

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.Case No. 3/6/15 of 2015/2013/2010.**  
R.C. No. 01 of 2009.

Date of argument : 03.11.2015.  
Date of Judgment : 10.11.2015.

Republic of India.

Versus.

Pramod Kumar Pradhan, aged about 62 years,  
Son of late Gopinath Pradhan, Vill.Jagannathpur,  
P.S. Dharmasala, Dist. Jajpur.  
Presently residing at Baipariguda, P.S. Baipariguda,  
Dist. Koraput.

... Accused.

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

For the Defence : Sri G.Acharya & Associates, Advocates.

Offence U/S. 409/477-A of IPC and u/s. 13(2) read with Section 13(1) (c) & 13(1)(d) of the Prevention of Corruption Act, 1988.

### **JUDGMENT**

Accused stands indicted u/s. 477-A/ 409 IPC and u/s. 13 (1) (c) & 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (to be referred hereinafter as P.C.Act) for having misappropriated a sum of Rs.2,88,542/- of postal account holders on falsification of accounts in the capacity of a public servant i.e. Sub-post master during the period from 2006 to 2008.

**2.** Accusation, in a nutshell, may be stated thus:

That accused was the Sub-Post master of D.P. Camp Post Office Sunabedha-3 during the period from 2006 to 2008 and in course of his official business he received the deposits from 93 savings bank account holders, 36 recurring depositors and six monthly income scheme account holders. He made necessary entries in their pass books with seal and returned them in proof of deposit, but misappropriated such amount to his own use. He did not adhere to the procedure to get the same entered in the necessary registers and ledgers in the Head post office. On getting reliable information the F.I.R alleging misappropriation of Rs.8.13.178/- was registered by Superintendent of Police, CBI Bhubaneswar on 24.2.2009 vide RC No.01 of 2009 and investigation was set into motion. Sri B.Samal, Inspector of Police, C.B.I. took up investigation in course of which he examined the account holders, seized the passbooks, ledger copies and other relevant documents. Concluding the misappropriated amount to the tune of Rs.2,88,542/- from 21 S.B. Accounts, one T.D. Account and two MIS accounts, he obtained sanction order from the Superintendent of Post Office, Koraput Division, Jeypore on 9.12.2009 and filed charge sheet on 22.12.2009. On 30.1.2010 court took cognizance. Hence, this trial.

**3.** The plea of accused is denial simplicitor. In course of answering 49 questions u/s. 313 Cr.P.C, the accused advanced a plea that he has made all the entries in respect of amount received and has informed to the Head office, but Ram Das Soren (P.W.29) being custodian of all papers might have fabricated the same.

**4.** Prosecution examined 30 witnesses in all. Out of which P.W.1 to P.W.14 and P.W.19 to P.W.27 are account holders. P.W.2 and P.W.7 are depositors of Monthly Income Scheme. P.W.28 is the sanctioning authority in respect of sanction order Ext.141. P.W.30 is the Investigating Officer. P.W.15, P.W.16, P.W.17, P.W.18 and P.W.29 are Postal Officials who are pressed into service to prove seizure, postal documents including passbooks and handwriting of accused as well as ledger in the head office. One hundred forty five documents are exhibited including FIR and Sanction order. Defence adduced neither oral nor documentary evidence.

**5.** The points for determination are :

- (i) Whether accused was a public servant during the period from 2006 to 2008?
- (ii) Whether accused being entrusted with money Rs.2,88,542/- from 24 account holders of D.P.Camp Post Office, Sunabedha in his capacity as Sub-Post Master commits breach of trust?
- (iii) Whether accused by that time and place being a public servant willfully and with intent to defraud falsified the account- books belonging to account holders?
- (iv) Whether accused committed misconduct by dishonestly and fraudulently misappropriating money Rs.2,88,542/- entrusted to him?
- (v) Whether accused by that time and place by corrupt and illegal means and by abusing his position, obtained pecuniary advantage?
- (vi) Whether the prosecution is validly launched?

