

IN THE COURT OF THE SPECIAL.C.J.M-VIGILANCE, B H U B A N E S WAR.

Present:
Sri P.L.Satpathy,LL.B.,
Spl.C.J.M-Vigilance,Bhubaneswar.

V.G.RCASE NO.65/2000

STATE Prosecution.
.....Versus.....

Ajit Ku. Mohanty, aged about 56 years,
S/o-Muralidhar Mohanty
At: Gajapati Nagar, Jatni Town, PS:Jatni, Dist: Khurda
At/p: QR.No.108/2, Unit-6, BBSR, Capital PS.

..... Accused person.

OFFENCE U/S.409 I.P.C

Counsel for the prosecution : Sri K.L.Kar, Spl.P.P, Vigilance,BBSR

Counsel for the defence : Sri B.N.Hota, Advs, BBSR.

Date of argument: 24.12.2013

Date of judgment: 28.12.2013

J U D G M E N T

1. In this case the above named accused stands charged for dishonest misappropriation of Govt. money of Rs.78,674.45p/- entrusted upon him, for his personal gain, in the capacity of public servant by violating the direction of law prescribing the mode in which such entrusted public money is to be discharged punishable U/s.409 IPC.

2. The prosecution case, in short, is that:

During the month from March 2000 to July 2000 a project was introduced by the Government for "Decentralization Public Nursery" in Begunna block under Khurda Social Forestry Range. By then the present accused was functioning as ranger in Khorda Forest Range and as per the aforesaid project he was designated as Social forestry Supervisor in Khorda Social Forestry Range. Begunna area was within the jurisdiction of Social Forestry Range, Khorda. The duty of the accused as social forestry supervisor was to raise plants, and seedlings of different nursery bed as well as earmarked plots and to make distribution of the same to the beneficiaries on

free of cost, to receive Govt. money in advance either from the D.F.O or the Deputy Director, Social Forestry Project and give the said cash to the Village Forest Workers to make field payment to the labourers/ growers engaged in raising plant and seedlings, and persons who transport the plants and seedlings from nursery bed to different area in Begunna block or sometimes he himself also makes direct payment to the labourers/Growers or transporters connected with the project work.

It is the further case of the prosecution that the accused in his official capacity as a public servant has made requisitions for finance in advance to meet the expenditure of decentralization of public nursery project during the month of June and July on 27.6.2000 for Rs.50,000/-(Ext.5), for Rs.20,000/- on 6.7.2000 vide Ext.6 and for Rs.20,000/- on 24.7.2000/- vide Ext.7. Accordingly the Deputy Director Social Forestry Project, Puri Division, BBSR (PW.12) had given public money of Rs.79,000/- in shape of three cheques to the accused (Rs.50,000/- vide cheque no.571144 dtd.27.6.2000, F.A Voucher no.8 of 6/2000(Ext.8 + Rs.20,000/- vide cheque no.571150 dtd.6.7.2000 + FA Voucher No.4 of 7/2000 vide Ext.10 + Rs.9000/- vide cheque no.573286 dtd.24.7.2000 vide FA Voucher no.17 of 7/2000(ext.9) to meet the expenses towards decentralized public nursery in Begunna Block for the month of June and July 2000. The accused had en-cashed the aforesaid cheque amounts, in all, Rs.79,000/- (Cheque amount of Rs.50,000/- en-cashed on 1.7.2000 + Cheque amount of Rs.20,000 on 6.7.2000 + cheque amount of Rs.9,000 on 26.7.2000 as evident from Ext.13) from Andhra Bank, Baramunda Branch, BBSR. The accused had reflected the aforesaid public money received by him in cash book (Ext.3) Prior to receive the aforesaid amount a public money of Rs.78.25 p was in hand of the accused. In this way all total public money of Rs.79,078.25 P was with the accused.

It is the further case of the prosecution that Sri Himansu Ranjan Mohanty, VFW-cum Secretary, Odisha Non-Gazetted Forest Service Range, Khorda Zone (PW.9) gave a written complain (Ext.11) on 5.12.2000 before the SP, Vigilance, BBSR Division alleging there in that the accused being the social forestry Supervisor, Khorda Range has misappropriated Govt. cash of Rs.79,000/- for July 2000. Due to misappropriation of said government cash the nursery growers of different nursery sites, SF Range, Khorda have not received money due for towards their labour works. Apart to that the accused having not given any money in advance to the

VFWs for making field payment is forcing the VFWs of Begunna block to submit vouchers. In this regard the association of Khurda range although had made representation before Deputy Director, SFP, Puri Division, BBSR but no action has taken till 5.12.2000.

