

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

PRESENT:

Sri M.K.Panda,
Special Judge, C.B.I.Court No.I,
Bhubaneswar.

T.R. Case No. 8 of 2001
Arising out of R.C. Case No. 11(A)/2000.

Date of Argument : 12.3.14 & 13.3.2014.
Date of Judgment : 21.3.2014.

REPUBLIC OF INDIA.

Versus.

1. Bata Krushna Das, s/o. Lokanath Das,
Vill. Chandikuda, P.S. Kakatpur, Dist. Puri.
2. Bainsidhar Senapati, aged about 53 years,
s/o. Late Kasinath Senapati, vill. Pitpand,
P.S. Mahakalpada, Dist. Kendrapara,
At/Pr. Madhusudan Nagar Unit-IV,
P.S. Kharvelanagar, Dist. Khurda.
... Accused Persons.

For the Prosecution :Sri K.L.Kar, Spl.P.P. C.B.I.
For the Accd.No.1. :Sri A.K.Mohanty, Adv.
For the Accd. No.2. :Sri S.Swain, Adv. &
Associate.

JUDGMENT

The accused Bainsidhar Senapati stands charged U/Ss.120-B IPC, 409 IPC, 420 IPC, 467 IPC, 471 IPC, 477-A IPC, 201 IPC and U/S.13(1)(d) read with Section 13(2) of the P.C.Act, 1988 whereas the accused

Bata Krushna Das stands charged U/Ss.120-B IPC, 420 IPC, 467 IPC, 471 IPC.

2. Facts material for the prosecution case hold as follows: The accused Bainsidhar Senapati was serving as Branch Manager, G.G.P. Branch of State Bank of Hyderabad, Cuttack Road, Bhubaneswar since July, 1995 to March, 1997. He had allowed Bata Krushna Das to open a Current A/c No. SIB-199 in the said branch on 26.8.95 in the name of M/s. Matrushakti Agency under the proprietorship of Batakrushna Das and on the introduction by Shri Mallick Kammaruddin Ali, proprietor of Kumar Motors having Current A/c No. SIB-194. On 30.9.95 an amount of Rs.50,000/- was transferred to STDR for a period of 24 months in the name of Bata Krushna Das from his above current account SIB 199. On the said date accused Bata Krushna Das applied for a Cash Key Loan of Rs.45,000/- against the said STDR of Rs.45,000/- which was allowed by the then Branch Manager, accused Bainsidhar Senapati without bringing the fact of grant of O.D. facility to the knowledge of his higher office. According to the prosecution the STDR of Rs.50,000/- was closed and the amount of Rs.52786/- was transferred to the current account no.SIB-199 of the accused Brta Krushna Das without his signature on the credit voucher dated 13.5.96 for which the over draft increased to Rs.1,30,878/-. Thereafter the accused Bata Krushna Das applied for a cash credit limit of Rs.1.25

lakhs on 20.7.96 hypothecating of goods and collateral security of guarantee extended by Braja Kishore Pattanmaik to cover up the over draft amount of Rs.1,30,878/-, which was allowed by the accused Bainsidhar Senapati with C.C. No.32 exceeding the limit of the C.C for which the over draft increased to Rs.2.5 lakhs in C.C.No.32. It is also case of the prosecution that on 14.3.97 accused Bainsidhar Senapati obtained the signature of accused Bata Krushna Das on a credit voucher for a value of Rs.5000/- dated 12.3.97 favouring M/S Matrusakti Agency but the accused Bainsidhar Senapati himself altered the amount in figures and words for Rs.2,50,000/- and posted the said amount without having cheque for Rs.5,000/- or Rs.2,50,000/- of M/s.Pyramid Construction in favour of Matrusakti Agency. The accused Bainsidhar Senapati has operated the entire transactions and the related account of Current A/c No.SIB 199 and C.C.-32 both are of the accused Bata Krushna Das, proprietor of M/S.Matrusakti Agency by creating and extending unauthorized facilities to the accused Bata Krushna Das and tried to close the loans outstanding against the accused Bata Krushna Das. The accused has destroyed the original ledger sheets relating to Current A/c No.SIB 199 & C.C.-32 of the accused Bata Krushna Das and reconstructed the ledger sheets on the basis of credit, debit and transfer vouchers along with other documents. Thus both the accused persons by