**6. ANSWER TO POINT NO.I.**

Factum of status of accused as Sub-Post Master of D.P. Camp post office, Sunabedha, Koraput is proved by the oral evidence of P.W.15, P.W.16, P.W.17, P.W.28 and P.W.29. The transfer and posting order of the accused is proved by Ext.32 which is the posting order of the accused dated 5.5.2004. P.W.16 states that he was working in that post office under accused as a runner and accused was the Sub-Post Master. Fact not disputed obviates debate, prosecution is found to have proved that as per Section 2 (c) of the P.C.Act,1988, accused was a public servant during the relevant period from 2006 to 2008 for being posted as Sub-Post Master, D.P.Camp Post Office, Sunabedha in the district of Koraput.

**7. ANSWER TO POINT NO.II.**

Accused was working as Sub-Post Master D.P. Camp sub-Post office, Sunabedha and his duty is narrated by P.W.17 who was the sub-post master of that post office from 2008 to June, 2010. According to him, the Sub-post master was the sole authority in respect of the entire transaction and at the time of deposit of money, the accounts holders used to fill up the deposit slips and submit the passbooks alongwith cash, the sub-post master after receipt of the money used to verify the account number and ledger relating to the account and used to make entries in the ledger and passbooks. Thereafter, sub-post master putting his signature and affixing the postal seal, handed over the passbooks to the concerned depositor. The sub-post master is also required to return the counterfoil of deposit slips and at the end of the day when the transaction is closed, the sub-post master is required to prepare the sub-office daily

account statement and submit it to head office. Term deposit log book and Monthly Income Scheme log books are also maintained making entries. This procedure of sub-post office where accused was working is not questioned in any manner in the cross-examination. So procedurally and structurally, in the D.P. Camp post office Sunabedha, the accused was the sole authority to receive the deposits from the account holders.

With regard to entrustment, the evidence of accounts holders is direct. P.W.1 proving his savings bank account Ext.1 stated that he tendered the money to the Sub-Post Master on 26.11.2007 and on 31.12.2007. In cross-examination he has admitted that accused had filled up the forms in the above dates. P.W.2 had paid Rs.50,000/- to the accused for opening of his monthly income scheme account Ext.2 and accused after making entry had handed over the passbook. In cross-examination he has stated that he had not received any interest on the above amount. P.W.3, a savings bank account holder, vide Ext.3 passbook, has categorically stated that he personally handed over cash of Rs.10,000/- and pass book to the accused-postmaster who after making entry and initial had returned. In cross-examination he could not say the full name of accused, but pointed out that there was no other postal employee in the name of Pradhan in that branch. P.W.4 proving his savings bank passbook Ext.4 stated that he handed over the pass book, cash and deposit slip to the accused and on 12.10.2006 and 11.1.2007 had deposited Rs.5,000/- and Rs.1600/- respectively. He has admitted in cross-examination that his pass book was taken away by the Post Peon Tapan P.W.16 and new passbook was given to him as that was required by the Postal authorities. P.W.5, who had opened one passbook Ext.5 in the name of his

daughter Swapna, has stated that he handed over cash, passbook and deposit slip to the accused who after making entry returned the passbook and on 26.10.2006 he had deposited Rs.2700/-.

P.W.6 has stated that in respect of his savings bank account Ext.6, he used to handover the passbook and cash along with form to accused who after making necessary entry was returning the passbook. Thereafter, he used to verify the entry and on 10.3.2006 and 21.10.2006 he had deposited Rs.2000/- and Rs.4360/- respectively. In cross-examination he has admitted that he had received back the money which he had deposited.

P.W.7 has stated that she had deposited a sum of Rs.50,000/- on 1.12.2006 in monthly income scheme passbook Ext.7 by depositing money before accused post -master Mr. Pradhan and had received Rs.333/- per month towards the deposit scheme and she had received Rs.50,000/-. P.W.8 proving his savings bank account Ext.8 has stated that she and her daughter used to handover the passbook and money and post master after making entry used to return the passbook and they had received the money which was lying in the passbook. Under this category that deposited money was received back correctly, the evidence of P.W.6, P.W.7 and P.W.8 do not nullify that accused was receiving the deposited amount. Rather it corroborates the evidence of other account holders that accused was receiving money in course of his official transaction from the account holders and after making entries in the passbook was returning the same.