On the above written allegation, Vigilance PR No.275 of the year 2000 was registered. The SP, Vigilance, BBSR Division, for ascertaining the truthfulness of allegation, vide letter no.2598/VSS, BBSR dtd. 21.12.2000 directed Sri Somnath Dhikit, Inspector of Vigilance, BBSR (PW.14) to make preliminary inquiry and report. The SP, vigilance, BBSR vide his office letter no.2663/VSS dtd. 29.12.2000 had requested the Civil Supply Officer, Khorda for deputation of two staff of his office(one class I to another class 3 employee) whose service had required to assist the vigilance staff in their secret assignment fixed to be taken by the vigilance division and directed those two deputed staffs to report their presence at Bhubaneswar Vigilance Division, Surya Nagar on 29.12.2000 by 2 PM.

In response to the aforesaid letter of the SP, Vigilance, BBSR Division the CSO Khorda vide his office letter no.3063 dtd.29.12.2000 intimated to the SP, Vigilance, BBSR Division that the office deputed Sri Pramod Ku. Pattnaik, Sr.Clerk (PW.3) and Sudarsan Mishra, Jr.Clerk (PW.5) for utilizing their service for the secret assignment scheduled to be held on 29.12.2000.

As per the order no.2622/VSS dtd.27.12.2000 of the SP , Vigilance, BBSR Division, BBSR communicated vide memo no.2623 dtd.27.12.13, Sri Somnath Dhikit , Inspector of Vigilance, BBSR(PW.14) made preliminary inquiry on the written allegation (Ext.11) submitted by PW.9 with the assistance of Sri B.B.Mallick, Inspector of Vigilance (PW.4) on 29.12.2000 from 2 pm to 5.30 pm in the O/O Social Forestry Supervisor, Khorda Range after observing all prescribed legal formalities , in presence of Pws 3 and 5. The accused was all through present in the said inquiry. In the course of inquiry it was ascertained that the accused had received Government cash of Rs.79,000/- towards the expenditure for the decentralized public nursery project in Begunna block. The cash book (Ext.3) was maintained till 24.7.2000 and the cash balance on that date was Rs.79,078.25 p(Rs.79,000/- which the accused had received towards the expenditure of decentralized public nursery project + Rs.78.25 p balance in hand as per cash book (Ext.3) In the course of inquiry, the accused claimed to have given a sum of

Rs.64,000/- in advance out of public money with him to the VFWs for making field payment to the labourers engaged in the decentralized public nursery for raising plants, seedlings and transportation (Rs.36,000/- to Sri Himansu Ranjan Mohanty, VFW(PW.9) on 1.7.2000 + Rs.7000 on 1.7.2000, Rs.14,000/- on 8.7.2000 to Radharani Behera, VFW (PW.2) + Rs.8,600/- to Kamall Ku. Pattnaik, VFW (PW.8) on 1.7.2000 and Rs.8400/- to Sri Bhubananda Mohapatra, VFW (PW.13) on 1.7.2000) But the accused failed to produce any document towards his such payment. On being asked Pws,2,8,9 and 13 denied to have received any advance cash from the accused for field payment.

In the course of inquiry it is further ascertained that the accused stated to have spent Rs.403/- out of the public money kept with him towards purchase of mobile of one liter worth of Rs.95/- on 27.7.2000 and 20 liters of diesel worth of Rs.308.80P (Rs.15.44p per liter) on 29.7.2000 for use in vehicle bearing Regd. No.OR/20B/1878 and to that effect had produced two cash memos (Cash memo no.7621 dtd. 27.7.2000 amounting to Rs.95/-) and cash memo no.17349 dtd.29.7.2000, amounting to Rs. 308.80P) granted by Somnath Motors, Nayapalli, Bhubaneswar. After physical verification of cash it was ascertained that there was shortage of cash of Rs.14,674.45P. On being asked by the vigilance party as regards the shortage of cash, the accused stated that he had kept the shortage cash with him in his residence instead of keeping the same in the available office iron chest. The accused further stated that he had not taken any permission from his higher authority for keeping shortage cash with him in his residence but as there was rift in between him & the staffs of the office he had not felt safe to keep the said shortage cash in the iron chest available in the office. Despite giving adequate opportunity to the accused to produce the said shortage cash the accused could not give the shortage cash though he had claimed to have kept the said cash in his house. PW.14 had taken the following three documents in his charge from the accused during the course of physical cash verification.

