

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A NO.17 OF 2021**

The State of Tripura

..... **Appellant(s)**

Vs.

Sri Nayan Das

S/o- Lt. Sukhen Ch. Das,
Of Bhati Abhoy Nagar, Agartala,
P.S.- West Tripura, District-West Tripura.

..... **Respondent(s)**

CRL.A NO.18 OF 2021

The State of Tripura

..... **Appellant(s)**

Vs.

Sri Rajat Acharjee

S/o Lt. Raimohan Acharjee,
Of Hospital Road, Udaipur,
P.S. R.K. Pur, District-Gomati Tripura

..... **Respondent(s)**

For the Petitioner(s) : Mr. R. Datta, P.P.

For the Respondent(s) : Mr. S. Sarkar, Sr. Advocate.
Mr. H. Debnath, Advocate.
Ms. S. Banik, Advocate.
Ms. U. Chanda, Advocate.

Date of hearing : 13.03.2023

Date of delivery of
Judgment & Order : 16/03/2023

Whether fit for reporting : YES.

HON'BLE THE CHIEF JUSTICE(ACTING)

JUDGMENT AND ORDER

Both these appeals are heard and taken up together for disposal since they arise from common Judgment and Order and similar question of facts and law are involved.

2. The brief fact of the case is that the respondent of Crl.A. No.18 of 2021, Sri Rajat Acharjee on 21.09.2007 took over the charge of Rajnagar Government Food Godown as Junior Store-Keeper from his predecessor i.e. the respondent of Crl.A. No.17 of 2021 Sri Nayan Das, in presence of and to the satisfaction of the then Additional Sub-Divisional Magistrate, Belonia, Sri Hiralal Debbarma, who certified that there was no discrepancy or shortage of any goods, as per the charge-list. But, subsequently during the period of Rajat Acharjee, Sri. Ranjit Kr. Das (Food Inspector) inspected the Go-down and reported him to arrange for a special verification as he suspected discrepancies and a shortage of a huge quantity of rice. In reply to this anxiety, the informant i.e. Sub-Divisional Magistrate, Belonia directed the then DCM, Rajnagar, Sri Bhaswar Bhattacharjee to make verification about the matter. Sri Bhattacharjee then submitted a report that a huge quantity of rice, related to several Government schemes is

missing from the Go-down which was astonishing, and also requested the informant to arrange for physical verification of the concerned records and registers related to the last 02 (two) years. Owing to the above report, the informant stated to have directed the then BDO, Rajnagar, Sri Subhashish Bandopadhyay to cause another verification of the matter who then submitted a report afresh stating that a total quantity of 1,61,306.805 kgs of rice was found short from the Go-down for the period when Rajat Acharjee was In- Charge. The informant supplied the last report to the Directorate, Food, Civil Supplies & Consumer Affairs, Government of Tripura, and based on the said report, the Director, Food, Civil Supplies & Consumer Affairs, Government of Tripura issued one communication to place the respondent-Rajat Acharjee under immediate suspension and directed another official to lodge an FIR against him for alleged misappropriation of Government property. Based on the report submitted by BDO, Rajnagar, it was apparent that the respondent-Rajat Acharjee was involved in the misappropriation of Government rice weighing 1,61,306.805 Kgs and thus FIR was lodged before O.C. P.R. Bari P.S. for legal action. Though initially, the FIR was lodged against the respondent- Rajat Acharjee, but investigation of the matter was done by the local Police of P.R. Bari P.S. and

subsequently by the CID, Agartala submitted a report (*charge-sheet*) against both the respondents herein namely Rajat Acharjee and Nayan Das under Section 409 of the Indian Penal Code.

3. Cognizance of this case was taken under Section 409 read with Section 34 of IPC. Learned trial Court after observing all formalities framed charge against the accused persons under Section 409 of IPC. To prove the case before the learned trial Court as many as 39 (thirty-nine) witnesses were examined by the prosecution and they are; Sri Bhajan Kr. Saha as PW-1, Sri Jyoti Mohan Majumder as PW-2, Smt. Manju Saha as PW-3, Sri Bibhu Das as PW-4, Sri Ranjit Kr. Das as PW-5, Sri Manik Ch. Saha as PW-6, Sri Jitendra Shil as PW-7, Sri Ranjit Kar (Informant) as PW-8, Sri Subhasish Bandopadhyaya as PW-9, Sri Biplab Paul as PW-10, Sri Hiralal Debbarma as PW-11, Sri Babul Ch. Saha as PW-12, Sri Manik Lal Das as PW-13, Sri Amar Nag as PW-14, Sri Sangram Saha as PW- 15, Sri Bhaswar Bhattacharjee as PW-16, Sri Satyajit Parial as PW-17, Sri Anjan Kr. Dhar as PW-18, Sri Jitendra Ch. Nama as PW-19, Sri Haripada Das as PW-20, Sri Sudhir Roy as PW-21, Sri Apu Basak as PW-22, Sri Rabindra Kr. Das as PW-23, Smt Padmini Gupta as PW-24, Sri Kajal Sinha as PW25, Sri Subal Ch. Das as PW-26, Sri Lalit Debbarma as PW-