P.W. 9, P.W.10, P.W.11, P.W.12, P.W.13, P.W.14 and P.W.15 have proved their passbooks Ext.9 to Ext.14

respectively. P.W.14 has stated that on 8.5.2007, 19.5.2007 and 15.6.2007 he had personally handed over the cash to the accused and had received the counter foils of the deposit slips. P.W.19 to P.W.27 are all savings bank account holders who have proved their respective passbooks Ext.19, Ext.21, Ext.16, Ext.25, Ext.23, Ext.24, Ext.18, Ext.17 and Ext.20 respectively.

P.W.25 Sabita Sarkar has proved his savings bank account Ext.18 stating that on 16.1.2008 he deposited Rs.1000/- which was entered in the passbook by the accused. P.W. 29 in his evidence para-22 has stated that on 16.1.2008 this witness P.W.25 had deposited Rs.8000/-. On scrutiny of passbook Ext.18 I found that vide Ext.18/1 on 16.1.2008 Rs.1000/- was deposited making balance Rs.1700.85 paise. The same is not reflected in the Head Post Office ledger Ext.139. So in computing the defalcated amount in respect of this account of P.W.25, Rs.1000/-will be counted.

P.W.19 has stated that postal authorities had collected his passbook. P.W.27 has stated that he had opened the accounts Ext.20 but as his father was making transaction, he could not say about the correctness of the entries. From the evidence of above account holders which is not shattered in the cross-examination including those have received back their deposited amount, it is clearly established that accused was the sole repository of confidence of depositors and had received cash by hand from the account holders and had made entries in their presence in the respective passbooks. So, the amount stated by P.W.6 , P.W.7, P.W.8 that they have received back and in respect of P.W.27 who could not say about his transaction, cannot be said to have been entrusted to the accused.

Consequently, facts remain proved beyond doubt that P.W.1 , P.W.2, P.W.3, P.W.4, P.W.5, P.W.9, P.W.10, P.W.11,P.W.12, P.W.13, P.W.14,P.W.19 to P.W.26 have handed over cash to accused for deposit in their passbooks. If accused had received the money in course of his official transaction and nothing is explored in cross-examination either to discredit or to account for the same, it can be said that the same amounts to misappropriation having dishonest or fraudulent intention.

When prosecution has proved entrustment of which detail I would table little later, the plea of defence that all the entries were made correctly in the registers and were communicated to the Head Post Office, needs to be examined at this juncture. P.W.18 was the Post Master of the Head Post Office Koraput during the relevant period. He has stated that all sub-post offices including the one of the accused, were required to submit daily accounts sheet, list of transaction, withdrawal and deposit vouchers to the head post office and after receipt of such information those would be reflected in the appropriate registers. He proved Ext.99 to Ext.118 in respect of different accounts of D.P. Camp sub-post office. Those computer generated documents are stated to have been certified by Bijaya Laxmi Panigrahi, Deputy Post Master of Koraput Head Post office. He on verification of the daily account sheets of D.P. Camp Sub-post office proved by P.W.15, has stated that the amount tendered by P.W.1 to P.W.14 and P.W.19 to P.W.27, which were entered in their respective passbooks were not intimated to the Head Post Office relating to alleged dates. In cross-examination he has admitted that those daily account sheet of sub-post office were put up before the Head Post master and the Deputy post master after verifying the entries had to make 'O.K' in the

computer with password. Nothing material has been elicited in the cross-examination to discredit the evidence of P.W.18. His evidence gets corroboration from P.W.29, Ramdas Soren, against whom defence has made allegation of fabrication during custody of documents. In order to know as to whether the amount entered in the passbooks as stated by examined account holders are informed to the head post office, scanning is done to the evidence of Ramdas Soren P.W.29. He has given a comparative statement in respect of each transaction on the basis of passbooks, ledger card as well as log book maintained in the D.P. Camp post office and daily account. In cross-examination he has admitted that in 2007 he inspected the DP Camp sub-post office ( of accused) and gave his report and had not detected any fraud of accused as he had not inspected those passbooks. He could not say if any, fraud report was made in the inspection report of the year 2004, 2005 and 2006. He has stated that on 26.7.2008 he lodged an FIR at Sunabedha Police station and accused was suspended prior to that. He has also stated that till lodging of F.I.R the detail misappropriation by accused was not revealed as it was under inquiry. He has further stated that in 2008 he made annual inspection of that post office and depositors were intimated through post peon to get their accounts verified and passbooks were collected from the depositors by post master. It is his evidence that during inquiry he verified the passbooks kept with the sub-post master Nabin Kumar Panda.

