal means abusing his official position.

2. Prosecution case in brief is that the accused was working as Sub-Postmaster, Garposh Sub-Post Office during the period from 2006 to 2008. During said period, he was authorised to receive amount from intending account holders and was required to make necessary entries in the pass book and to acknowledge the same by putting his signature and official seal. The amount is to be incorporated on the same day in daily account and is to be maintained in long book with ledger card. But after receipt of the amount from the account holders, the accused has not made entry either in the ledger card or long book or daily account book or journal and misappropriated the said amount fraudulently. On the written report of Superintendent of Post Offices, Sambalpur regarding misappropriation of SB and R.D. deposits by accused, a case was registered by SP, CBI, Bhubaneswar and investigation was taken up. During course of investigation, it could be ascertained that the accused has misappropriated an amount of Rs.35010/- from savings bank account and RD account maintained at Garposh Sub-Post Office and caused wrongful loss to the postal department. On completion of investigation charge sheet was submitted against the accused Under Section 13 (2) read Sec. 13(1)(c) and Sec. 13(1)(d) of Prevention of Corruption Act, 1988 after obtaining sanction of prosecution from the competent authority.

3. Defence plea is of complete denial and complicity of the accused with offence. Further stand has been taken that in connivance of other postal staffs, this case has been foisted against the accused falsely.

4. Points fall for determination are:

- (i) Whether the accused Pulin Kumar Das while was working as Sub-Post Master of Garposh Sub-Post Office, during the period from 2006-2008 being a public servant was entrusted with a sum of Rs.35010/- and committed criminal breach of trust in respect of the said property?
- (ii) Whether the accused during the above period being a public servant in the employment of the aforesaid post office by corrupt and illegal means or otherwise abusing his official position as such public servant obtained pecuniary advantage to the tune of Rs.35010/- which was received by him from the account holders?
- (iii) Whether the accused being a public servant has fraudulently misappropriated an amount of Rs.35010/- or otherwise converted the said property for his own use entrusted to him or under his control as a public servant?

5. In order to establish the charges against the accused, altogether eleven witnesses have been examined, out of whom P.W.5 is the informant, P.Ws.1, 7 and 9 are account holders, P.W.2 is the Ex-Sub Postmaster, Garposh Sub-Post Office, P.W.3 is the Postal Assistant Jharsuguda Head Post Office, P.W.4 is the Postal Assistant at Bamara Sub-Post Office , P.W.6 is the Superintendent of Post Offices, Sambalpur Division, P.W.8 is the Postal Inspector, P.W.10 is the Superintendent, RMS, K-Division, Jharsuguda and P.W.11 is the Investigating Officer. Only one witnesses namely Raj Kumar Thakur has been examined as D.W.1.

6. It is revealed from the evidence of P.W.1 that he had opened one RD account at Garposh Sub-Post Office bearing

No.97579 with contribution of Rs.500/- per month. He had deposited Rs.6000/- on 13.9.2007 along with fine amount of Rs.10/- towards twelve months due and paid to the accused. The accused made entry in the pass book vide Ext.2. Subsequently on 31.12.2007, he came to know that no entry has been made in the ledger. But at the time of his cross-examination, he has admitted the fact that three staffs were working in that sub-Post Office and he cannot say the name of those persons.

7. P.W.7 is another account holder who had opened one SB account in the name of her minor daughter and had deposited Rs.7000/- on 21.4.2007 and made over the pass book along with money and pay-in-slip to him. According to her the accused made entry in the pass book affixed the postal seal and returned the pass book to her. She was told that there was no balance amount at her credit. In her cross-examination, she has admitted the fact that she has not given any statement in any departmental proceeding and the postal Inspector had taken the pass book. Further she has admitted to have got refund of Rs.7000/- from the postal department. She does not say anything regarding misappropriation of above amount by the accused. Rather, she had made a written complaint to the postal authority.

8. P.W.9 is another account holder who had opened SB account in the name of his son bearing Account No. 1362487 and he was operating the same on behalf of his son. According to him after making necessary entry in the pass book, the post master returned the pass book to him. On 15.10.2007 he made over the pass book along with cash of Rs.5000/- to the post master and subsequently,

he was told by the postal Inspector that a sum of Rs.5000/- has not been credited in his account, for which, he made a written complaint vide Ext.26. At the time of his cross-examination, he has admitted the fact that postal Inspector has seized his pass book and no document has been given in acknowledging such pass book. He has no document other than Exts.25 and 26 to show regarding misappropriation.