27, S.I. Swapan Sarkar (R.O.) as PW-28, Sri Kumbharai Reang as PW-29, Sri Ranjan Deb as PW-30, Sri Subrata Kr. Das as PW-31, Sri Nilmoni Debbarma as PW-32, Sri Siba Prasad Das as PW-33, Sri Anil Rudra Paul as PW-34, S.I. Rajib Debnath (I.O.) as PW-35, DSP, Babul Das (I.O.) as PW-36, Inspector Anup Kr. Das (I.O.) as PW-37, S.I. Krishnadhan Das (I.O.) as PW-38 and SDPO Sri Ratan Das (I.O.) as PW-39. Based on that evidence, the learned trial Court came to the conclusion that the accused persons are guilty of the offence punishable under Section 409 of IPC, and, accordingly, the learned Trial Court sentenced them to suffer R.I. for 3(three) years and also to pay a fine of Rs.25,000/-, in default to suffer S.I. for another 5(five) months.

4. Thereafter, being aggrieved and dissatisfied with the order of conviction and sentence, passed by the learned Trial Court, the respondent-Nayan Das preferred an appeal vide Crl. Appeal No.15 of 2018 and respondent Rajat Acharjee preferred appeal vide Crl. Appeal No.12 of 2018 before the learned Sessions Judge, South Tripura, Belonia. After hearing the parties and also considering the materials and documents on record, the learned First Appellate Court passed a common Judgement dated 05.02.2021 thereby setting aside the order of conviction & sentence by the learned Trial Court in Case

No.G.R.418 of 2008 on 28.05.2018. Accordingly acquitted both the respondents herein from the charge framed against them under Section 409 of IPC.

5. Being aggrieved by and dissatisfied with the order of acquittal passed by the learned Session Judge, South Tripura Belonia in Crl. Appeal No.12 of 2018 and Crl. Appeal No.15 of 2018, the appellant-State has preferred these instant appeals praying for setting aside the impugned Judgment and order of acquittal dated 05.02.2021 passed by the learned Sessions Judge, South Tripura, Belonia in Criminal Appeal No.15 of 2018 and Criminal Appeal No.12 of 2018 arising out of order of conviction and Sentenced dated 28.05.2018 passed by learned Chief Judicial Magistrate, South Tripura, Belonia in G.R. No.418 of 2008 whereby the respondent and another were convicted under Section 409 of IPC and sentenced them to suffer R.I. for three years and also to pay a fine of Rs.25,000/- in default, to suffer SI for another five years.

6. Heard Mr. R. Datta, learned P.P. appearing for the appellant-State and Mr. S. Sarkar, learned Sr. counsel assisted by Ms. S. Banik, learned counsel appearing for the respondent of Crl.A. No.17 of 2021 i.e. Sri Nayan Das and Mr. H. Debnath, learned counsel assisted by Ms. U. Chanda, learned counsel

appearing for the respondent of CrI.A No.18 of 2021 i.e. Sri Rajat Acharjee.

7. The learned P.P. appearing for the petitioner-State has pointed out that Exbt-M.O.9 and Exbt-M.O.10 series clearly established that there was a misappropriation and defalcation of public rice/food grain and learned Trial Court after proper appreciation of all the evidence convicted the respondents herein but the learned First Appellate Court failed to appreciate so. Learned P.P. also submitted that the main ingredient of Section 409 of IPC is entrustment and misappropriation; here the respondents never denied that they were not entrusted. Nowhere they have stated that from 01.04.2007 to 05.11.2007 they were not entrusted with their duties, rather they admitted so. Learned P.P., relied upon the evidence of P.W.8, the informant, P.W.-5 the Food Inspector, P.W.9, BDO Rajangar, P.W.13, Dy. Director Food South, P.W.16, DCM Rajnagar. Learned P.P. also relied upon the evidence on P.W.-25, P.W-26, P.W.-27, and P.W.-34 who were the Audit team members. Learned P.P. further submitted that the Judgment and Order as passed by the Lower Appellate Court is perverse wherein it has been observed that there are no specific exhibits i.e. M.O.9 series and 10 series were marked. His further observation was as to how in absence of

any specific exhibits, the Trial Court has relied on the exhibited documents. Stating thus, he contended that the order passed by the Trial Court is just and proper and the Lower Appellate Court has erred in not appreciating the Trial Court Judgment and prayed to set aside the Judgment and Order as passed by the Lower Appellate Court and allow this present appeals.