entering into criminal conspiracy with each other cheated the State Bank of Hyderabad, GGP Branch, Cuttack Road, Bhubaneswar to the tune of Rs.3,99,724/- and the accused Bainsidhar Senapati by abusing his official position as a public servant caused wrongful loss to the bank and wrongful gain to him & the accused Bata Krushna Das. On completion of usual investigation C.B.I submitted charge sheet against both the accused persons resulting in the present case.

3. Defence plea is one of complete denial of complicity of the accused persons in the alleged crimes.

4. Points for determination are :

i. Whether the accused Bainsidhar Senapati had been working as Branch Manager in State Bank of Hyderabad, GGP Branch, Cuttack Road, Bhubaneswar from July, 1995 to March, 1997 and the accused Bata Krushna Das had opened a Current Account No. SIB 199 in the said Branch on 26.8.1995 in the name of Matrusakti Agency.

ii. Whether both the accused persons entered into a criminal conspiracy with each other and cheated the Bank to the tune of Rs.3,99,724/- and caused wrongful loss of the said amount to the Bank.

iii. Whether both the accused persons in connivance with each other dishonestly inducing it to deliver Rs.3,99,724/- in favour of M/S. Matrusakti Agency by way of credit facilities and the accused Bainsidhar Senapati

destroyed loan documents, ledger sheets relating to CA SIB 199 and CC-32 of M/S.Matrusakti Agency and also made false entries in the reconstructed ledger sheets of the Bank.

iv. Whether both the accused persons misappropriated the amount of Rs.3,99,724/- by forging the documents of the bank i.e. credit debit and transfer vouchers and ledger sheets of C.A. SIB-199 and CC-32 of M/S.Matrusakti Agency purporting to be valuable securities.

v. Whether the accused persons in connivance with each other forged the original ledger sheets, loan documents of C.A SIB-199 and CC-32 intentionally to be used for the same as genuine documents which they had known or had reason to believe that those are forged documents.

vi. Whether the accused Bainsidhar Senapati, Branch Manager of State Bank of Hyderabad, GGP Branch, Cuttack Road, Bhubaneswar in connivance with the accused Bata Krushna Das, proprietor of M/S. Matrusakti Agency defrauded and destroyed the original ledger sheets and other documents in respect of CA-SIB199 and CC-32 and misappropriated the amount of Rs.3,99,724/- of the Bank.

vii. Whether the accused Bainsidhar Senapati, Branch Manager, State Bank, Hyderabad GGP Branch, Cuttack Road, Bhubaneswar during the aforesaid period

being a public servant was entrusted with a sum of Rs.3,99,724/- having dominion over the said property and committed criminal breach of trust in respect of the said amount.

viii. Whether the accused Bainsidhar Senapati during the aforesaid period caused disappearance of documentary evidence by destroying the original ledger sheets and other documents of the Bank in respect of C.A SIB -199 and CC-32 to screening him from legal punishment.

ix. Whether the accused Bainsidhar Senapati during the aforesaid period being a public servant working in the capacity of Branch Manager of State Bank of Hyderabad, GGP Branch, Cuttack Road, Bhubaneswar by corrupt or illegal means or otherwise abusing his position as such public servant obtained pecuniary advantage to the tune of Rs.3,99,724/- for himself and for accused Bata Krushna Das, proprietor of M/S. Matrusakti Agency by allowing the aforesaid loan in favour M/S. Matrusakti Agency.

5. Prosecution in support of its charges against the accused persons has examined as many as seven witnesses whereas defence has adduced no evidence in substantiation of its plea.