- I) Cash Account Register from 10.8.98 to 24.7.2000.
- II) Cash memo no.17349 dtd.29.7.2000 for Rs.308.80p
- III) Cash memo no.7621 dtd.27.7.2000 amounting to Rs.95/-.

After inquiry PW.14 prepared a memorandum (Ext.2) then and there at the inquiry spot whereupon he obtains the signature of Pws.3,4,5 as well as the signature of the

accused.

As per the direction of SP,Vigilance, BBSR, Division, BBSR PW.14 on the basis of Ext.2 submitted his inquiry report before the SP, Vigilance, BBSR Division, BBSR alleging there in that in between June-July,2000 the accused Ajaya Ku. Mohanty, Social Forestry Supervisor, Khorda Range without spending any money towards decentralized public nursery project in Begunna Block has committed dishonest misappropriation of Govt. money of Rs.78,674.45 p entrusted upon him in his official capacity as a public servant for his personal gain and there by committed the offence U/s.409 IPC

After receipt of the preliminary inquiry report of PW.14, the SP, Vigilance, BBSR Division, BBSR instructed the OIC, BBSR Vigilance PS vide Ext.1/3 to register a case U/s.409 IPC and PW.14 is directed to investigate into the case. Accordingly Sri Pradip Ku. Roy (PW.1), the OIC Vigilance PS, BBSR by drawing the formal FIR (Ext.1/1) registered BBSR Vigilance PS Case No.60 dtd.30.12.2000 at 4.05 pm and as per direction of SP Vigilance , BBSR he entrusted the case to PW.14 for investigation vide Ext.1.

During the course of investigation PW.14 examined Pws. 1 and 4 on 2.01.01. Pws.2,3,5 on 8.1.01, PW.8 on 9.1.01, deposited the documents taken in his zima from the accused in the vigilance division, malkhana vide MR No.10 of 2001 on 16.1.01, placed requisition to the O/O Deputy Director, Social Forestry Project, Puri Division, BBSR on 18.1.01 to supply him the relevant documents for the purpose of seizure and seized seven numbers of documents from Somnath Sahu, Jr. Accountant (PW.10) on his production in presence of two staff of the office, namely Joginath Sahu (PW.7) and Ganesh Prasad Rout (PW.6) and prepared the seizure list (Ext.4). After seizure PW.14 left the item no.7 in Column No.4 of Ext.4 i.e cash book (Ext.3) in the zima of PW.10. pw.14 also issued requisitions vide DR 223/VSS dtd. 20.1.01 to the Branch Manager, Andhra Bank, Baramunda, BBSR to inform him as to whether the cheque no.571144 dtd. 27.6.2000, Rs.50,000/-, Cheque no.571150 dtd. 6.7.2000 for Rs.20,000/-, Cheque no.573286 dtd 24.7.2000 for Rs.9000/- issued by PW.12, Deputy Director, SFP, Puri Division, BBSR in favour of the accused have been en-cashed by the accused from the Savings Bank Account No.6237, if so, on which dates. On 24.1.01 PW.14 examined PW.9 and 13 on 7.2.01 collected letter no.188/10/263 dtd 7.2.01(Ext.13) from PW.11,Branch Manager, Andhra bank,

Baramunda Branch, BBSR and examined the matter. On 19.2.01 PW.1 examined the Deputy Director, SFP, Puri Division, BBSR. On 22.2.01 PW.14 issued requisitions to Deputy Director, SFP, Keonjhar for directing the accused who was then the social Forestry Supervisor, Champua to appear before him. On 27.2.01 pw.2 collected the following two documents from the O/O Deputy Director, SFP, Puri Division, BBSR.

I) Office order no.90 dtd.15.10.1999 of Regional Joint Director, SFS, BBSR, regarding question of accused as SFS in Khorda forest division.

II) Joining report of accused in Khorda Division. On 28.2.01 PW.14 examined the accused and released him on executing PR bond. Pw.14 took all necessary steps towards investigation and after collecting the necessary materials and on completion of the investigation the charge sheet U/s.409 IPC against the accused was filed to face his trial in the court of law. This court after hearing Ld. Counsel on both parties and giving due consideration to the materials available on record was pleased to frame charge U/s.409 IPC against the accused. The contents of the said charge was read over and explained to the accused person who pleaded not guilty and claimed for trial.