8. Mr. Subrata Sarkar, learned counsel appearing for the petitioner of Crl.A. No.17 of 2021 i.e. Sri Nayan Das contended that the order of the Lower Appellate Court is not perverse and this scope of revision is very limited and placed reliance upon **Paras-12 to 21** of the Apex Court Judgment reported in **(2010) 9 SCC 189** titled as **Babu Vs. The State of Kerala** which is reproduced herein-below:-

"12. This court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the Trial Court.

The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. AIR 1974 SC 2165; [Shambhoo Missir & Anr. v. State of Bihar](#) AIR 1991 SC 315; [Shailendra Pratap & Anr. v. State of U.P.](#) AIR 2003 SC 1104; [Narendra Singh v. State of M.P.](#) (2004) 10 SCC 699; [Budh Singh & Ors. v. State of U.P.](#) AIR 2006 SC 2500; [State of U.P. v. Ramveer Singh](#) AIR 2007 SC 3075; [S. Rama Krishna v. S. Rami Reddy \(D\)](#) by his LRs. & Ors. AIR 2008 SC 2066; [Arulvelu & Anr. Vs. State](#) (2009) 10 SCC 206; [Perla Somasekhara Reddy & Ors. v.](#)

State of A.P. (2009) 16 SCC 98; and *Ram Singh alias Chhaju v. State of Himachal Pradesh* (2010) 2 SCC 445).

13. In *Sheo Swarup and Ors. v. King Emperor* AIR 1934 PC 227, the Privy Council observed as under:

"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."

14. The aforesaid principle of law has consistently been followed by this Court. (See: *Tulsiram Kanu v. The State* AIR 1954 SC 1; *Balbir Singh v. State of Punjab* AIR 1957 SC 216; *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200; *Khedu Mohton & Ors. v. State of Bihar* AIR 1970 SC 66; *Sambasivan and Ors. v. State of Kerala* (1998) 5 SCC 412; *Bhagwan Singh and Ors. v. State of M.P.* (2002) 4 SCC 85; and *State of Goa v. Sanjay Thakran and Anr.* (2007) 3 SCC

755).

15. In *Chandrappa and Ors. v. State of Karnataka* (2007) 4 SCC 415, this Court reiterated the legal position as under:

"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) *The Code* of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. *In Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450, this Court re-iterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. *In State of Rajasthan v. Naresh @ Ram Naresh* (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. *In State of Uttar Pradesh v. Banne* alias Baijnath & Ors. (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances includes:

- i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;
- ii) The High Court's conclusions are contrary to evidence and documents on record;
- iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;
- iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;
- v) This Court must always give proper weight and consideration to the findings of the High Court;
- vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

14. A similar view has been reiterated by this Court in *Dhanapal v. State* by Public Prosecutor, Madras (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (*Vide Rajinder Kumar Kindra v. Delhi Administration* AIR 1984 SC 1805; *H.B. Gandhi & Ors. v. Gopi*

Nath & Sons 1992 supp. (2) SCC 312; Triveni Rubber & Plastics v. Collector of Central Excise, Cochin AIR 1994 SC 1341; Gaya Din (D) thr. Lrs. & Ors. v. Hanuman Prasad (D) thr. Lrs. & Ors. AIR 2001 SC 386; Aruvelu & Anr. (Supra); and Gamini Bala Koteswara Rao & Ors. v. State of Andhra Pradesh thr. Secretary (2009) 10 SCC 636).

21. In Kuldeep Singh v. Commissioner of Police & Ors. AIR 1999 SC 677, this Court held that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with..

Mr. Sarkar, learned Sr. counsel further submitted that there is no specific finding of the Court below with regard to the shortage of rice and the auditors were not trained persons.