Basing upon this evidence learned defence counsel vehemently urged that as he (P.W.29) was in custody of all passbooks, he might have manipulated the entries and in absence of any expert evidence it cannot be said that accused

was the author of entries in the passbooks. The said Nabin Ch.Panda is examined as P.W.17. He has stated that the M.I.S. Ledger in respect of Basant Kishore Sahoo and Snehalata Sahoo were not available of which information was given to I.O vide Ext.140. Nothing material is elicited in the cross-examination of these two witnesses to show that they acted with malice against accused. Rather it is proved that when the allegation of fraud was detected the accused was put under suspension and P.W.18 lodged an F.I.R at Sunabedha P.S on 26.7.2008. Performance of duty with due regard to official command does not amount hostility if it breeds unwelcome action against somebody. This is what flows from the evidence of P.W.15 and P.W.18. Their credibility was questioned but not discredited.

Resultantly facts remain proved that the alleged amount received by accused and entered in the passbook are kept hidden from the eyes of the head office and for that it is not reflected in the head post office ledger. The amount so found which is nothing but misappropriation after entrustment are tabulated in the following manner.

Sl. No.	Witness and Ext. of passbook.	Amount with date		Head Post Office ledger card where the amount is not reflected
1	P.W.1 , Ext.1	1000	26.11.2007	Ext.111.
		200	31.12.2007	
2	P.W.2, Ext.2	50000	28.2.2007	Log book Ext.26
3	P.W.3, Ext.3	10000	22.5.2007	Ext.100.
4	P.W.4, Ext.4	5000	12.10.2006	Ext.99
		16000	11.1.2007	
5	P.W.5, Ext.5	2700	26.10.2006	Ext.105.
6	P.W.9, Ext.9	300	30.10.2006	Ext.116
		300	27.11.2006	
		300	26.3.2007	
		300	16.4.2007	
		300	6.6.2007	

		300	2.7.2007	
		300	25.8.2007	
		300	15.9.2007	
		300	5.10.2007	
		500	14.11.2007	
		1500	14.1.2008	
7	P.W.10, Ext.10	2600	17.7.2006	Ext.102
		3000	13.11.2007	
		3000	17.11.2007	
8	P.W.11, Ext.11	3700	10.11.2007	Ext.117
		1500	26.11.2007	
		3500	2.1.2008	
9	P.W.12, Ext.12	5000	13.6.2007	Ext.107
10	P.W.13, Ext.13	9500	16.2.2006	Ext.113.
11	P.W.14, Ext.14	4000	8.5.2007	Ext.110
		9000	19.5.2007	
		6500	15.6.2007	
12	P.W.19, Ext.19	500	4.1.2006	Ext.114.
		600	31.1.2006	
		1400	10.4.2006	
		2100	12.4.2006	
		1500	28.4.2006	
		4000	4.7.2006	
		1500	11.8.2006	
		23000	26.4.2007	
		10000	23.7.2007	
13.	P.W.20,Ext.20.	10000	26.6.2006	Ext.108.
		500	28.9.2006	
		150	27.2.2007	
		100	29.3.2007	
14	P.W.21, Ext.16	1000	1.5.2007	Ext.112.
		2000	1.6.2007	
15	P.W.22, Ext.25.	1132	18.3.2006	Ext.103
16	P.W.23, Ext.23	1500	1.11.2006	Ext.101.
		500	4.11.2006	
		600	26.12.2005	
17.	P.W.24, Ext.24	600	16.11.2006	Ext.118
		1500	18.12.006	
		1000	5.2.2007	
		2500	5.3.2007	
		1000	30.3.2007	
18	P.W.25, Ext.18.	1000	16.1.2008	Ext.139
19.	P.W.26, Ext.17	1900	31.12.2007	Ext.104
	Total	213482		

So far as the offence under Section 409 IPC is concerned it must be proved that a person entrusted with property or with

any dominion over property, in his capacity as public servant commits criminal breach of trust in respect of such property, as defined in Section 405 IPC, meaning thereby that he dishonestly misappropriates or converts to his own use that property.