3. The accused when examined U/s.313 CrPC denied the prosecution allegations in totality regarding dishonest misappropriation of Govt. money as alleged by prosecution claimed that he has been falsely implicated in this case.

4. The points for determination in this case are as follows:

- i) Whether the accused was a public servant at the relevant period. ?
- ii) Whether Govt. Cash of Rs.79,000/- was entrusted upon the accused in his official capacity as a public servant for the month of June and July 2001 for meeting expenditure towards decentralized public nursery project in Begunna block. ?
- iii) Whether the accused had committed dishonest misappropriation of Government cash of Rs.78,674.45 p for personal gain?

5. The prosecution in order to bring home the charge against the accused has examined 14 witnesses, in all, and also has got exhibited various documents. Of the witnesses examined on the side of the prosecution, PW.1 Pradip Ku. Roy, the officer in charge of vigilance police, BBSR as on 30.12.2000 who had drawn the formal FIR (Ext.1/1) and registered the BBSR Vigilance PS Case No.60 of 2000 U/s.409 IPC. Pws.2,8,13 were three village foresters who were looking after the raising of plants and seedlings by engaging growers. PW.9 was another VFW who was also looking

after the raising of plants and seedlings had made a written complaint (Ext.11) before Sp, Vigilance regarding misappropriation of Government money of Rs.79,000/- by the accused. Pws.3 and 5 were two employees of Civil Supply office, Khorda in whose presence the alleged preliminary vigilance inquiry had been conducted. PW.4 was the inspector of vigilance, BBSR Division who had assisted the inquiring vigilance officer (PW.14) in the alleged vigilance inquiry. Pws.6 and 7 were the two employees of the O/O Social Forestry Project , Puri Division, Khorda who were the witnesses to the seizure in respect of the documents seized under seizure list (Ext.4). PW.10 an employee of SFP, Puri Division, BBSR on whose production the documents under seizure list Ext.14 were seized. PW.11 was the Branch Manager of Andhra Bank, Baramunda Branch who was examined to say about the encasement of cheque amount by the accused. PW.12 was the Deputy Director of Social Forestry Project, Puri Division, BBSR who had entrusted the public money of Rs.79,000/- to the accused to execute the decentralized public nursery project within Begunna block. PW.14 the vigilance inspector, who as per the direction of SP, vigilance, had conducted preliminary inquiry on the written allegation (Ext.11) submitted by PW.9 in the O/o Social Forestry Range, Khorda and on whose written report the alleged vigilance case was registered. PW.14 was also the IO of this case who had submitted charge sheet against the accused. On the other hand the accused himself has examined as DW.5 U/s.315 CrPC. Besides him defence has also examined four other witnesses (Dws 1 to 4) on its side. Apart from that defence has also proved documents from Exts A to C.

6. I have heard Ld. Counsels for the accused and also the counsel appearing for the vigilance and gone through the entire evidence available on record.

7. It is admitted by the defence that during the relevant period the accused was working as social forestry supervisor, Khorda Range under Khorda Forest Division. According to Section 21 CrPC the accused being the social forestry supervisor is a public servant which is not disputed by the defence. Mr. Brahmananda Hota , Ld. Counsel appearing for the accused submitted that the accused is a public servant and cognizance has been taken against the accused in absence of sanction U/s.197 CrPC as the Act done by the accused is coming within the purview of due discharge of official duty and the Act so done does not amount to mis-utilization of his official power. According to him the previous sanction of the State Government is required

in the instant case for taking cognizance of the offence U/s.409 IPC against the accused. It is further submitted by him that since no previous sanction U/s. 197 CrPC having been obtained by the prosecution, the order taking cognizance as well as the entire proceeding for that matter is vitiated in view of the bar contained in Section 197 (1) of CrPC, 1973.. On the other hand it is submitted by the Ld. Counsel appearing for the vigilance that in the instant case there is no reasonable connection between the act alleged to have committed by the accused and due discharge of official duty by the accused and as such no sanction U/s.197 CrPC is required in this case. In the instant case it is the allegations of the prosecution that the accused has committed dishonest misappropriation of public money entrusted with him in his official capacity as a public servant. Considering the allegations against the accused and the materials available on record it is found that the act alleged to have been committed by the accused has no nexus with his due discharge of official function as a public servant and more so the Act alleged to have been committed by the accused amounts to violation of article 21 of the Constitution of India. Therefore, the Act done by the accused does not come within the sweep of due discharge of official duty, rather prima facie it amounts to mis-utilization of his duty as a public servant for which Section 197 CrPC is not required to prosecute against the accused U/s.409 IPC and as such the submissions advanced by Mr. Hota, Ld. Counsel for the accused has not substantive force.