9. According to the prosecution, from the account of P.W.1 Rs.6010/-, from the account of P.W.7 an amount of Rs.7000/- and from the account of P.W.9 an amount of Rs.5000/- along with from account of one Umesh Chandra Patel an amount of Rs.17,000/- has been misappropriated. But said Umesh Chandra Patel has not been examined by the prosecution.

10. From the evidence of P.W.2, it is revealed that the accused has deposited Rs.26,000/- at Garposh Sub-Post Office on 21.11.2007 vide receipt Ext.3. But at the time of his cross-examination he has admitted the fact that he has not stated before the I.O. that he was Sub-Post master at Garposh Sub-Post Office during the above period and had known to the accused. Further he has admitted that he had no talk with accused Pulin Kumar Das and Binay Kumar Baxla (P.W.4). He has stated that accused Pulin Kumar Das has not written Ext.3 in his presence nor had put his signature in his presence.

11. P.W.3 had stated that he received Rs.30,000/- from the accused and granted a receipt vide Ext.4 and the amount was deposited under UCR head duly attested by Bansihar Pradhan (P.W.6) vide Ext.5. At the time of his cross-examination he has

admitted that he had not stated before the I.O. that he knew Pulin Kumar Das. Further, he has admitted that he has not obtained the signature of accused Pulin Kumar Das on any document at the time of acceptance of money and granting the receipt. P.W.4 has also stated about deposit of Rs.20,000/- and Rs.22,000/- vide Exts.6 and 7 on 6.12.2007 and 7.12.2007 respectively. On verification, he found that official ledger showed shortage of Rs.7000/- in the account of Preeti Agrawal with reference to her pass book vide Ext.8. But at the time of his cross-examination he has not proved the withdrawal slip and he failed to produce any copy of the relevant letter written to the Superintendent of Post Offices. Even if he has stated regarding deposit of amounts by the accused, in his cross-examination he has admitted that he came to know about the deposit during investigation. From the above evidence of above witnesses, conclusively it is not established that accused has misappropriated the amount from their accounts as stated by the prosecution.

12. P.W.5 is the informant who had lodged a written report regarding misappropriation of Rs.92,010/- in total from different accounts vide Ext.9. But at the time of his cross-examination, he has admitted that he has not visited personally to the sub-post office and he has not examined the account holders of Garposh Sub-Post office. Similarly, in his cross-examination, he has admitted that he has not sent any written complaint to the postal authority before lodging FIR. Four account holders have not been examined and their statement have not been recorded by him before lodging FIR.

13. P.W.6 who was the Superintendent of Post office has stated that his predecessor has lodged the report before CBI. He has stated about the procedure adopted in the sub-post office in maintaining registers and records. At the time of cross-examination, he has admitted that he cannot say whether he has made any correspondence to the account holders and he cannot say how many persons were working in the Garposh Sub-Post Office.

14. It is revealed from the evidence of P.W.10 Narayan Chandra Behera that he paid surprise visit along with P.W.8 to Garposh Sub-Post Office on 20.11.2007 which comes under administrative control of Superintendent Post Offices, Sambalpur Division. While verifying the official records, he found some pass books and deposits in the hand bag of the accused-sub-post master, he verified and found that sub-post master has committed misappropriation of Rs.85,010/- from four numbers of SB pass books and one R.D. pass Book. Then he submitted a departmental enquiry report vide Ext.10. He has not filed any document regarding surprise visit to the Sub-post office on the above date and he has not filed the seizure list in respect of seizure of pass books. He has also stated to have obtained signature of accused on seizure list and relieve order and he has not taken the details of accounts on the next day when the accused was relieved from Garposh Sub-Post Office. He has also admitted in his cross-examination that he has not asked for show cause for misappropriation of Rs.85010/- from the accused nor he has drawn his attention in writing. He has further admitted that there was no fraud of government cash on 21.11.2007 at Garposh Sub-post office. Since the amount was

taken into government account, same was with the accused and there was no fraud of amount. Further he has stated that he cannot show any document that before 21.11.2007 there was fraud of Rs.85010/- and misappropriation by the accused. But FIR has been lodged for misappropriation of Rs.92010/-. From the above evidence, it is not ascertained as to exactly under what circumstances on 21.11.2007 the balance was in tact.