In this connection reliance can be placed on a decision reported in **AIR 2006 SC 2211 ,State Of Himachal Pradesh vs Karanvir (dated 12 May, 2006)**, wherein it was found that

"The respondent was a Post Master. He was holding an office of public trust. The complainant who was a teacher entrusted the amount to the respondent for the purpose of purchasing National Savings Certificates. As soon as the amount was received by the respondent on behalf of the postal authorities, it became public money. It was required to be utilised for the purpose for which the same was handed over to the respondent."

And it is held:-

" The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 of the IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor. "

Evidence adduced proves in absence of any explanation that accused has misappropriated an amount of Rs.213482/- and offence u/s. 409 IPC is proved beyond reasonable doubt.

#### **8. ANSWER TO POINT NO.III.**

Accusation of falsification of accounts is sought to be repelled advancing the plea that the endorsements made in the passbooks exhibited do not belong to accused and the same is not proved by any handwriting expert. Learned P.P submitted that expert opinion is not a must to prove hand-writing. According to him, when the account holder- witnesses have

stated to have seen the entry by accused in their passbooks, there is no need to seek hand-writing expert opinion.

Already it is established that accused as a Sub-post master was the sole authority to make transaction with account holders. In that capacity he received money from the account holders P.W.1 to P.W.14 and P.W.19 to P.W.27. All the above witnesses except P.W.27 have categorically stated that accused while receiving the money was making entry correctly in their respective passbooks which are proved Ext.1 to Ext.14, Ext.16 to Ext.21 and Ext.23 to Ext.25. P.W.16 has stated categorically that he had acquaintancy with the hand-writing of the accused for having worked as a Gramin Daka Sevak in the said post office and he proved entries made in the above passbooks by accused. He has also proved the entries in the log books Ext.28 and daily account books Ext.29, Ext.30, Ext.35, Ext.36, Ext.37 and Ext.38 to Ext.98 and 21 ledger books vide Ext.119 to Ext.139. In cross-examination he has categorically stated that he had seen the passbooks and other documents in the post office when depositors came for deposit. He was contradicted with minor discrepancies with his statement u/s. 161 Cr.P.C, but the same is not proved as per law through I.O. P.W.30. P.W.29 who was Asst. Superintendent of Post office, Koraput has categorically stated that he had acquaintancy with the signature and hand writing of the accused and he proved all the passbooks and other connected documents.

These positive and direct evidence of account holders that accused had made entry and signature in their respective passbooks are admissible u/s.47 of the Evidence Act. The rule **Ex-Visu Scriptionis** that a person who has ever seen the supposed writer of a document write, so as to have thereby

acquired a standard in his own mind of the generated character for the hand-writing of that party is a competent witness. The evidence of P.W. 16 and P.W.29 who have acquaintancy with the hand-writing of the accused is also admissible under said section because they were familiar with the hand-writing, signature and endorsement of accused in course of their official transaction. In ordinary course of business habitual submission of documents purporting to be written by the accused as the sole authority of sub-post office has occasioned to develop familiarity and that satisfies the explanation given u/s. 47 of the Evidence Act. Nothing material is elicited in cross-examination to discredit the testimony of these witnesses as far as their familiarity with the writing of the accused is concerned. Their official status makes them competent and confirms their credibility. The faith account holders had reposed was not fake.

Support of law on this point, can be derived from the following decisions.

In *Murari Lal -v- State of Madhya Pradesh*, (1980) 1 SCC 704 it is held that

“12....There may be cases where both sides call experts and two voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the court. Where there is none, the court will have to seek guidance from some authoritative textbook and the court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that Shashi Kumar v. Subodh Kumar and Fakhruddin v. State of M.P. were cases where the Court itself compared the writings.”

In *Fakhruddin v. State of M.P.*, AIR 1967 SC 1326 it is held that

"11. Both under s.45 and s.47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premise of the expert in the one case and to appraise the value of opinion in the other case."

