

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. 25 OF 2009.

R.C. No. 24(A) of 2008.

Date of argument : 03.05.2016

Date of Judgment : 11.05.2016

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 A. Jaiswal, P.P. C.B.I.

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

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.16,051/- by falsification of
document as a branch postmaster during the period from
4.12.2006 to 2.7.2007.

2. The prosecution case precisely unfolds the charges in the following manner. On 24.9.2008 Superintendent of Post office, South Division, Cuttack (P.W.8) 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. 651060 of Bansidhar Sahoo. No.651125 of Nabin Kumar Bal ,651255 of Sri Gouranga Sahu, No.650856 of Udaya Nath Sahoo, No.651453 of Smt.Sasimani Devi, No.651518 of Sulochana Sahu and 650538 in the name Keshab Das and R.C Lenka respectively covering the period from 4.12.2006 to 2.7.2007 to the tune of misappropriated amount of Rs.16,051/-, relevant to the trial at hand.

(2-A) The Supdt. of Police, C.B.I, Bhubaneswar on 30.9.2008 registered FIR (Ext.63) on his own report in written vide R.C. Case No.24 (A) of 2008 u/s. 409 of IPC and section 13(2) read with Section 13(1)(c) & 13 (1)(d) of P.C.Act, 1988 and directed Sri K.P.Tripathy, Inspector C.B.I for investigation. Later Sri G.K.Pradhan (P.W.10), 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. The Investigating Officer then obtained sanction

order Ext.9 as required u/s. 19 of the P.C.Act which appears to have been given by Supdt. Of Post office Cuttack South Division (P.W.2)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 stems from the police report u/s. 173(2) Cr.P.C covering the period from 4.12.2006 to 2.7.2007 for the misappropriated amount of Rs. 16,051/-.

3. Accused took the plea that he was working as delivery agent, not as branch post master of Rudrapur Branch Post office. Denying his complicity, he put himself on the trial.

4. In order to bring home charge the prosecution has examined eleven witnesses. Defence adduced neither oral nor documentary evidence. Sixty three documents are exhibited on behalf of the prosecution Out of eleven P.Ws examined, P.W.4 is the sanctioning authority while P.W.5, P.W.8 and P.W.11 are the postal officials who proved the postal documents seized and inquiry report conducted by them. P.W.10 is the Investigating Officer. P.W.2,3,7 and 9 are the accountholders while P.W.1 and 6 are the father and brother of accountholders namely Udaynath Sahu and Laxmidhar Sahoo respectively.

5. The points for determination are :

- (i) Whether accused was a public servant during the period from 4.12.2006 to 2.7.2007 in the capacity of Branch Postmaster of Rurdrapur branch post office?
- (ii) Whether accused by that time and place was entrusted with Rs.16,051/-by the account holders?

- (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.16,051/- entrusted to him as a public servant?
- (v) Whether accused during the period from 4.12.2006 to 2.7.2007 as a public servant committed misconduct by obtaining pecuniary advantage of Rs.16,051/- by corrupt and illegal means?

6. As accused has already secured acquittals in nine trials faced on the same prosecution allegation and this trial rests on the differentia of time, the crux of accusation is misappropriation of Rs.16,051/- during the period from 4-12-2006 to 2-7-2007 deposited in S.B. A/c S.B Accounts no. 651060 of Bansidhar Sahoo. No.651125 of Nabin Kumar Bal,651255 of sri Gouranga Sahu, No.650856 of Udaya Nath Sahoo, No.651453 of Smt.Sasimani Devi, No.651518 of Sulochana Sahu and 650538 in the name Keshab Das and R.C Lenka. Careful scrutiny of evidence is essential to separate grains from the chaffs, lest overlapping will rule the roost.

P.W.9, Saving Bank account holder of 651518 whose certified copy is proved by her vide Ext.62, has stated that her father had given some amount and she got her pass book opened in the post office and accused Patitapaban Das was distributing Dak in the village. She stated that one Ghadei Babu

had taken her pass book. She has admitted that accused had given her pass book after deposit of Rs.800/-. Ext.62 the certified copy of pass book reveals that on 6.6.2007 there was a deposit of Rs.1000/- carrying the balance to Rs.1800/-. This evidence does not disclose that accused was the Branch Post Master and had made endorsement in her pass book.

P.W.7 Bansidhar Sahoo for whom allegation against accused was non-deposit of Rs.1000/- in Ext.13 has admitted in his cross-examination that one Harihara Brahma was the post master during the relevant period and accused Patitapaban Das as a peon was distributing daks and he had never complained any irregularity against him. If he had deposited Rs.2500/- and was only to get Rs.1500/-, then the act of misappropriation by accused can not be inferred.

P.W.3 while proving his pass book Ext.8 , has stated that he had deposited money handing over the pass book to the accused, but in cross-examination he has admitted that he has deposed in the court according to the instruction of the advocate of the CBI. If the testimony is the outcome of the instruction, then credibility is doubtful.