15. From the possession of P.W.8, CBI seized 55 documents in the year 2008 vide seizure list Ext.12. Similarly the enquiry report was also seized vide Ext.12. It is revealed from the evidence of P.W.8 that he has obtained the written statement of accused vide Ext.27 and SB list of transaction vide Ext.28. The ledger copy of sub-post office in respect of SB account No.,1362487 has also been proved vide Ext.30. In his statement, the accused has not admitted the misappropriation, rather he has stated that he had entered the amount in the ledger and also in the pass book and has put seal and signature in the pass book. He has not admitted about the misappropriation of above amount. Even if pass book of Umesh Chandra Patel and Subasini Patel of Garposh sub-post office has been seized vide Ext.36 and statement of Umesh Chandra Patel has been proved vide Ext.37, said persons have not been examined by the court even if they are material for the prosecution. The statement Sri Patel reveals that he has deposited Rs.17,000/- on 11.9.2007 and the balance was correctly reflected in the pass book. He does not say anything regarding misappropriation of amount from his account by the accused. The statement of Preeti Agrawal P.W.7 reveals that she had deposited the amount which has been correctly reflected in the pass book and she has not stated anything

regarding misappropriation of any amount by the accused from her account. As discussed earlier, P.W.1 has not disclosed about the misappropriation of any amount from his account. Only he got the information from higher officer that no entry has been made in the ledger.

16. In view of the evidence laid by the above prosecution witnesses, it is seen that there are contradictions in the statement as well as in the evidence of prosecution witnesses regarding misappropriation of amount and conclusively it is not established that accused has misappropriated cash of Rs.35010/- from the account of four account holders.

17. The I.O. (P.W.11) has seized 55 numbers of documents vide Ext.12 and seized four items vide Ext.63 as revealed from his evidence. He has also seized the unclassified receipts of Jharsuguda Head Post Office on 27.1.2009 and on conclusion of investigation, submitted charge sheet. In the list of documents as well as in the list of witnesses, he has not specified the sanction order or name of the sanctioning authority. At the time of his cross-examination, he has admitted that all total three persons were working at Garposh Sub-Post Office and he has not collected the specimen signature and handwriting of all the staffs. He has not got any allegation for financial irregularity during the year 2006 and 2007.

18. Only one witness namely Raj Kumar Thakur has been examined by the defence who is account holder of Garposh Sub-Post Office. He has disclosed that one Koushal Bhangra was making necessary entries in the pass book during the tenure of accused Pulin Kumar Das and he is well acquainted with his signature and

handwriting. Further, he has disclosed that one Biswanath Jena, Inspector has collected pass books from the account holders and advised the account holders not to admit the signature of Koushal Bhangra. He has not stated anything substantial about the misappropriation of Rs.35010/-.

16. During course of argument, learned counsel for the defence submitted before the court that the FIR as well as sanction order are defective, for which, entire prosecution case fails. Further, he argued that charge has not been framed giving details of amount misappropriated. On the other hand, learned P.P. CBI submitted that the FIR as well as sanction order are in proper procedure and there is no scope to disbelieve the same. On perusal of FIR, it is seen that details of misappropriated of Rs.35010/- has not been reflected with specific accounts number for which there is no scope to disbelieve the argument advanced by the defence regarding above transaction. In view of the evidence adduced on behalf of prosecution, it is not at all established beyond all reasonable doubt that the accused himself has misappropriated the amount of Rs.3510/- from four account holders.

17. After analysing the evidence on record, I come to the conclusion that the prosecution has not well established the charges under Sec. 409 IPC and Under Sec. 13(2) read with Sec.13 (1)(c) and 13(1)(d) of Prevention of Corruption Act against the accused beyond reasonable doubt.

18. In the result, the accused is held not guilty for the offence under Sec. 409 IPC and Under Sec. 13(2) read with

Sec.13(1)(c) and 13(1)(d) of Prevention of Corruption Act and is acquitted from the above charges under Sec.248(1) Cr.P.C.

The seized documents be returned to the person from whom seized and the zimanama if any, be cancelled after four months of appeal period, if no appeal is preferred and in the event of appeal subject to the order of appellate court.

SPECIAL JUDGE,C.B.I.,COURT NO.III,
BHUBANESWAR.

Dictated & corrected by me and is pronounced in the open court today i.e. on 28th June, 2014.

SPECIAL JUDGE,C.B.I.,COURT NO.III,
BHUBANESWAR.

LIST OF WITNESSES EXAMINED FOR THE PROSECUTION:

P.W.1	Muralidhar Mandal.
P.W.2	Pabitra Kumar Patel.
P.W.3	Santosh Kumar Panda.
P.W.4	Binay Kumar Baxla.
P.W.5	Banchhanidhi Mishra.
P.W.6	Bansidhar Pradhan.
P.W.7	Priti Agrawal.
P.W.8	Biswanath Jena.
P.W.9	Mansidh Jatrama.
P.W.10	Narayan Chandra Behera.
P.W.11	Manoj Kumar Dash

LIST OF WITNESSES EXAMINED FOR THE DEFENCE:

D.W.1Rajkumar Thakur.