In *Mobarik Ali Ahmed v. State of Bombay.*, (1958) SCR 328 at page 342 Hon'ble Apex Court held as follows:

"...It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in ss.45 and 47 of the Indian Evidence Act. It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the Court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender, limited though it may be, as also his knowledge of the subject, matter of the chain of correspondence, to speak to its authorship. In an appropriate case the court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship."

Hon'ble Apex Court has reiterated the law on the mode of proving handwriting in the case of *Gulzar Atishri Raj Mohammad And ... -vs- State Of Himachal Pradesh* decided on 21 October, 1997 in the following words:-

"It must be remembered that expert evidence regarding hand-writing is not the only mode by which genuineness of a document can be established. The requirement in Section 67 of the Evidence Act is only that the handwriting must be proved to be that of the person concerned. In order to prove the identity of the hand-writing any mode not forbidden by law can be resorted to. Of course, two modes are indicated by law in Sections 45 and

47 of the Evidence Act. The former permits expert opinion to be regarded as relevant evidence and the latter permits opinion to be regarded as relevant evidence and the latter permits opinion to be regarded as relevant evidence”.

The above decision Gulzar Aatishri case is followed by Hon'ble Apex court in the case of State Through Inspector of ... -vs- K. Narasimhachary on 7 October, 2005 reported in 2006 Cr.L.J 518 SC.

**9.** In the case at hand, the handwriting of the accused in the capacity of a public servant in the passbooks of account holders is proved beyond reasonable doubt. He had received the money and to create an impression that it was taken into postal account had made entry in the passbook but failed to follow up the procedure to communicate the same to the head post office by list of transaction (LOT). He did not make entry in the connected registers. No explanation comes forward as to why such entry in the registers was not made. Giving a false account as made in the statement u/s. 313 Cr.P.C strengthens the prosecution case and the intention that account holders were to be defrauded can be inferred. The fact that P.W.7 the account holder of M.I.S and P.W.6 and P.W.8 had received their amount subsequently is not a matter to be considered once offence u/s. 477-A is found proved by falsification of passbooks with intent to defraud. Falsification of document does not require any deprivation of property. Fraud means making a person believe what is not true with intent to cause some injury of some kind in property. Absence of expert evidence does not mar the falsification of passbooks of account holders to misappropriate the tendered amount. The offence u/s. 477(A) of IPC is proved to the hilt against the accused.

**10. ANSWER TO POINT NO.IV AND V.**

Accused is found to have misappropriated a sum of Rs. 213482/- as a public servant in the capacity of sub-post master of D.P.Camp Post Office, Sunabedha. It was an act of fraud to deceive the account holders. The means was not in accordance with the rule prescribed and practiced in the post office. The misappropriated amount was a pecuniary advantage, the accused had obtained. The offence of criminal misconduct u/s. 13(1) (c) and 13(1)(d) are proved which is punishable u/s. 13(2) of the Prevention of Corruption Act, 1988.

**11. ANSWER TO POINT NO.VI.**

Learned defence counsel keeps a caveat for validity of prosecution on the ground of double jeopardy and invalid sanction.

(a) Sanction is proved by P.W.28 who was a Senior Superintendent of Post office, Koraput at Jeypore. As Head of Postal division, he had authority to remove the accused from service. He has proved sanction order Ext.141. Cashing on his cross-examination that the file was moved by the concerned dealing assistant and assistant superintendent of post office had placed before him for sanction, it is argued that P.W.28 has not applied his mind before lending signature. But in the said cross-examination P.W.29 has categorically admitted that as per his direction the sanction order was prepared. In this regard law requiring previous sanction u/s. 19 of the P.C.Act is well enumerated in the decision reported **2014 Cri.L.J 930 (S.C.) C.B.I. - vrs- Ashok Kumar Agarwala**. In that decision Their Lordships have summarized the legal position in the following words:

- “8. In view of the above, the legal propositions can be summarised as under:
- (a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document. If any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.
  - (b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.
  - (c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.
  - (d) The order of sanction should make it evident that the authority had been aware of all relevant facts/ materials and had applied its mind to all the relevant material.
  - (e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law”.

In the above decision Their Lordships have also reiterated that Court must examine the issue regarding failure of justice in the true sense or a camouflage argument relating to sanction.