8. It is a case U/s.409 IPC. In this case it has the onerous duty of the prosecutions to prove the following three essential ingredients U/s.409 IPC.

- I) That the accused was a public servant at the relevant time
- II) That the accused in his such capacity as public servant was entrusted with public money.
- III) The accused committed dishonest misappropriation in respect of public money entrusted upon him for his personal gain.

After careful analysis of the materials available on record if it is seen that the aforesaid ingredients are not complied with, hence it can be rightly said that no offence U/s.409 IPC can be said to have committed.

9. It is the case of the prosecution that during the relevant period the accused was functioning as social forest supervisor in Khorda social forest range within which jurisdiction Begunna block comes and as such the accused was a public servant as

per Section 21 CrPC. It is the further case of the prosecution that during the month of June and July 2000 public money of Rs.79,000/- was given by the Deputy Director, social forestry project, Puri Division , BBSR to the accused in his official capacity as a public servant, in shape of three numbers of cheque for the purpose of executing the decentralization of public nursery project in Begunna block. It is the further case of the prosecution that prior to receiving the aforesaid public money, public money of Rs.78.25 p was in hand as it is evident from the office cash book (Ext.3) and in this way all total public money of Rs.79078.25 p was with the accused. The learned defence counsel submitted that the accused has no dispute regarding the above mentioned prosecution case and as such the accused had admitted the aforesaid allegations of the prosecutions against him. Since when defence has no dispute over the aforesaid prosecution allegation it can be rightly said that the prosecution had successfully discharged his duty by establishing the above mentioned essential ingredients no. 1 and 2 of Section 409 IPC. As the accused has no dispute regarding his service as a public servant as well as entrustment of public money with him as public servant, I do not prefer to make elaborate discussion about the alleged entrustment and the service of the accused. Similarly I do not prefer to discuss the evidence of Pws.2,6,7,8,9,10,11,12,13, Ext.5,6,7,8,9,10, and 13 which relates to entrustment of public money in order to make the judgment unnecessarily lengthy.

10. When the alleged entrustment of public money is admitted by the accused then it would be for the accused to account for the money entrusted with him, if the accused is unable to account for the money or renders explanation for his failure to account which is found untrue, an inference can be drawn that the accused in order to cause lawful gain to himself as committed misappropriation of public money entrusted upon him with dishonest intention. Let us examine as to how far the accused has able to account for the public money entrusted with him.

11. Accused has admitted that public money of Rs.79078.25 p was with him. The accused has tendered explanation that out of the above public money he had spent Rs.403.80 p towards purchase of mobile and diesel and to that effect he had produced the cash memos obtaining from Somnath Motors, Nayapalli, BBSR on 27.7.2000 and 29.7.2000. Prosecution has no dispute to it.

12. It is the case of the prosecution that the labourers engaged in carrying out the

work of raising plants and seedlings under the project in questions had not received their wages towards their labour work. Pws 2,8,9 and 13 are four village Forest Workers. The aforesaid village forest workers in their evidence before the court have given support about the aforesaid allegations of the prosecution. It is also seen from the evidence of Pws 9 that he had made a written complaint(Ext.11) before their higher authority about the non-payment of labour charges by the accused to the labourers. This is the vital allegation of the prosecution against the accused. True it is that none of the labourers who had not received their dues have been examined on the side of the prosecution. Prosecution has also furnished no explanations for their non-examination. Prosecution has not produced the written complaint submitted by PW.9 to his higher authority regarding non-payment of labour dues by the accused. Law is well settled that oral evidence can not be substituted in place of documentary evidence. PW.14 is the IO of this case and whose preliminary inquiry report has been treated as FIR in this case. PW.14 has categorically stated in his evidence that during his inquiry none has stated anything before him about the allegations made by PW.9 in Ext.11. He has further stated that he had not conducted inquiry in respect of Ext.11 and that he had not received any complaint from villagers about payment/non-payment and that he had not come across any document made by village forest workers to their higher authority for inquiry and action regarding non-payment of labour dues by the accused and he has also not come across in respect of any false vouchers made by accused to regularize the matter. This also amounts to suppression of material evidence which casts doubt about the case of the prosecution.

