

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. 60/17 OF 2012/2009.

R.C. No. 24(A) of 2009.

Date of argument : 17.3.2016.

Date of Judgment : 19.3.2016.

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, 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, 420, 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 money by cheating and
falsification of document as a branch postmaster during the
period from 23.12.2006 to 30.3.2007.

2. Prosecution case, in short. is that on 24.9.2008
Superintendent of Post office, South Division, Cuttack lodged an

information 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 R.D. Account no.2032588 in the name of Smt. Radhamani Panda for the year 2006 to 2007 to the tune of misappropriated amount of Rs.8420/-, involved in the present case.

(2-A) The Supdt. of Police, C.B.I, Bhubaneswar on 30.9.2008 registered FIR on his own report in written 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 Inspector of CBI took up investigation. He examined witnesses and seized documents. It is specifically alleged that as against entrustment of Rs.20,000/- on 23.12.2006 and Rs.500/- on 30.3.2007 to accused by account holder Radhamani Panda to make deposit in R.D. Account No.2032588,the accused had shown only Rs.8500/- in the passbook of Radhamani Panda but had taken Rs.80/- to the Govt. account by falsifying R.D journals and other records and thereby he had misappropriated Rs.20420/-. The Investigating Officer then obtained sanction order as required u/s. 19 of the P.C.Act which appears to have been given by Supdt. Of Post office Cuttack South Division for the total period from 2000 to 2007 and submitted charge sheet. It is understood that year wise split up charge sheets were filed

against this accused. The present trial is ensued out of police report u/s. 173(2) Cr.P.C covering the period from 23.12.2006 to 30.3.2007. The court took cognizance on 9.7.2009. Hence, this case.

3. The plea of defence is denial simplicitor. To substantiate, accused has asserted u/s. 313 Cr.P.C in specifics 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. Seventy documents are exhibited on behalf of the prosecution as against only one document from the side of the defence.

5. The points for determination are :

- (i) Whether accused was a public servant during the period from 23.12.2006 to 30.3.2007 in the capacity of Branch Postmaster of Rudrapur branch post office?
- (ii) Whether accused by that time and place was entrusted with Rs.20,500/- by Radhamani Panda (P.W.4) ?
- (iii) Whether accused during that period fraudulently or dishonestly induced Radhamani Panda to deliver Rs.20,500/- to him and signed & sealed the passbook Ext.11 dishonestly?
- (iv) Whether accused by that time and place in the capacity of a public servant as Branch postmaster of Rudrapur branch post office fraudulently falsified the records and ledgers of Rudrapur branch post office with intent to defraud?

- (v) Whether accused by that time and place fraudulently misappropriated Rs.20420/- entrusted to him as a public servant ?
- (vi) Whether accused during the period from 23.12.2006 to 30.3.2007 as a public servant committed misconduct by obtaining pecuniary advantage of Rs.20420/- by corrupt and illegal means?

6. From the perspective of prosecution, launched and investigated that culminated more than one trials, the nature of evidence needs to be addressed with greater circumspection. P.W.1 is the sanctioning authority through whom the copy of sanction order Ext.1 is proved. P.W.4 is the account holder while P.W.5 is the complainant Asst. Supdt. Post office, Cuttack who had first lodged complaint Ext.44 before Supdt. of Police, C.B.I.. P.W.2 was the Sub-Postmaster of Chhatia sub-post office. P.W.3 was the Asst. Supdt. Of Post, Legal in the office of Central Postmaster General, Bhubaneswar who had conducted enquiry to the allegation. P.W 6 is the Investigating officer.