6. There could be no denying that P.W.7 Duryodhan Batra, the then Branch Manager in State Bank of Hyderabad, G.G.P. Branch is the most important

witness for the prosecution. His evidence is that he joined as Branch Manager in State Bank of Hyderabad, GGP Branch, Bhubaneswar in June, 1997 and continued till July, 2000. He has testified that Sri Bainsidhar Senapati was his predecessor. P.W.7 specifically deposed that the Cash Credit Account of Matrusakti Agency was closed on 14.3.97 by debiting local clearing account. His further testimony is that in course of tallying the accounts, he detected that the account was closed by debiting branch clearing account and that cheque had not been presented but Rs.2,50,000/- was debited and credited to the Cash Credit Account of Matrusakti Agency. P.W.7 has also testified that the credit voucher of account-holder Matrusakti Agency of Rs.2,50,000/- contained in Ext.6 shows that it has been drawn in Union Bank of India cheque. He has specifically alleged in his evidence that the accused Bainsidhar Senapati has passed this voucher under his signature (Ext.6/1) without making corresponding entry of the amount for clearing in Clearing Day Book contained in Ext.7. His further allegation in the evidence is that page-111 of Ext.7 does not show any entry of clearing of cheque corresponding to Ext.6. He has further alleged in his evidence that page-116 of Ext.7 does not bear the signature of the accused. He has proved the Day Book of the Cash Credit Account which has been marked Ext.8. His further allegation in the evidence is that the Day book of the Cash credit

Account contained in Ext.8 at page-89 shows that Rs.2,50,000/- of Matrusakti Agency has been credited to this account without presenting the cheque in clearing house and it has been shown as received through clearing in the register Transfer Scroll contained in Ext.9. According to P.W.7 it has been reflected in C.C. Account No.32 that Rs.2,50,000/- has been shown as received. The Transfer Scroll of State Bank of Hyderabad G.G.P Branch, Bhubaneswar for the period from 22.12.1995 to 15.5.1996 has been marked Ext.10. P.W.7 has explained in his evidence that Cash Key account of Matrusakti Agency of Rs.52,786/- was credited by cancelling the security amount of Rs.50,000/-. His further evidence reveals that accordingly the Cash Key Account limit was closed and once a Cash Key Account is closed, it can be operated with credit balance only. His further admission is that in this case even after adjustment the account holder was allowed to operate the account by way of over drawl. His specific evidence is that the operation of this account after closure of adjustment cash of key security, the transactions virtually become insecure and unauthorized. P.W.7 has categorically deposed that this adjustment has been made on 13.5.96 and there has been excess of over drawl amount of Rs.1,30,878/- till 3.9.96. The transfer scroll of the State Bank of Hyderabad, G.G.P Branch has been marked Ext.11. P.W.7 has also testified that transfer receipt and payment are

maintained in this register and voucher Ext.5 shows that the Cash Credit account of Matrusakti Agency has been verified and has been transferred and credited to C.A. SIB-199 of M/S. Matrusakti Agency as is evident from the relevant entry at Sl.19 of page-249 of Ext.11. P.W.7 has proved the signature of Bainsidhar Senapati which has been marked Ext.11/1. According to P.W.7,Ext.4/123 is the corresponding voucher and the term deposit of Rs.50,000/- was cancelled and adjusted towards Cash Key Limit. P.W.7 has specifically deposed that C.B.I has seized 26 documents on his production and prepared seizure list on different dates. The relevant seizure lists have been marked Ext.12 to Ext.15 and his signatures have been marked Ext. 12/1 to Ext.15/1. P.W.7 has explained in his evidence that A.G.M. Regional Office, Vizak instructed him to file a complaint case before the competent court of law and on the direction of the Court, this case has been instituted. The relevant complaint petition has been marked Ext.16 and the signature of P.W.7 has been marked Ext.16/1.