P.W.2 while proving his pass book Ext.7 he has admitted to have withdrawn amount. He has stated that accused was making entries in his pass book, but in cross-examination he has admitted that accused was paying him amount with pass book and he had never applied to get withdrawal of deposited amount of Rs.9500/- and from one Dhukan he came to know about misappropriation. The witness is wonky and his evidence appears to be hearsay.

As stated above, P.W.1 is the father of account holder Udayanath Sahoo, He proved six pass books Ext.1 to Ext.6 but the relevant pass book for this case is Ext.2 standing in the name of Udayanath Sahoo. He has stated that there was a balance of Rs.47,000/- as on 4.5.2007. On verification of Ext.2 pass book, it reveals that it was commenced on 14.6.2004 and by the end of 4.5.2007 the balance was Rs.47,000/-. He has stated categorically that withdrawals made by his wife and minor children were correctly reflected in their respective pass books. He has not stated that any of his deposit made in his pass books was not taken into account. Further prosecution has not given any explanation for non-examination of account holder Udayanath Sahoo.

P.W.6, the brother of account holder Gouranga Sahoo vide Ext.18, could not say the pass book account number and the date of deposit in the cross-examination. He has stated that when he wanted to withdraw Rs.2000/- from this pass book, accused told him that he would pay the same after selling the tree. But fact remains that the material witness account holder namely Gouranga Sahoo is not examined.

From the evidence of P.W.7 and P.W.9 it is found that accused was distributing Daks as a peon. The testimonies of the account holders do not prove that accused had made initials in their respective pass books during the relevant period of this trial.

An anatomical survey of the total evidence unearths that no specific fact in accuracy is told to connect accused with the amount not taken into account with regard to their respective pass books. It assumes importance because the

accused faced trial in ten cases almost for the same allegation and in this trial, only in respect of seven pass books for a specific period, it is alleged that money deposited by the account holders were not given effect for the purpose of misappropriation. What is lacking on this part of account holders testimonies is clarity and cogency.

7. Next comes the evidence of postal officers pressed into service to connect accused with documents. P.W.5, 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.8 complainant has also admitted that accused had never worked with him and he had not seen the documents which were seized by the Investigating officer. This witness has proved Ext. 50 and Ext.53, the copy of orders that accused was kept in-charge of Rudrapur Branch Post Master from 18-1-2000 to 31-5-2000, but pertinently, the said period is irrelevant here. It may be stated here that in all the nine trials faced by accused on this allegation of which ramification will be analyzed later, the accused has been found to have not worked as Branch Post Master during relevant period.

P.W.4, sanctioning authority, could not say as to who had prepared the sanction order, Ext.9. There is no handwriting expert evidence that handwriting available in the passbooks Ext.2,7,8, 13,14,15, and Ext.18 belong to accused. The testimonies of P.W.5 and P.W.8 do not show that they had familiarity with the handwriting of accused because both of them admitted that accused had never worked under them. When the account holder P.W.7 states that one Harihar Bhrama was the

Branch Post Master, P.W.5 official witness states that one Asutosh Bhrama was the Branch Post Master during relevant period. The connecting link between accused and passbook is found missing. So also the functional designation of accused vis-a-vis relevant period .

(7-A) The complainant P.W.8 proved complaint Ext.43 which he lodged on 24.9.2008. But in cross-examination he has admitted that he had no personal knowledge about the documents seized and he was not the custodian of those documents. P.W.11 has conducted an inquiry at Rudrapur branch post office but in cross-examination, he has admitted that the inquiry by him was conducted in the absence of accused and during his inspection in the year 2005, 2006 and 2007, none of the account holders of Rudrapur branch post office made any complaint before him. He has admitted to have issued order dated 6.11.2007 in placing accused on put off duty describing his designation as Gramin Dak Sevak Mail Deliveran as on that date. The inquiry conducted by postal authorities does not show as to why accused was not given scope to explain the deficiencies in the documents and in this backdrop when handwriting expert opinion is lacking, the prosecution can be said to have squirrely failed to connect the accused with any falsification of documents.

(7-B) To sum up, the evidence of account holders fall short to implicate accused with any entrustment by them. The evidence of postal authority, who conducted inquiry does not prove any falsification of document by accused.

It is already stated by Sub-postmaster P.W.5 that one Ashutosh Brahma was the postmaster while accused was

Extra Department Postal Agent. After making all such verification, the complaint Ext.43 was lodged by P.W.8 on 24.9.2008. P.W.11, the Asst. Supdt. of post office who had conducted an inquiry has admitted to have placed accused under suspension on 6.11.2007 mentioning his designation as Gramin Dak Sevak Mail Deliveran. It is not understood as to why the suspension order depicted a designation of accused which defies the prosecution but supports defence. Because of the above inconsistencies, the prosecution cannot be said to have proved that accused was working as branch post master of Rudrapur branch post office during the relevant period from 4-12-2006 to 2-07-2007.