7. The explicit accusation unfolds that on 23.12.2006 and 30.3.2007, the accused had received money from R.D. Account holder, P.W.4. She has testified that on the first day she handed over Rs.20,000/- to the accused to open three R.D accounts, but accused opened only one account showing initial deposit of Rs.8,000/- and subsequently she deposited money in the above account and the enquiring authority took her passbook Ext.11. In cross-examination she contradicted herself saying that at the time of opening of her account Harihar Panda was the branch postmaster and she had handed over money to him for opening the above account in her name and Patitapaban Das was the post peon. I verified Ext.11, the passbook of this witness Radhamani Panda bearing R.D. A/c No.2032588 and it reveals

that on 23.12.2006 Rs.8,000/- and on 30.3.2007 Rs.500/-, totaling Rs.8,500/- are entered in the passbook with seal and signature. Without referring to any other material, it is clear that the account holder P.W.4 has contradicted herself with regard to the factum of handing over money to accused and thereby stamped herself as wholly unreliable witness.

(7-A) The passbook Of p.w-4, Ext-11, is proved by P.W.2. He has admitted in cross-examination that accused was never working with him in any place and there was no specimen signature of accused in Chhatia Sub-post office. He further states that one Ashutosh Brahma was the postmaster and the accused was an Extra departmental postal agent. He has admitted that there was no certificate of the issuing authority in the journals, passbooks and the account books and that he had not received any complaint from any account holder against accused. On verification of Rudrapur branch post office S.B. Journal which is marked Ext.18 for the period 1.5.2005 to 28.12.2007, it is found that on 23.12.2006 as against Radhamani Panda Rs.80/- are shown to have been deposited and in the red ink the account number has been mentioned. So also some remarks in the red ink. Similarly, on 30.3.2007 Rs.3150/- is shown to have been deposited against account holder namely Priyanka. On scrutiny of branch office journal for the period from 1.9.2006 to 30.4.2007 vide Ext.33 , it is found that on 23.12.2006 some entries were made but prosecution has not specified it's relevancy with the accused. So also the entry dated 30.3.2007.

(7-B) At this juncture, the handwriting expert opinion proved may be considered. The true copy of the forwarding report by the Supdt. of post office and the report of Deputy Govt. Examiner of Questioned documents are exhibits 58, 59, 60 and 62. Two forwarding letters dated 24.12.2008 by Supdt. Of Post

office, Cuttack reveal that some withdrawal vouchers were sent with specimen signatures of Khirod Kumar Sahu. Another forwarding letter dated 7.5.2008 reveals that the specimen signatures of Ranjan Kumar Bai were sent for comparison with withdrawal slip. There is no indication of document relating to the entries or specimen concerning R.D. Account No.2032588 therein. Thus seen, no document including the specimen signature of accused or the account holder in question Radhamani Panda (P.W.4) was ever examined by any handwriting expert. Here connecting link between accused and accusation is missing.

(7-C) P.W.3 while testifying about the procedure of transaction of money deposited in branch post office vis-a-vis the duty of the branch postmaster, has stated that he had recorded the statement of account holders including the present account holder Radhamani Panda in course of inquiry, he has stated that accused has reflected the deposit of Rs.80/- only instead of Rs.8000/- and had not reflected Rs.500/- in the four documents Ext.18, Ext.33, Ext.38 and Ext.39. He has clarified that from verification of ledger and sub-post office documents, he came to conclusion that the moneys collected from account holders were not reflected by the then branch postmaster-accused and that accused had misappropriated Rs.8420/- from the account holder of Radhamani Panda and accordingly he had submitted his inquiry report. The inquiry report is not proved. In cross-examination this witness has admitted that during his inspection of Rudrapur branch post office in the year 2005 and 2006, he had not found any misappropriation and had submitted his inspection report to the Supdt. of Post office, Cuttack. He has also stated that none of the account holders made any allegation of misappropriation till the year 2006 before him. He admitted to

