

**HIGH COURT OF TRIPURA  
AGARTALA  
CRL. REV. P NO.51 OF 2022**

**Sri Banwari Sinha,**  
S/o. Lt Rajkumar Lavanya Bhusan Sinha,  
Resident of Baralutma, P.S- Salema,  
Dhalai Tripura.

..... **Petitioner(s)**

Vs.

**The State of Tripura.**

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

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For the Petitioner(s) : Mr. H.K. Bhowmik, Advocate.

For the Respondent(s) : Mr. S. Ghosh, Addl. P.P.

Date of hearing and delivery of  
Judgment & Order : 22.08.2023.

Whether fit for reporting : YES/NO

**HON'BLE MR JUSTICE T. AMARNATH GOUD**

**JUDGMENT AND ORDER(ORAL)**

This present application has been filed under Section 397 read with Section 401 of Criminal Procedure Code, 1973 against the impugned Judgment dated 08.06.2022 passed by the learned Sessions Judge, Unakoti District Kailashahar, Tripura, in connection with case Crl. Appl.07(4) of 2021 whereby the learned Appellate Court has affirmed the conviction and sentence passed by the learned Trial Court by dismissing the appeal which was preferred against the conviction and sentence passed by the learned Trial Court on 15.11.2021 by the learned JM(1<sup>st</sup> Class), Kailashahar, Unakoti District, in case No. PRC(WP)16/2014 whereby the present petitioner was convicted to suffer S.I. for 3(three) years and also to pay a fine of Rs.10,000/- with default stipulation for offence committed under Section 409 IPC and also to

suffer SI for 2(two) years and to pay a fine of Rs.10,000/- for offence committed under Section 468 of IPC with default stipulation. Both sentences shall run concurrently.

2. The brief fact of the case is that the petitioner-Banwari Sinha being entrusted with and while in possession of the Savings Account Passbook of Smt Sabitri Deb of her SB Account No bearing No 11540102802 fraudulently withdrew an amount of Rs. 3,53,000/- on various dates from 25.06.2010 to 11.10.2010 by using his ID bearing No 3025837 and by forging her signatures on the withdrawal slips committed criminal breach of trust in respect of the same amount by misappropriating the same.

It is also the prosecution case that the petitioner-Banwari Sinha being entrusted with and while in possession of the Savings Account Passbook of Smt Kamli Paul of her SB Account No bearing No 11540083264 fraudulently withdrew an amount of Rs. 5,70,000/- on various dates from 23.09.2009 to 29.01.2010 by using his ID bearing No 3025837 and by forging her signatures on the withdrawal slips committed criminal breach of trust in respect of the same amount by misappropriating the same.

Further, it is also the prosecution case that the petitioner-Banwari Sinha being entrusted with and while in possession of Savings Account Passbook of Sri Laxmi Kanta Sinha of his SB Account No bearing No 30449713190 fraudulently withdrew an amount of Rs. 3,40,000/- on various dates from 12.10.2010 to 13.10.2010 by using his ID bearing No 3025837 and by forging his signatures on the withdrawal slips committed criminal breach of trust in respect of the same amount by misappropriating the same.

Thus, in all the petitioner has committed a criminal breach of trust in respect of a sum of Rs 12,63,000/- as a public servant.

3. On 15.12.2010, Sri Bidhayak Bhattacharjee i.e. the then i/c Branch Manager of the State Bank of India, Kailashahar Branch lodged a written complaint with the O/C, Kailashahar P/S which was registered as KLS Police Station Case No. 226/2010, under Section 409 of Indian Penal Code, 1860 and the case was endorsed to S.I. Badal Dutta for investigation. On his transfer, the case was investigated by S.I. Sanjib Laskar who after completion of the investigation submitted charge sheet, vide KLS PS Charge sheet No. 249/2013, under Section 409 of IPC, against the petitioner-Banwari Sinha. Cognizance of the offence was taken by the then-learned JM 1<sup>st</sup> Class, Kailashahar on 28.01.2014, and the charge was framed under-Sections 409/468 of IPC on 03.08.2015 by the then-learned JM 1<sup>st</sup> Class, Kailashahar and conducting trial. The learned trial court convicted the appellant and also sentenced him, as indicated above.

4. Being aggrieved and dissatisfied with the impugned judgment and conviction and sentence passed by the learned Trial Court on 15.11.2021, the petitioner preferred an appeal before the learned Sessions Judge, Unakoti District, Kailashahar which was registered as Crl. Appl. No.07(04) of 2021.