Tested in the touchstone of above law, the sanction order Ext.141 is found valid and defence contention is not acceptable.

- (b) With regard to second contention on “double jeopardy”, learned defence counsel has banked upon the P.W.29 who has admitted in cross-examination that on 26.7.2008 he lodged an F.I.R at Sunabedha Police Station and till lodging of F.I.R the detail misappropriation was not revealed as it was under enquiry. It is urged that once an FIR was lodged at Sunabedha Police station alleging misappropriation and fraud, the second FIR to commence investigation and trial in this court is barred.

No paper is proved to show commencement of trial in this regard in any other court. The law of double jeopardy is not attracted when a competent court has not completed trial recording acquittal or conviction.

In the decision reported in **(2012)7 SCC 621 (Sangeetaben Mahendrabhai Patel –vs- State Of Gujarat & Anr) on 23 April** it has been held that

“The rule against double jeopardy provides foundation for the pleas of autrefois acquit and autrefois convict. The manifestation of this rule is to be found contained in Section 300 Cr.P.C; Section 26 of the General Clauses Act; and Section 71 I.P.C.

The Constitution Bench of this Court in [S.A.Venkataraman v. Union of India & Anr.](#), AIR 1954 SC 375, explained the scope of doctrine of double jeopardy, observing that in order to attract the provisions of [Article 20 \(2\)](#) of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words ‘prosecuted’ and ‘punished’ are to be taken not distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attractive.

8. [In Om Prakash Gupta v. State of U.P.](#), AIR 1957 SC 458; and [State of Madhya Pradesh v. Veereshwar Rao Agnihotri](#), AIR 1957 SC 592, this Court has held that prosecution and conviction or acquittal under [Section 409](#) IPC do not debar trial of the accused on a charge under [Section 5\(2\)](#) of the Prevention of Corruption Act, 1947 because the two offences are not identical in sense, import and content”.

For the law enumerated above, the plea of double jeopardy fails. The prosecution is found validly launched and suffers from no infirmity to vitiate trial.

**12.** Encompassing an adduction of facts gathered from above scrutiny, the probability of the defence plea is found to have not surfaced. Prosecution has successfully proved that accused has dishonestly misappropriated a sum of Rs.213482/-by falsifying the accounts and as a public servant committed misconduct. The proof is established beyond reasonable doubt.

**13.** In the result, accused is held guilty u/s.409, 477(A) of IPC and u/s. 13(2) read with Section 13(1)(c) and u/s. 13(1) (d) of the P.C.Act, 1988 and is convicted thereunder.

The privilege of Probation of Offenders Act is not extendable u/s.18 of the Prevention of Offenders Act, 1958. Having regards to the uncanny means by which the trust of depositors is demolished and nature of punishment, the benefit of Probation of Offenders Act is denied to the accused.

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 10<sup>th</sup> November, 2015.

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

**HEARING ON POINT OF SENTENCE.**

Heard the convict and the learned counsels for both parties. Leniency is prayed. Having regards to the misappropriation of amount and nature of criminal misconduct established, the doctrine of proportionality in awarding sentence would be adhered to. The minimum sentence would serve the ends of justice. The convict is sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.50,000/- in default to undergo rigorous imprisonment for six months for the offence u/s. 409 IPC, sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.10,000/- in default to undergo rigorous imprisonment for two months for the offence u/s. 477(A) IPC and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 10,000/- in default to undergo rigorous imprisonment for two months for the offence under Section 13(1) (c) punishable u/s. 13(2) of the Prevention of Corruption Act, 1988. No separate sentence is awarded for offence u/s. 13(1)(d) P.C.Act in view of sentence to other offences. The substantive sentences awarded are to run concurrently.

The period undergone as UTP be set off u/s. 428 Cr.P.C.

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.

Dictated and corrected by me. Sentence is pronounced in the open court today this the 10<sup>th</sup> November, 2015.