7. Defence cross- examination has brought out certain admissions in the evidence of P.W.7 which strains the credibility of the prosecution evidence. His admission is that it has not been mentioned in the complaint petition about his intimation to the A.G.M and instruction authorizing him to file this complaint case. It is also his admission that the accused Bata Krushna Das withdrew

amount of Rs.50,000/- from the Current Account No.199 and deposited in Special Term Deposit in which case the account holder is entitled to 12% interest. According to P.W.7, accused Bata Krushna Das took a loan of Rs.45,000/- against the deposit of STD Rs.50,000/-. His explanation is that Branch Manager Bainsidhar Senapati was competent to sanction 90% of the fixed deposit amount. P.W.7 has fairly conceded a defence suggestion that the Branch Manager is competent to allow overdrawl in respect of Current Account, if the transaction is in operation. P.W.7 has denied his knowledge whether Cash Credit limit of Rs.2,50,000/- has been sanctioned under Cash Credit hypothecation, Govt. Press Bhubaneswar. He has also denied his knowledge whether the guarantor Braja Kishore Pattanaik @ Brajendra Kumar Pattanaik was an employee of Orissa Text Book Press Bhubaneswar for the said loan. He has also denied his knowledge whether an amount of Rs.35,000/- is still with the Bank as fixed deposit. According to P.W.7, he does not know whether Rs.89,839/- has been deposited by the loanee Bata Krushna Das in the Bank. His explanation in the cross-examination is that Manager or Manager in Account is custodian of the cheques and that during his incumbency at Bhubaneswar as Branch Manager , he was maintaining all the cheques and the clerk used to maintain the register of cheques. He has also deposed in the cross-examination that no acknowledgement of receipt of the

cheques is given to the concerned clerk. His further evidence is that he has not seen any document to show that the accused Bainsidhar Senapati has received the said cheque. It is also his testimony that there was no actual payment of Rs.2,50,000/- against the clearing in question. His further admission is that Branch Manager is competent to sanction Rs.3,00,000/- under Cash Credit hypothecation.

8. The first defence contention is that the entire trial of this case is vitiated because the complainant has not been authorised to initiate any criminal proceeding against the accused. Not only that, he has not ever been authorized or instructed by the competent higher authority. It appears from the evidence on record that A.G.M is the higher authority. But there is absolutely no document to show instruction of the A.G.M authorizing the complainant to file complaint against the accused. Besides, the complaint petition is conspicuous by the absence of any direction of the competent authority by virtue of which this case has been filed. The very fact that the complaint in this case has been filed without any legal sanction of permission from the authority, it can be well said that the very foundation of the prosecution is too fragile to sustain the super structure.

9. Pertinently, the procedure and practice in the bank is that after presenting credit voucher and cheque it is credited to the account of the concerned person first

and if clearing is not confirmed it will be reversed. It is worthwhile in this connection to take note of the evidence of P.W.2 the Head Cashier. He has specifically deposed that in case a cheque is deposited for clearing, it is immediately credited to the account of the person concerned and that clearing becomes effective and in case of failure it is reversed. Importantly, the credit voucher of Rs.2,50,000/- was presented for clearing and the amount was credited to the Cash Credit Account No.32, following which as the voucher was not confirmed in clearing house, the accused reversed the clearing resulting in non-payment. The complainant P.W.7 at para-11 has fairly admitted : "There has been no actual payment of Rs.250,000/- made as against the clearing in question". The complaint petition contained in Ext.16 clearly shows that the entry of Rs.2,50,000/- was reversed on 17.11.97. The allegation of P.W.7 that the accused passed the credit voucher of Rs.2,50,000/- without corresponding clearing is not illegal or an offence. It is the admitted position that the current account was in operation, when the over drawl was granted. The complainant P.W.7 has conceded a defence suggestion that the Branch Manager is competent to allow over drawl in respect of Current Account, if the transaction is in operation. The accused – Branch Manager has granted Rs.45,000/- in Cash Credit facility against the fixed deposit of Rs.50,000/-. It is significant to note that

accused- Branch Manager is competent to sanction 90% of fixed deposit amount. Besides, it is the admission of the complainant that the accused Bata Krushna Das took a loan of Rs.45,000/- against STDR Rs.50,000/-. His assertion in evidence is that the Branch Manager Bainsidhar Senapati is competent to sanction 90% of the fixed deposit. It is unusual to note that no materials have been brought on record by the prosecution to negative the assertion that the power of the accused to sanction 90% of the fixed deposit amount. No less important is the evidence of P.W.4 who is an employee of State Bank of Hyderabad that according to Cash Key Loan it is granted against deposit of customer and 90% of the deposit can be granted.