have put the accused in off duty on 6.11.2007 vide Ext.A when accused was serving as Gramin Dak Sevak Mail Deliveran Agent. From this witness who is none else than the Inquiring Officer, it is revealed that till 2006 in course of several inspections of Rudrapur Branch Post office, he did not receive any allegation of misappropriation and only after inquiry, he found misappropriation of Rs.8420/- which runs contrary to the complainant's evidence that she had given Rs.20,000/- to the then branch postmaster to open her account. The statement of Radhamani recorded by this witness P.W.3 is not proved. Ext.A reveals that on the date of putting accused off duty i.e. On 6.11.2007, accused was serving as G.D.S.M.D (Gramin Dak Sevak Mail Deliveran). P.W.5 the complainant through whom prosecution has proved many documents including Ext.54 has not stated that accused was continuing as branch postmaster during the period relevant for this trial. He has denied to have made any inquiry with regard to allegation involved in this case. He could not say if accused joined as Extra Department Delivery Agent. Through him the certified copy of a letter by accused dated 12.4.2008 was proved which was marked as Ext.68 with objection for want of original. The said letter was addressed to Supdt. of post office, South Division Cuttack. This document is purported to have been written by accused and addressed to Supdt. Post office. The mode of proof is not correct. There is no evidence with regard to its original. The certified copy of a private document cannot be proved by a person who has stated in cross-examination that "I have no personal knowledge about the documents which I exhibited today except Ext.44 written complaint by me". In view of above testimony of P.W.5, Ext.68 cannot be said to have been admitted into evidence properly with reference to Section 61 to Sec.67 of the Evidence Act and the objection of defence is hold

good.. Added to this, Ext.54 a memo bearing no.204 dated 18.4.2000 by Supdt. of Post office , Cuttack South Division reveals that accused was provisionally appointed as branch postmaster Rudrapur for a period from 18.1.2000 to 31.5.2000. There is no other order /document proved that accused was similarly continued or posted as branch postmaster of Rudrapur post office during the period from 23.12.2006 to 30.3.2007. 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 unmasked.

(7-D) Further, Ext.43 original ledger card of Chhatia sub-post office in respect of R.D. Account No. 2032588 reveals that Rs.80 was deposited on 23.12.2006 with an endorsement in the remarks column No.8 "ledger copy supplied to I.O Central Division, Cuttack with initial dated 7.12.". Surprisingly under column Nos. 6 and 7 ,initials have been made in the same ink as made in column no.8 which does not tally with the entries made in column no.1 to 5. It is not clarified as to why such discrepancy in the entry is found and by whom, which casts cloud over the authorship of accused for the same.

8. To sum up, for the time specific charge running from 23.12.2006 to 30.3.2007, neither any oral testimony nor document indicates that accused was serving as a branch postmaster of Rudrapur branch post office during that period. The amount of alleged misappropriation is stated to be Rs.20,420/- in the prosecution case while P.W.3, the authority, has concluded the same to Rs.8420/- and informant-account holder contended contrary proving his passbook Ext.11. Doubt was raised on her credibility when she herself contradicted the substratum of prosecution case stating that she handed over money to the branch postmaster Mr. Harihara Panda. The

handwriting expert opinion conducted by Supdt. Post office does not relate to two transactions involved in this case. The sanction order Ext.1 reveals that it was given for total period from 2002 to 2007 and the sanctioning authority P.W.1 has admitted that there was separate vigilance wing in postal department for conducting inquiry in misappropriation and fraud. The cumulative effect of above analysis points out that entrustment of Rs.20500/- by account holder Radhamani Panda to accused on 23.12.2006 and 30.3.2007 is not free from doubt. 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. What prosecution tried is to connect the accused by referring to the whole gamut of documents irrelevant to this trial, which needs the proof in exactitude. In a criminal trial proof beyond reasonable doubt means the proof of accusation in precision that is what lacking here. On anatomical survey of the oral and documentary evidence, it transpires that prosecution has failed to prove the charge by clear, cogent and unimpeachable evidence.

9. The totality of the prosecution allegation involved in the trial invites the attention of the principle of double jeopardy as well as doctrine of autrefois acquit. The investigating officer P.W.6 has admitted to have deposed in T.R.18 of 2009, T.R.20 of 2009 and T.R.22 of 2009. Learned defence counsel vehemently urged that accused should not have been tried twice u/s.300 Cr.P.C on the same facts. Per contra, Learned P.P repelled the plea of double jeopardy stating that when the offences are time specific, more than one trial is permissible on the same facts and this trial is not hit u/s.300 Cr.P.C. Learned P.P has filed photocopies of three judgments which are admitted by defence.