LIST OF DOCUMENTS ADMITTED BY THE PROSECUTION

Ext.1	Deposit slip.
Ext.1/1	Signature of husband of P.W.1. in Ext.1.
Ext.2	Pass book.
Ext.2/1	Entry along with endorsement in Ext.2.
Ext.3	Receipt.
Ext.3/1	Signature of Pulin Kumar Das.
Ext.4	Receipt.
Ext.5	Daily report.
Ext.5/1	Signature of Manoj Kumar Das.
Ext.5/2	Signature of Bansidhar Pradhan.
Ext.6	Unclassified receipt showing payment by accused dtd.6.12.2007 of Rs.20,000/-.
Ext.7	Unclassified receipt showing payment of Rs.22,000/- by the accused on 7.12.2007.
Ext.8	Postal pass book No.1363764.
Ext.9	Written complaint(Plain paper FIR)
Ext.9/1	Signature of P.W.5 on Ext.9.
Ext.10	Letter No.F/4-2/07-08 dtd.1.1.2008 of the Suptd. Post Office, Sambalpur.
Ext.10/1	Signature of Narayan Ch. Behera on Ext.10.
Ext.11	Paas Book in the name of Simran Agrawalla.
Ext.12	Seizure list.
Ext.12/1	Signatures of P.W.8 on Ext.12.
Ext.12/2	Signature of P.W.8 on Ext.11.
Ext.12/3	Signature of M.K. Das, Inspector on Ext.12.
Ext.12	Pass book of Tribikram Meher.
Ext.13	Pass book of Tribikram Meher
Ext.13/1	Signature of Tribikram Meher on Ext.13.
Ext.14	Written statement of Tribikram Meher.
Ext.14/1	Signature of Tribikram Meher.
Ext.15S	tatement of Pulin Kumar Das dtd.20.11.2007. Ext.15/1 Signature of accused Pulin Ku.Das.
Ext.16	Deposit slip of SB A/C.No.1363787.
Ext.16/1	Signature of Tribikram Meher on Ext.16.
Ext.16	Payment voucher of Tribikram Meher.
Ext.17	Payment voucher.
Ext.18	Deposit slip in respect of A/C.No.1363787.
Ext.18	Daily transaction report of Garposh Sub-Post Office.
Ext.19	Daily transaction report .
Ext.19/1	Signature of Pulin Kumar Das.
Ext.20	Daily transaction report of Garposh Sub-Post Office.

- Ext.20/1 Signature of accused Pulin Kumar Das.
 Ext.21 Daily transaction report dtd.19.7.06 of Garposh Sub-Post Office.
 Ext.22 List of transaction dtd.24.11.06 of Garposh Sub-Post Office.
 Ext.22/1 Signature of accused Pulin Ku. Das.
 Ext.23 Ledger Copy of SB A/C.1363787.
- Ext.24 Ledger Copy of SB A/C.No.1363787.
 Ext.24/1 Signature of Sub-post master,Jharsuguda.
 Ext.25 SB Account No.1362487 of Mansid Jatrama and Satyapriya Jatrama.
 Ext.26 Written statement of Mansid Jatrama.
 Ext.26/1 Signature of Mansid Jatrama.
 Ext.27 Written statement of Pulin Kumar Das.
 Ext.27/1 Signature of Pulin Ku. Das on Ext.27.
 Ext.27 S.B List of transaction dtd.15.10.07 of Garposh Sub-Post Office.
 Ext.28 SB list of transaction dtd.15.10.07 of Garposh Sub-post Office.
- Ext.28/1 Signature of accused.
 Ext.29 Pay-in-slip of Mansid Jatrama.
 Ext.30 Ledger copy of Account No.1362487.
 Ext.30/1 Signature of Pulin Kumar Das.
 Ext.31 Ledger copy of SB a/c.No.1362487.
 Ext.31/1 Signature of Postmaster Jharsuguda Head Post Office.
 Ext.32 Written statement of Pulin Kumar Das.
 Ext.32/1 Signature of Pulin Ku. Das on Ext.32.
 Ext.33 Daily list of transaction dtd.5.10.2006.
 Ext.33/1 Signature of Pulin Ku. Das on Ext.33.
 Ext.34 True ledger copy of SB account No.1363824 in the name of Leela Agrawal.
- Ext.34/1 Signature of accused Pulin Kumar Das.
 Ext.35 Ledger copy of SB A/C. 1363824.
 Ext.35/1 Signature of postmaster Jharsuguda Head Post Office on Ext.35.
- Ext.36 Pass book of Umesh Ch.Patel & Subasini Patel.
 Ext.37 Written statement of Umesh Ch.Patel.
 Ext.37/1 Signature of P.W.8 on Ext.37.
 Ext.38 Written statement of Pulin Ku. Das .
 Ext.38/1 Signature of P.W.8 on Ext.38.
 Ext.38/2 Signature of Pulin Ku. Das on Ext.38.