10. It is important to note that Cash Credit loan was granted under hypothecation of property security and the deceased Braja Kishore Pattanaik was the guarantor of such Cash Credit loan. It appears from the complaint petition that Braja Kishore Pattanaik who was working in Orissa Text Book Preparation, Production and Marketing, Unit-III, Sriya Talkies Area, Bhubaneswar and was sanctioned Rs.2,50,000/- as Cash Credit loan under hypothecation of property under the custody of Text Books Press which is a State Govt. of Orissa for which every transaction was allowed in shape of demand draft and payment through Text Book, Govt. Press, Bhubaneswar. It is more than apparent from the Current

Account loan that the overdraft amount has been adjusted and paid to the Bank and the operation of cash credit loan with guarantor Braja Kishore Pattanaik, the employee of Text Book Press, the over drawl became secured and consequently the bank has got security against the over drawl amount.

11. It has been next contended by the defence counsel that the allegation that the accused passed the credit voucher of Rs.2,50,000/- without corresponding clearing is not illegal or an offence. The evidence of P.W.7 in examination-in-chief stands virtually discredited by his clean admission in para-11 of the cross-examination that there has been no actual payment of Rs.2,50,000/- as against the clearing in question. The complaint petition as contained in Ext.16 reads that the entry of Rs.2,50,000/- was reversed on 17.11.97. Importantly the procedure and practice of Bank transaction is that on presentation of credit voucher or cheque it is to be credited to the account of the person concerned and if clearing is not confirmed it will be reversed. The Head Cashier, P.W.2 has categorically deposed that in case cheque is deposited for clearing, it is immediately credited to the account of the person concerned and that clearing becomes effective and in case of failure it is reversed. What cannot be lost sight of in this connection is that the credit voucher for Rs.2,50,000/- was presented for clearing and the amount

has been credited to the account of C.C. No.32 and since the voucher was not confirmed in clearing, the accused reversed the clearing resulting in non-payment. What is all the more significant is that it has been mentioned in the complaint petition as contained in Ext.16 that the entry of Rs.2,50,000/- was reversed on 17.11.97.

12. The next defence argument is that the charge of causing disappearance of evidence is wholly legally unsustainable in absence of material particulars. P.W.7 has deposed that the loan ledger is available in the branch for which the copy of it has been produced and proved as Ext.3. The most damaging admission appearing in the last para of evidence of the complainant is that Ext.3 is available in G.G.P branch of the Bank. On the face of this candid admission that the ledger is available in the bank, the charge on this score of causing disappearance of ledger is nothing short of a figment of imagination.

13. His final contention is that since the accused Bainsidhar Senapati, Branch Manager of G.G.P Branch Bhubaneswar in State Bank of Hyderabad is a public servant, it was incumbent on the prosecution to produce and prove the sanction order as contemplated under Section 19 of the P.C.Act. In fact, this is a fundamental requirement for such type of offence. There is no controversy over the fact that the accused Bainsidhar Senapati was serving as Branch Manager in State Bank of Hyderabad, G.G.P Branch Bhubaneswar and in course of

his official duty he has allowed the bank transaction with the accused Bata Krushna Das, Proprietor of Matrusakti Agency. Understandaly, this act of the accused who is a public servant very much comes within the ambit of official duty. It, therefore, follows a natural corollary that the prosecution is duty bound to fulfil this legal requirement for prosecution against the accused. There is no denying that no sanction has been granted by the competent authority who has power to remove the accused from his service. Quite obviously in the conspicuous absence of sanction the whole prosecution against the accused is not only illegal but also the entire trial is vitiated.