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

**LIST OF WITNESSES EXAMINED FOR THE PROSECUTION.**

P.W.1	Hiralal Mohanta
P.W.2	Basanta Kishore Sahu.
P.W.3.	Smt. Sanjukta Nayak.
P.W.4.	Jayanta Das.
P.W.5.	Mangala Nayak.
P.W.6.	Saraswati Sahu.
P.W.7	Snehalata Sahu
P.W.8	Hemalata Swain
P.W.9	Susama Das.
P.W.10	Smt. Basanti Swain
P.W.11	Sanjaya Kumar Aikat
P.W.12	Pramod Ranjan Sahu
P.W.13	Ganesh Kumar Das
P.W.14	Chandramani Sethy
P.W.15	Radhakanta Pradhan
P.W.16	Tapan Kumar Ray
P.W.17	Nabin Chandra Panda
P.W.18	Hadibandhu Hindwar
P.W.19	Smt. Arnapura Kumari
P.W.20	Smt. Janaki Choudhury
P.W.21	Sri Subala Saha
P.W.22	Sadhana rani Debi
P.W.23	Surendra Panigrahi
P.W.24	Bipun Mandal
P.W.25	Sabitarani Sarkar
P.W.26	Minatirani Singh
P.W.27	Debashish Mohapatra.
P.W.28	M.Kotesch Chandra Patra.
P.W.29	Ramdas Soren
P.W.30	Baidanath Samal.

**LIST OF WITNESSES EXAMINED FOR THE DEFENCE**

NONE.

**LIST OF DOCUMENTS MARKED FOR THE PROSECUTION.**

Ext.1 to Ext.14	Passbooks.
Ext.1/1 and 1/2	Entries in the passbook.
Ext.15	Seizure list.
Ext.15/1	Signature of P.W.15
Ext.16 to 25	Passbooks.
Ext.26	Monthly Income Scheme logbook.

Ext.27	Time deposit log book.
Ext.28	S.B. log book
Ext.29	Sub office daily account dated 28.12.07
Ext.30	Attested photocopy of page no.625 , 116, 121, of post office S.B. Manual Vol.II.
Ext.31	Attested Photo copy of page No.351 , 3562 of post office small saving scheme part-II
Ext.32	Transfer and posting order of accused.
Ext.33	Sub office daily account dated 16.1.2008
Ext.34	Copy of the ledgter
Ext.35 to 98	Sub office daily account.
Ext.99 to 118	Copy of H.O. ledger.
Ext.119 to 139	Ledger books.
Ext.140	Intimation
Ext.140/1	Signature of P.W.17
Ext.141	Sanction order
Ext.141/1	Signature of p.W.28
Ext.4/1	Entries made by accused in Ext.4.
Ext.3/1	Entries made by accused in Ext.3.
Ext.23/1	Entries made by accused in Ext.23.
Ext.10/1 & 10/2	Entries made by accused in Ext.10
Ext.25/1	Entries made by accused in Ext.25
Ext.17/1.	Entries made by accused in Ext.17.
Ext.5/1	Entries made by accused in Ext.5.
Ext.21/1	Entries made by accused in Ext.25.
Ext.12/1.	Entries made by accused in Ext.12
Ext.20/1	Entries made by accused in Ext.20.
Ext.6/1.	Entries made by accused in Ext.6.
Ext.142	Ledger card by D.P.Camp Post office.
Ext.14/1	Entries made by accused in Ext.14.
Ext.16/1 & 13/1	Entries made by accused in Ext.16 and Ext.13.
Ext.143	Ledger card maintained in D.P.Camp post office.
Ext.19/1.	Entries made by accused in Ext.19
Ext.24/1 & 24/2	Entries made by accused in Ext.24.
Ext.11/1	Entries made by accused in Ext.11
Ext.8/1.	Entries made by accused in Ext.8
Ext.9/1 to 9/5.	Entries made by accused in Ext.9.
Ext.18/1.	Entries made by accused I n Ext.18.
Ext.22/1.	Entries made by accused in Ext.22.
Ext.7/1.	Entries made by accused in Ext.7.
Ext.2/1.	Entries made by accused in Ext.2.
Ext.144	Seizure list.
Ext.144/1.	Signature of P.W.29 in Ext.144.

Ext.145	FIR
Ext.145/1.	Signature of P.W.30 in Ext.145
Ext.144/2	Signature of P.W.30 in Ext.144.
Ext.15/2.	Signature of p.W.30 in Ext.15.

**LIST OF THE DOCUMENTS MARKED FOR THE DEFENCE**

NIL.

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