- Ext.39 Ledger copy of Garposh Sub-post office.
- Ext.40 Ledger copy of Jharuguda Head Post Office A/C.No.1363324.
- Ext.40/1 Signature of Post Master,Jharsuguda on Ext.40.
- Ext.41 Preliminary report.
- Ext.41/1 Signature of P.W.6 on Ext.41.
- Ext.42 Written statement of Pulin Ku.Das dtd.31.1.2008.
- Ext.42/1 Signature of Pulin Ku.Das on Ext.42.
- Ext.43 Written statement of Priti Agarwal dtd.12.1.1997.
- Ext.43/1 Signature of P.W.8 on Ext.43.
- Ext.44 System generated ledger copy of SB A/C.1363764.
- Ext.44/1 Signature of Postmaster,Jharsuguda on Ext.44.
- Ext.45 Ledger copy of SB A/C.1363764.
- Ext.45/1 Signature of Postmaster Garposh Sub-Post Office on Ext.45.
- Ext.46 Written statement of Priti Agrawal.
- Ext.46/1 Signature of P.W.8 on Ext.46.
- Ext.46/2 Signature of Sub-Post Master,Garposh Sub-Post Office.
- Ext.47 Statement of Pulin Ku.Das .
- Ext.47/1 Signature of Pulin Kumar Das on Ext.47.
- Ext.48 List of transaction dtd.13.9.07 of Garposh Sub-Post Office.
- Ext.48/1 Signature of Pulin Ku.Das on Ext.48.
- Ext.49 Statement of Daily account dtd.17.11.2006.
- Ext.49/1 Signature of Pulin Ku.Das on Ext.49.
- Ext.50 Daily account dtd.24.11.06 of Garposh Sub-Post Office.
- Ext.50/1 Signature of Pulin Ku.Das on Ext.50.
- Ext.51 Daily Account of Garposh Sub-Post Office .
- Ext.51/1 Signature of Pulin Ku.Das on Ext.51.
- Ext.52 Daily Account dtd.19.10.06 of Garposh Sub-Post Office.
- Ext.52/1 Signature of Pulin Ku.Das on Ext.52.
- Ext.53 Daily Account of Garposh Sub-Post Office dtd.15.10.07.
- Ext.53/1 Signature of Pulin Ku.Das on Ext.53.
- Ext.54 Daily transaction account dtd.5.10.2006.
- Ext.54/1 Signature of Pulin Ku.Das on Ext.54.
- Ext.55 Daily account of Garposh Post Office.
- Ext.55/1 Signature of Pulin Ku.Das on Ext.55.
- Ext.56 Daily account of Garposh Post office dtd.19.7.2006.
- Ext.56/1 Signature of Pulin Ku.Das on Ext.56.
- Ext.57 Daily account book from 30.6.03 to 30.12.05 of Garposh Sub- Post Office.

- Ext.58 Account book in Garposh Sub-Post Office from 30.12.05 to 21.11.07.
- Ext.59 R.D.long book from 21.5.07 to 11.12.07 of Garposh Sub-Post Office.
- Ext.60 Savings Bank long book from 23.10.03 to 11.12.06 of Garposh Sub-Post Office.
- Ext.61 Long Book from 12.12.06 to 11.12.07 of Garposh Sub-Post Office.
- Ext.61/1 Signature of P.W.9.
- Ext.62 Formal FIR .
- Ext.62/1 Endorsement and signature of D.K. Thakur.
- Ext.63 Seizure memo dtd.23.4.2009.
- Ext.63/1 Signature of P.W.11 in Ext.63.
- Ext.64 Letter dtd.25.2.2009 of Suptd.of Post Office,Sambalpur Division.
- Ext.64/1 to 64/3 Enclosures of Ext.64.
- Ext.65 Schedule of Unclassified receipt of Jharsuguda Head Post Office.
- Ext.66 Sanction order.

LIST OF DOCUMENTS ADMITTED BY THE DEFENCE :

Ext.A SB. Pass Book of Sunita Thakur.

LIST OF M.Os. MARKED BY THE PROSECUTION:

Nil.

LIST OF M.Os. MARKED FOR THE DEFENCE:

Nil.

SPECIAL JUDGE,C.B.I.,COURT NO.III,
BHUBANESWAR.