13. It is seen from the evidence of PW.8 Kamal Ku. Pattnaik a V.F.W in Pugusahi section that one labourer namely P.K.Chhualsingh had reported before him that he has not received his dues for the month of June and July 2000 amounting to Rs.3020/-. This labourer being examined as DW.4 from the side of the defence. This witness has testified in his evidence that he was working as a labourer under PW.8 in raising plants and seedlings under the project in question. It is also stated by him that he has no dues to get from the department towards his labour charge who has also stated that not only he but also the other labourers who were working in the nursery side under the project have already received their dues in full to their satisfaction. There is no latches in the testimony of DW.4 in order to disregard his

testimony. In view of the evidence of DW.4 I place no implicit reliance on the evidence of PW.2, 8,9 and 13 regarding non-payment of labour dues. Further Dws.1 to 4 claimed regarding their engagement as labourers under VFWs in raising seedlings and plantation and they have received their dues towards labour charge and nothing has been suggested by the prosecution to them that they were not working under the project.

14. The accused has also rendered further explanation that out of the rest entrusted amount of Rs.78,674.45 he had given Rs.64,000/- to the VFWs namely Himansuranjan ohanty(PW9), Radharanii Behera(PW.2), Kamal Ku. Pattnaik (PW.8) and Sri Bhuvananda Mohapatra (PW.13) in advance for making payment to the labourers employed under them in carrying out the work of raising plants and seedlings (Rs.26,000/- to Sri Himansuranjan Mohanty(PW.9) on 1.7.2000 +Rs.7000 on 1.7.2000, Rs.14,000/- on 8.7.2000 to Radharani Behera(PW.2) + Rs.8600/- to Kamal Ku. Pattnaik(PW8) on 1.7.2000 + Rs.8400 to Bhuvananda Mohapatra (PW.13) on 1.7.2000. Pws. 2,8,9,13 have bluntly denied to have taken any money from the accused in advance for field payment. They have also claimed that the accused alone was authorized to make direct payment to the labourers and as such there was no question to give them money in advance by the accused. PW.12 was the Deputy Director, Social Forestry Project, Puri Division, BBSR who had given the public money in question to the accused for examination of the project in questions. He has stated in his evidence that the accused can make direct payment to the labourers or he can give the public money in advance to the VFWs for making field payment to the labourers. Therefore, in view of the evidence of PW.12 the claim of Pws.2,8,9 and 13 that the accused was only authorized to make payment to the labourers is not at all believable. It is the case of the prosecution that the accused could not produce any voucher showing the payment of money in advance to the VFWs for field payment. In this aspect the accused has given an explanation that in good faith he had given money in advance to Pws.2,8,9 and 13 for making field payment without keeping any signed money receipt from them. PW.2 was one of the VFWs to whom the accused claimed to have given Rs.21,000/- in two phases in advance for making field payment to the labourers. Had PW.2 actually not been taken any money in advance from the accused towards field payment to the labourers she would have directly denied to have received any money but reading

the evidence of PW.2 it seems that she has stated that she does not remember as to whether she had received money in advance from the accused towards field payment or not. When Pw.2 herself is in duty as to whether she had received money in advance from the accused for field payment or not that doubt would certainly go in favour of the accused. Ext.B with the representation of the accused which was addressed to the Deputy Director , Social Forestry Project, Puri Social Forestry Project, BBSR. The accused had got it from the office through RTI Act, it appears from Ext.2 that on 30.11.2000 the accused had intimated to his higher authority that in good faith he had given Rs.64,000/- to four VFWs (Pws 2,8,9,13) for field payment towards the labourers but despite his repeated approach the VFWs did not give any vouchers against the cash taken by them from him towards disbursement of the same to the labourers who were employed under the project. Had the accused not given any public money to the VFWs (Pws.2,8,9 and 13) for making field payment he would not have dare to write this letter to his higher authority. More over this letter was written much prior to the vigilance inquiry held on 29.12.2000. Apart to that it is also not the case of the prosecution that the project was not successfully completed. None of the labourers have made any allegation that they have not received their dues towards their labour charge. It is also not the case of PW.2,8,9 and 13 that they have given the labour charges from their own pocket since when they have admitted in their evidence that they had engaged labourers for raising plants and seedlings in different nursery beds. The IO PW.14 has himself admitted that the accused has not prepared any false voucher. From the materials available on record it is also seen that there was rift between the accused and the village forest workers. So it might be the reason the VFWs have not submitted the vouchers against the money taken by them for making field payment to the labourers which can not be rulled out. As per the prosecution the cash book was maintained up to 24.7.2000 and therefrom till 29.12.11 the cash book was not maintained. The cash book was with the accused , if he had any ill intention he would have make the cash book regularize by creating false vouchers but he has not done so. Probably he had awaited to make the cash book regularize after receipt of the vouchers from the VFWs. When the VFWs did not give vouchers the accused was unable to make the cash book regularize. Therefore, the accused has no ill motive for non-regularizing the cash book. To hold the accused guilty for dishonest misappropriation public