Only because the accused was working in Rudrapur branch post office during the relevant period, they seem to have attributed the authorship of such handwriting in the passbooks to the accused.

8. The evidence proves that accused was working in Rudrapur branch post-office as a Gramin Dak Sevak Mail Deliveran and thereby he was a public servant. The documents placed are not proved to be the handwriting of accused.

9. Prosecution suffers from infirmities of contravening sec-154 and 300 Cr.P.C to deny fair trial to accused. These are sufficient to corrode the substratum of prosecution case. Let the same be said on the touch stone of law.

(i) On 24.9.2008 Asst. Supdt. of Post office, P.W.8, lodged a written complaint Ext.43 before S.P. C.B.I. 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.63. P.W. 10 Investigating Officer has admitted in cross-examination that

basing upon the same FIR, sanction order and similar evidence he has submitted ten charge sheets . The I.O has admitted to have deposed in T.R. 16/09, 17/09 18/09 19/09 20/09 T.R. 21/09,T.R.22/09 T.R.23/09 and T.R.24/09 against the accused. There is no dispute that on submission of charge sheets for the allegation running for seven years, the accused faced trial in ten cases and till date he has been acquitted in all the aforesaid nine trials.

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.

A- In the decision reported in **(2011)2 S.C.C. Page-703 Kolla Veera Raghab 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. "

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. "

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."

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 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. "

In fact, this court dealt with the principle of double jeopardy and recorded acquittal of accused in previous trials. 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 all the nine trials in force.

(ii) 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. The settled law in this regard is to be referred to as follows:-

A- **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.](#) "

B- 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. "

C- 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 –:

"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 cumulative effect of above analysis is that prosecution has failed to prove the charges beyond reasonable doubt by clear, cogent and unimpeachable evidence.

11. 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 11th May, 2016.

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

LIST OF WITNESSES EXAMINED FOR THE PROSECUTION:

P.W.1	Khirod Kumar Sahu
P.W.2	Nabina Bala.
P.W.3	Sasimani Devi.
P.W.4	Lokanath Sahani.
P.W.5	Mahendra Nath Sahu.
P.W.6	Laxmidhar Sahu.
P.W.7	Bansidhar Sahoo.
P.W.8	Maheswar Sethi.
P.W.9	Smt. Sulochana Sahu.
P.W.10	Giris Kumar Pradhan.
P.W.11	Balakrushna Kar.

LIST OF WITNESSES EXAMINED FOR THE DEFENCE:

None.

LIST OF EXHIBITS MARKED FOR THE PROSECUTION:

Ext.1 to 6	Pass Books
Ext.7	Pass book of SB Account No.651125
Ext.8	Pass book No.651453

Ext.9	Sanction order.
Ext.9/1 to 9/9	Signature of P.W.4 on Ext.9.
Ext.10 to 17	Postal pass books.
P.W.10/1 to 17/1	Initial of accused in pass books Ext.10 to 17.
Ext.18 & 19	RD journal from 2.2.2000 to 28.12.2007.
Ext.20 to 34	Branch Office journals from 15.9.2000 to 1.2.2007.
Ext.35 to 42	Account book of Rudrapur Branch Post office.
Ext.43	Certified copy of letter dtd.24.9.2008.
Ext.44	Certified copy of seizure list dtd.23.5.2009.
Ext.45	Certified copy of Rule 31,38 & 67 of Post Office Savings Bank Manual vol.I.
Ext.46	Certified copy of seizure list dtd.21.11.2008
Ext.47	Certified copy of seizure list dtd.15.1.2009.
Ext.48	Certified copy of joining-cum-charge report dtd.26.5.81.
Ext.49	Certified copy of joining-cum-charge report dtd.1.6.2000.
Ext.50	Certified copy of charge report dtd.18.1.2000.
Ext.51	Certified copy of letter No.A-240/PF dtd.30.5.2000
Ext.52	Certified copy of service particulars dtd.27.5.1981.
Ext.53	Certified copy of Memo No.A-240/PF dtd.18.4.2000
Ext.54	Certified copy of fraud report dtd.21.5.2008
Ext.55	Certified copy of another fraud report.
Ext.56	Certified copy of fraud report dtd.28.9.2007.
Ext.57	Certified copy of fraud report dtd.14.11.2007.
Ext.58	Certified copy of fraud report dtd.26.11.2007.
Ext.59	Certified copy of fraud report dtd.26.11.2007.
Ext.60	Certified copy of fraud report dtd.14.1.2008.
Ext.61	Certified copy of application of accused dt.12.4.2008

Ext.62 Certified copy of SB pass book No.651518 of
S.Sahoo.

Ext.63 Certified copy of formal F.I.R.

LIST OF EXHIBITS MARKED FOR THE DEFENCE:

Nil.

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