9. While adopting the arguments of Mr. Sarkar, learned Sr. counsel, Mr. H. Debnath, learned counsel appearing for the respondent of CRL.A. No.18 of 2021 has submitted that Nayan Das was in charge of the Rajnagar Government Food Go-Downs from 01.04.2007 to 21.09.2007 and on 21.09.2007 Rajat Acharjee took over the charge of Rajnagar Government Food Go-Downs and carried on the charge upto 05.11.2007. During the tenure, no proper verification on the stocks was done and since the same is not decided, fixing of accountability on the accused persons is unjust, and prayed to dismiss the petition and uphold the order of acquittal of the Lower Appellate Court.

10. Heard both sides and perused the evidence on record.

11. Prima facie it is to be seen that the shortage of more than 1,61,306.455 Kgs of rice is not a small issue and definitely it needs a zoomed view of the prosecution and the Courts in the interest of the citizens since the food grains are set to have been misappropriated from the Food Go-downs of the State and the accused persons were the in-charge of the said Food-Godowns. It cannot be said that more than 1,61,306.455 Kgs of rice is a small quantity and during the transit or loading and unloading or for the lack of any verification there was shortage of such quantity of rice. The respondents being the in-charge and the responsible officers are supposed to be diligent in their duties and while giving and taking over charge during their tenure they are supposed to take all precautions with regard to stock verification and entry into the relevant registers. Accordingly, this Court feels that the respondents failed in their duties and it lead to the shortage of rice/food grains.

12. In this background, FIR was lodged before the O.C. P.R. Bari P.S. investigation was done by the local police of P.R. Bari P.S. and subsequently by the CID, Agartala and charge-sheet was submitted against both the respondents

under Section 409 of IPC. Learned Trial Court after observing all formalities framed the following charge against the respondents:-

" (i) Whether the accused Rajat Acharjee, for the period from 21.09.2007 to 05.11.2007 at Rajnagar Govt. Food Go-down, being entrusted with Govt. Property, to wit 1,61,306.455 Kgs. Of Govt. rice under various Schemes, in the capacity of the Junior Store-Keeper, a public servant, committed criminal breach of trust with respect to such property and thereby committed an offence punishable under Section 409 of the Indian Penal Code?

(ii) Whether the accused Nayan Das during the period from 01.04.2007 to 21.09.2007 Rajnagar Govt. Food Go-down, being entrusted with Govt. Property, to wit 19,376,230 Kgs of Govt. Rice under various Schemes, in the capacity of the Store-in-charge, public servant, committed criminal breach of trust with respect of such property and thereby committed an offence punishable U/S 409 of the Indian Penal Code."

The learned Trial Court, after examining the witnesses and perusing the evidence, particularly based upon Exbt-M.O.9 and Exbt-M.O.10 found the accused herein guilty of offence punishable under Section 409 of IPC and sentenced them as mentioned herein above.

13. The respondents-accused persons preferred an appeal before the Lower Appellate Court and filed Crl. Appeal No.15 of 2018 and Crl. Appeal No.12 of 2018 respectively. The Lower Appellate Court has pointed out certain infirmities committed by the Trial Court and set aside the sentence and allowed the appeals and acquitted the accused persons.

14. According to this Court, the Appellate Court when came to a conclusion that the Trial Court has committed

certain errors while appreciating the evidence and referring to the exhibits, it ought to have remanded back the matter to the Trial Court to re-appreciate the evidence and examine the exhibits and then pass an order accordingly. But instead, the Lower Appellate Court has given the benefit of doubt while pointing out the errors said to have been committed by the Trial Court and has acquitted the accused persons by allowing the appeals. It is pertinent to note here that the subject matter involved here is not a crime against an individual but a crime against society at large. When more than 1,61,306.455 Kgs of rice/food grains has been misappropriated and a case has been registered, it becomes the prima facie duty of the Court in the interest of the public to go into the ground root level of the matter and to pass a reasoned order on the strength of the record.

15. Since the Lower Appellate Court has found certain errors in the Trial Court Judgments with regard to appreciating the depositions/evidence and the documents marked as exhibits, the Lower Appellate Court ought to have remanded the matter back to the Trial Court for re-appreciating the evidence and passing a reasoned order on the involvement of the accused in the alleged crime. Hence accordingly, the Judgment and Order of both the Trial Court dated 28.05.2018

and the Lower Appellate Court dated 05.02.2022 is set aside and the matter is remanded back to the Trial Court for re-appreciating the evidence of the prosecution witnesses and also the documents marked and decide the matter. The Trial Court is also at liberty to mark any further documents as exhibits and also lead further evidence.

16. In light of the above observation and direction, these present appeals stands disposed of. Stay order if any stands vacated. Pending application(s), if any stands closed.

CHIEF JUSTICE (ACTING)

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