money punishable U/s.409 IPC maintained, in all cases be founded merely on his failure to account for the public money entrusted to him but whether he is unable to account or renders an explanation for his failure to account which is unproved an inference for misappropriation with dishonest intention may readily infer the explanation rendered by the accused seems as to how he had dealt with public money amounting to Rs.64,000/- appears to be true as well as plausible explanation and as such in these circumstances it would be unreasonable to draw an inference of misappropriation of public money with dishonest intention in respect of public money of Rs.64,000/-.

15. It is the case of the prosecution that on 29.12.2000 when the vigilance party made physical verification of cash, found shortage of Rs.14,674.45 P the accused could not produce the aforesaid shortage money then and there when vigilance party required to produce. In this regard the accused had rendered his explanation that he had kept the shortage money with him in his residence instead of keeping the same in the office iron chest as he did not feel it safe because there was rift in between him and the staffs of the office. From Ext.B it is clear that the accused had intimated his higher authority much prior to the vigilance inquiry that the shortage amount was with him. Ext.A is the deposit slip of Andhra Bank, Baramunda Branch, BBSR. The accused well examining himself as DW.5 U/s.315 CrPC he has filed the deposit slip which has been marked as Ext.A from his side without any objection from the side of the prosecution. From Ext.A it is seen that on 30.12.2000 an amount of Rs.14674 has been credited into the S.B Ac. No.6237 stands in the name of Deputy Director, Social Forestry Project, Puri Division, BBSR. A person upon whom property has been entrusted for executing some Govt. work is required under rules to deposit the unspent untrusted amount in the treasury or bank within a few days. The failure to do so would not by itself amount to the offence of criminal breach of trust because in addition it must be proved that there was dishonest misappropriation. The element of dishonest must also be proved. Sometimes a person may, due to negligence or forgetfulness fails to deposit the money which may have been entrusted to him. The mere failure of deposit the money would not therefore prove dishonestly and there must be other circumstances to prove the element of dishonest and unless the element of dishonest is proved the mere retention of money would not be itself the offence of Criminal Breach of Trust.

The Ld. Counsel appearing for the vigilance submitted that in the present case the allegations against the accused is for dishonest misappropriation of public money entrusted with him for his own use. To prove the same direct evidence of dishonest misappropriation can seldom found, and such dishonest intention have to infered from the proved facts and circumstances of the present accused. After surgical operation of the entire oral testimony and documentary evidence led by the prosecution in this case I do not found any proved facts or circumstances from where an inference can be drawn that the accused had any dishonest intention behind retaining public money of Rs.14,674.45 p with him till 29.12.2000 although the project had already been completed since July 2000. In the instant case one day after vigilance inquiry the accused had deposited the shortage amount of Rs.14,674/- as it is evident from Ext.A. From the aforesaid facts and circumstances it can be rightly said that the accused had not committed misappropriation of Rs.78.674.45p. Further it can be said that the accused has caused no wrongful gain for himself out of the public money entrusted with him or the same reasonings he has caused no wrongful loss to the Government as the public money entrusted with him had been sent for the purpose for which he was authorized. Hence no offence U/s.409 IPC is made out against the accused.

As a result of the above stated discussion, I am of the considered view that the case of the prosecution does not stand establish beyond reasonable doubt against the accused. Consequently the accused is entitled to be acquitted.