14. The complainant has fairly conceded the defence suggestion that cash credit limit of Rs.2,50,000/- was sanctioned in cash credit hypothecation of Govt. Press Bhubaneswar and all the payments have been made through demand draft in Govt. Press. It is, therefore manifestly obvious that the accused- Branch Manager has not shown any undue favour or committed any illegality or irregularity in his official capacity as Branch Manager. The investigation as well as the evidence of P.W.7 is conspicuous by the absence of a single word of allegation against the accused Bata Krushna Das. Quite obviously the charges against him do not at all sustain in the perspective. The oral as well as documentary evidence relied on by the prosecution is too inadequate, infirm and

deficient to connect the accused with the alleged offences.
It is, therefore absolutely unsafe to act upon the evidence
which is inherently incredible and untrustworthy. The contentions advanced by the learned defence counsel carry ample legal conviction and hence, are acceptable. The oral as well as documentary evidence adduced by the prosecution hardly carries any legal conviction on the face of serious deficiencies.

15. In ultimate analysis of the totality of the evidence on record, I am constrained to hold that the prosecution has failed to prove its case against the accused beyond all reasonable doubt. I, therefore, find the accused Bainsidhar Senapati not guilty of the offences under Sections 120-B, 409, 420, 467, 471, 477-A, 201 IPC and under Section 13(1)(d) read with Section 13(2) of the P.C.Act and accused Bata Krushna Das under Sections 120-B, 420, 467 and 471 IPC and acquit them under Sections 248(1) Cr.P.C. The bail bonds stand cancelled.

The seized documents be returned from whom seized and the zimanama, if any, be cancelled four months after the appeal period is over, if no appeal is preferred and in the event of an appeal subject to order of the Hon'ble Appellate Court.

Special Judge, C.B.I., Court NO.I,
Bhubaneswar.

Dictated and corrected by me & pronounced in the open court today i.e. on 21st day of March, 2014.

Special Judge, C.B.I., Court No.I,
Bhubaneswar.

LIST OF WITNESSES EXAMINED FOR THE PROSECUTION

- P.W.1. Md.Kutabuddin.
- P.W.2. Bishnu Charan Tarai.
- P.W.3. Devakishore Nayak.
- P.W.4. Basant Kumar Das.
- P.W.5. Mallik Kumar Udin.
- P.W.6. Prasanta Kumar Das.
- P.W.7. Duryodhan Behera.

LIST OF WITNESSES EXAMINED FOR THE DEFENCE.

NIL.

LIST OF DOCUMENTS ADMITTED BY THE PROSECUTION.

- Ext.1. Current account opening form.
- Ext.1/1 Signature of Account holder.
- Ext.2 Cash key application form.
- Ext.2/1. Signature of the accused B.Senapati.
- Ext.2/2. Signature of accused Batakrushna Das.
- Ext.3. Ledger card of Account No.SIB-199.
- Ext.4 to 4/140. Cheques and vouchers passed by the accused Bainsidhar Senapati.
- Ext.4/141 Signatures of accused Bainsidhar Senapati.
to 4/281
- Ext.5 to 5/30 Vouchers and cheques of Matrusakti Agency bearing C.C.A No.32.
- Ext.5/31 Other cheques and vouchers passed by
to 5/57. accused B.Senapati.
- Ext.6. Credit voucher of Matrusakti Agency.
- Ext.6/1 Signature of accused B.Senapati.
- Ext.7 Clearing Day Book.

- Ext.8. Day book of cash credit account.
- Ext.9 Register of Transfer Scroll
- Ext.10. Transfer Scroll register of GGP Branch for the period from 22.12.95 to 15.5.96.
- Ext.11. Another Transfer Scroll Register of GGP Branch of State Bank of Hyderabas.
- Ext.11/1 Signature of B.Senapati.
- Ext.12 to Seizure lists.
- Ext.15
- Ext.12/1 Signatures of P.W.7.
to
- Ext.15/1
- Ext.16. Complaint petition filed by P.W.7
- Ext.16/1. Signature of P.W.7.

LIST OF DOCUMENTS ADMITTED BY THE DEFENCE

NIL.

Special Judge, C.B.I., Court No.I,
Bhubaneswar.