The perusal of those judgments reveals that 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, it was found that accused was prosecuted twice for the same offences. What is not disputed that for the prosecution of accused, one F.I.R was lodged, one sanction order was obtained, same evidence was relied upon but different charge sheets were filed. In the above noted completed three trials taken for different periods, the acquittal is in force. The offences involved in the present trial like u/s. 477-A and 420 IPC 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.

(9-A) 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. "

(9-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. "

(9-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. "

(9-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 Cri.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. "

10. On the anvil of above law and the facts analysed, I am of the considered opinion that for the offence u/s. 477-A and 420 I.P.C , this trial against accused is barred u/s. 300

Cr.P.C for the acquittal in T.R. No.18 of 2009, T.R. No.20 of 2009 and T.R. No.22 of 2009 in force.

11. Sequel to the reasoning supra, the prosecution is found to have failed to prove its case beyond reasonable doubt.

12. In the result, accused is held not guilty of the offences u/s. 409, 420, 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 19th March, 2016.

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

LIST OF WITNESSES EXAMINED FOR THE PROSECUTION.

P.W.1.	Lokanath Sahani.
P.W.2.	Mahendranath Sahu.
P.W.3.	Balakrushna Kar.
P.W.4.	Radhamani Panda.
P.W.5.	Maheswar Sethi
P.W.6	Girish Kumar Pradhan.

LIST OF WITNESSES EXAMINED FOR THE DEFENCE.

None.

LIST OF EXHIBITS MARKED FOR THE PROSECUTION.

Ext.1.	Sanction order
Ext.1/1 to 1/9	Signature of P.W.1 on Ext.1.
Ext.2 to 17	Postal passbooks.
Ext.2/1 to 17/1.	Initials of accused.
Ext.18 and 19.	R.D. journals of Rudrapur post office from 2.2.2000 to 28.12.2007
Ext.20 to 34	Branch office journals of Rudrapur from 15.9.2000 to 4.2.2007.
Ext.35 to 42	Accounts book of Rudrapur branch post office.
Ext.43	Ledger card.
Ext.44	C.C of complaint.
Ext.45	Seizure list.
Ext.46	Certified copy of seizure list dt.23.5.2009.
Ext.47.	Certified copy of Rule 31, 38 and 67 of post office saving bank manual vol.I
Ext.48	Certified copy of seizure list dt. 21.11.2008.
Ext.49.	Certified copy of joining report dt.26.5.1981
Ext.50	C.C of charge report dt.1.6.2000.
Ext.51	Another c.c. of charge report dt.18.1.2000.
Ext.52	C.C of letter dt.30.5.2000.
Ext.53	C.c of service particulars of accused
Ext.54	C.C of order dt.18.4.2000 to 31.5.2000
Ext.55	C.C of report about misappropriation of funds by

	accused.
Ext.56.	C.C of fraud report against accused.
Ext.57	Seizure list dated 15.1.2009.
Ext.58	C.C of G.E.Q.D. report.
Ext.59.	C.C of another report of GEQD dt.16.6.08.
Ext.60	C.C of forwarding letter dt.24.12.08.
Ext.61	Seizure list dt.12.9.09.
Ext.62	C.C of GEQD report dt. 7.1.2009.
Ext.63.	C.C of fraud report submitted on 28.9.07.
Ext.64	C.C of fraud report submitted on 14.11.2007.
Ext.65 and 66	C.C of fraud report submitted on 26.11.2007.
Ext.67	C.C of fraud report exhibited on 14.1.2008.
Ext.68.	C.C of letter dt. 12.4.2008 of accused.
Ext.69.	Formal FIR
Ext.69/1.	Signature of S.P. C.B.I.
Ext.70	C.C of letter No.F/3-4/07-08 dt.12.5.2009.

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.