In the result, I hold the accused is not guilty U/s.409 IPC and acquit him therefrom U/s.248(1) CrPC. The accused is on court bail and he be discharged from his bail bonds.

Enter this case as "Mistake of Fact"

Spl.C.J.M-

Vigilance,BBSR

The judgment is dictated,corrected and pronounced by me in the open court today i.e. on 28th December, 2013 under my hand and seal of this court.

Vigilance,BBSR

List of P.ws. examined for prosecution.

P.w.1	Pradeep Ku. Roy
P.w.2	Radhamani Behera
P.w.3	Pramod Ku. Pattnaik
P.w.4	Bipin Bihari Mallik
P.w.5	Sudarsan Mishra
P.w.6	Ganesh Prasad Rout
P.w.7	Joginath Sahoo
P.w.8	Kamal Ku. Pattnaik
p.w.9	Himansu Ranjan Mohanty
P.w.10	Somanath Sahu
P.w.11	Prabhat Chandra Sahu
P.w.12	Laxmikant Das
P.w.13	Bhubanananda Mohapatra
P.w.14	Somnath Dixit

List of D. W.s.Examined for defence.

D.w.1	Santosh ku. Samantray
D.w.2	Sridhar Behera
D.w.3	Samir Ransingh
D.w.4	Prasanta Chhualsingh
D.W.5	Ajit Ku. Mohanty

List of exhibits marked for prosecution.

Ext.1	Endorsement & signature of PW.1 in FIR
Ext.1/1	Formal F.I.R
Ext.1/2	Signature of P.W.1 in Ext.1/1
Ext.1/3	Endorsement & signature of S.S.Hansada, IPS, S.P,Vigilance, BBSR in FIR
Ext.2	Memorandum (4 sheets)
Ext.2/1	Signature of PW.3 in Ext.2
Ext.3	Cash Book
Ext.3/1	Signature of PW.3 in Ext.3 at page 65
Ext.2/2	Signature of PW.4 in Ext.2
Ext.3/2	Signature of PW.5 in Ext.3

- Ext.4 Seizure list dtd. 18.1.01
- Ext.4/1 Signature of PW.6 in Ext.4
- Ext.5 to 7 Three requisitions
- Ext.5/1 to 7/1 Signature of accused Ajit Ku. Mohanty in Ext.5 to 7 respectively
- Ext.8 to 10 Three vouchers
- Ext.8/1 to 10/1 Signature of accused in Ext.8 to 10 respectively.
- Ext.4/2 Signature of PW.7 in Ext.4
- Ext.11 Letter no.341 dtd 5.12.2000 issued by PW.9 to SP, Vigilance, BBSR.
- Ext.11/1 Signature of PW.9 in Ext.11
- Ext.4/3 Acknowledgment and signature of PW.10 in Ext.4
- Ext.12 Zimanama dtd. 18.1.01(Back side of Ext.4)
- Ext.12/1 Acknowledgment & signature of PW.10 in Ext.12
- Ext.3/3 Entries regarding receipt of Rs.50,000/- by the accused at page 64 in Ext.3 dtd. 27.6.2000.
- Ext.3/4 Entries regarding receipt of Rs.20,000/- by the accused at page 65 of Ext.3 dtd.6.7.2000
- Ext.3/5 Entries dtd. 24.7.2000 regarding receipt of Rs.9000/- by the accused at page 65 in Ext.3.
- Ext.13 Letter no.188/10/263 dtd 7.2.01 issued by B.M. Andhra Bank to S.P, Vigilance, BBSR.
- Ext.13/1 Signature of PW.11
- Ext.1/4 Signature of PW.14 in Ext.1,4,12 and 2 respectively
- Ext.4/4 Signature of PW.14 in Ext.1,4,12 and 2 respectively
- Ext.12/2 Signature of PW.14 in Ext.1,4,12 and 2 respectively
- Ext.2/3 Signature of PW.14 in Ext.1,4,12 and 2 respectively

List of exhibits marked for defence.

- Ext.A Counterfoil of pay in slip dtd. 30.12.2000 showing deposit of Rs.14674.00 in AC No.6237 of Andhra Bank, Baramunda, BBSR.
- Ext.B Copy of Memo No.298 dtd. 30.11.2000 issued by accused to Dy. Director , Social Forestry Project.
- Ext.C Letter No.1032 dtd. 4.12.13 issued by P.I.O office of CCF & WPO,BBSR to accused.

List of M.Os.

Nil