5. Basis of the arguments and the evidence available on record, the following points are taken up for discussion and decision by the Court below:-

*"i) Whether the appellant as a public servant was entrusted with property of which he was duty bound to account for and thereby misappropriated the said property ?*

*(ii) Whether the appellant committed forgery intending that the document shall be used for the purpose of cheating?"*

6. After hearing the arguments of both sides and perusing the evidence on record, the learned Court below vide its Judgment dated 08.06.2022 dismissed the said appeal and upheld the Judgment as Order as passed by the Court below.

7. Being aggrieved and dissatisfied with the impugned Judgment dated 08.06.2022, this present petition has been filed seeking to set aside the impugned Judgment dated 08.06.2022 passed by the learned Sessions Judge, Unakoti District, Kailashahar, Tripura in connection with case No. CrI. Appl.07 of 2021 whereby the Appellate Court has affirmed the conviction and sentence by rejecting the appeal preferred by the petitioner against the impugned Judgment of the Trial Court dated 15.11.2021 passed in connection with PRC(WP) No.16 of 2014.

8. Heard Mr. H.K. Bhowmik, learned counsel appearing for the petitioner as well as Mr. S. Ghosh, learned Addl. P.P., appearing for the State-respondent.

9. Mr. H.K. Bhowmik, learned counsel appearing for the petitioner on the point of entrustment submits that the allegation against the petitioner that he misappropriated the entrusted bank saving by criminal breach of trust and forging the signature of bank employees has not been established beyond reasonable doubt. Moreover, there is no proof that the petitioner herein has withdrawn the money in question in cash or via transaction to any other account. Further learned counsel submitted that if the petitioner had withdrawn the money, why would the Bank refund the same from their Bank account? The petitioner also did not have the passbooks of the said disputed accounts. Learned

counsel further submitted that as per the MASTER CIRCULAR, apart from service regulations no specific authorization was given to his client.

On the point of entrustment, learned counsel referred **Para-14** of the Hon'ble Apex Court Judgment reported in **(2012) 8 SCC 547** titled as **Sadhupati Nageswara Rao Vs. The State of Andhra Pradesh** which is referred herein-under:-

*"14. In order to prove the offence of criminal breach of trust which attracts the provision of [Section 409](#) IPC, the prosecution must prove that one who is, in any manner, entrusted with the property, in this case as a dealer of fair price shop, dishonestly misappropriates the property, commits criminal breach of trust in respect of that property. In other words, in order to sustain conviction under [Section 409](#) IPC, two ingredients are to be proved: namely,  
i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty bound to account for; and  
ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under [Section 405](#) IPC.  
The basic requirement to bring home the accusations under [Section 405](#) are the requirements to prove conjointly i) entrustment and ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.*

Stating thus, learned counsel appearing for the petitioner urged this Court to allow this appeal.

10. On the other hand, Mr. S. Ghosh, learned Addl. P.P., appearing for the State-respondent vehemently opposed the submission of the learned counsel appearing for the petitioner and submits that the Judgment and Order as passed by the Courts below is just and proper and needs no interference.

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

12. It is clearly indicated that the Bank its operation and its employees are governed by the MASTER CIRCULAR, CAREER PROGRESSION: AWARD STAFF IN-CADRE HIGHER APPOINTMENT as indicated on page-105 of the paper book appended to the affidavit of this present petition. In the said, on page 107, Sub Clause-5 the work and

the responsibilities of the petitioner herein are already indicated and accordingly, he was rendering his services as special assistant. There is nothing on record nor in the pleadings that at no point of time, he denied to entertain the work responsibilities which were assigned to him, since the same is not under any specific authorization as pleaded before this Court, indicating that, apart from said service regulations no specific authorization was given to him. Further, the Trial Court has found that Bank Accounts have been operated under Special Personal Identification No.3025837 which was issued to the petitioner. The citation of **Sadhupati Nageswara Rao(supra)** as referred by the learned counsel appearing of the petitioner is not applicable to the fact of this case. In view of the above, the findings of the Trial Court and the Appellate Court need no further interference.

13. With the above observation and direction, this present revision petition stands dismissed and the Judgments and Order as passed by the learned Trial Court dated 15.11.2021 affirmed by the First Appellate Court vide Judgments and Order dated 08.06.2022 is upheld. As a sequel, stay if any stands vacated. Pending application(s), if any also stands disposed of.

**JUDGE**

suhanjit

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