

**HIGH COURT OF TRIPURA
AGARTALA
CRL.REV. P NO.55 OF 2021**

Sanjoy Debnath,
S/o- Sri Ranjan Debnath,
Narayan Sarani, Kanchanpur,
P.S.- Kanchanpur, North Tripura.

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

Vs.

The State of Tripura,
To be represented by the Ld. Public Prosecutor,
Hon'ble High Court of Tripura, Agartala.

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

CRL.REV. P NO.58 OF 2021

Jahar Debbarma,
S/o- Sri Priti Ranjan Debbarma,
Bischitra Daspara,
P.S.- Manu, District- Dhalai Tripura

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

Vs.

The State of Tripura,
To be represented by the Ld. Public Prosecutor,
Hon'ble High Court of Tripura, Agartala.

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

For the Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.

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

Date of hearing and delivery of
Judgment & Order : 17.03.2023.

Whether fit for reporting : YES.

HON'BLE THE CHIEF JUSTICE(ACTING)
JUDGMENT AND ORDER(ORAL)

Both these Criminal Revision Petitions are heard and taken up together for disposal since they arise out of a common Judgment and Order involving common questions of law and facts.

2. The Criminal Revision Petition No.55 of 2021 is filed under Section 397(1) read with Section 401 of Cr.P.C. against the Judgment dated 28.09.2021 passed by the learned Sessions Judge, North Tripura, Dharmangar in Case No. Crl. Appeal No.07 of 2020, affirming the Judgment dated 03.03.2020, passed by the Sub-Divisional Judicial Magistrate, Kanchanpur, North Tripura in PRC(WP)02/2019, whereby and where under convicting the petitioner for committing offence punishable under Section 409 of IPC and sentencing him to suffer simple imprisonment for 3 years and to pay a fine of Rs.10,000/- with default stipulation.

2.1. The Criminal Revision Petition No.58 of 2021 is filed under Section 397(1) read with Section 401 of Cr.P.C. against the Judgment dated 28.09.2021 passed by the learned Sessions Judge, North Tripura, Dharmangar in Case No. Crl. Appeal No.06 of 2020, affirming the Judgment dated

03.03.2020, passed by the Sub-Divisional Judicial Magistrate, Kanchanpur, North Tripura in PRC(WP)02/2019, whereby and where under convicting the petitioner for committing offence punishable under Section 409 of IPC and sentencing him to suffer simple imprisonment for 3 years and to pay a fine of Rs.10,000/- with default stipulation.

3. The brief fact of the prosecution case is that Sri Arabinda Sarkar, in the capacity of ATM Executive of SIS Cash Services Private Ltd. (*hereinafter referred to as SIS*), lodged one '*Ejhar*' with the Officer-in-charge, Kanchanpur P.S. stating *inter alia* that Sri Sanjoy Debnath and Sri Jahar Debbarma i.e. the petitioner herein were appointed as joint custodians of ATM vide I.D. no. TR13002U, under United Bank of India, Kanchanpur Branch, State Bank of India, Anandabazar Branch, and United Bank of India, Vanghmun Branch from 2013 onwards with proper KYC. On 08.06.2015 as per requisition, both the accused persons' collected cash of Rs.12,00,000/- (Rupees Twelve Lakhs only) from UBI of Kanchanpur Branch for loading cash in the above said ATM. After loading said cash in the ATM, both the accused persons confirmed the cash balance of Rs.25,27,300/- (*Rupees Twenty Five Lakhs Twenty Seven Thousand and Three Hundred only*) with the previous cash balance in the said ATM. From 17.06.2015 the dispensing of

cash by the said ATM was stopped for unknown reasons and after communication with the accused persons they reported that there was link issue (V. Set problem) and as a result, ATM was not working. According to the informant, both the accused persons were reporting the above issue falsely. But as per the machine-generated report, it was found that both the accused persons went to the ATM on 13.06.2015 and confirmed the balance with E.O.D report which was not reported by them to UBI Kanchanpur Branch. Since the ATM vide no. TR 13002U was closed for link issue for consecutive seven days, there was suspicion from the side of the complainant. So, they made a call to Senior Manager of UBI Kanchanpur Branch on 24.06.2015 at 12.00 noon for physical inquiry of the cash. But when the Manager of the bank along with bank officials went for inquiry, it was found that one of the joint custodians namely accused Sri Jahar Debbarma was working at the machine. When the UBI bank personnel asked the accused Sri Jahar Debbarma for physical cash verification then he refused due to the absence of another custodian i.e. accused Sri Sanjoy Debnath. This incident was reported by UBI Branch personnel to the complainant who advised the Bank Officials to close the shutter of the said ATM and the informant traveled from Agartala to Kanchanpur for a joint-inquiry of ATM cash.

On that date of 24.06.2015 at 6.30 pm complainant along with the Bank Officials of UBI Kanchanpur Branch went to the said ATM and asked the accused persons to open the vault of the said ATM being the custodians. But intentionally accused persons gave wrong password so that it will hang the machine and the vault does not open. But after several times of counseling, the accused persons opened the ATM vault and it was found from the machine-generated report which displayed cash of Rs.30,700/- (*Rupees thirty thousand seven hundred only*) which meant that there was a shortage of Rs.9,77,100/- (*Rupees nine lakh seventy-seven thousand one hundred only*). It is also stated in the 'Ejhar' that on 24.06.2015 at about 1.00 pm it was confirmed by the Manager of SBI, Anandabazar Branch that accused Sri Sanjoy Debnath visited the ATM of SBI, Anandabazar for unknown reason, as according to operational report there was no schedule loading in the said ATM on that date. Accordingly, this 'Ejhar' was lodged alleging that the accused persons were entrusted for cash loading in the ATM vide no. TR13002U of UBI, Kanchanpur branch by collecting cash from the bank with their secret password which were created by them and they misutilized the public money of Rs.9,77,100/- (*Rupees Nine Lakhs Seventy Seven Thousand One Hundred only*) by cheating SIS.

4. After receipt of the "Ejhar", the Officer-in-charge, Kanchanpur PS registered Kanchanpur PS case no. 2015 KCP 048, dated 25.06.2015 for the commission of offence punishable under Section 409/420 of the Indian Penal Code against the accused persons and endorsed the case to Sri Shakti Sadhan Jamatia, Sub-Inspector of Police for investigation and on completion of the investigation, the Investigating Officer finding prima-facie case submitted charge sheet against the accused persons for the commission of offence punishable under section 409/420 of IPC.

5. The accused persons faced trial in the Court of Learned SDJM, Kanchanpur North Tripura in PRC(WP) No.02 of 2019, and following charges were framed against the accused persons:-

"i) Whether accused persons being entrusted by SIS Cash Services Private Ltd, as cash custodian committed criminal breach of trust of an amount of Rs.9,77,100/-(Rupees Nine Lakh Seventy Seven Thousand and One Hundred only) at any time on and from 08.06.2015 to 17.06.2015 form United Bank of India ATM I.D. No.TR 133002U situated at Kanchanpur market?

ii) Whether both the accused person on an form 08.06.2015 to 17.06.2015 at any time cheated the UBI, Kanchanpur Branch and thereby dishonestly induced the said bank officials to deliver Rs.9,77,100(Rupees Nine lakh Seventy Seven Thousand and One Hundred Only)?"

6. Prosecution, to prove their case, examined as many as 10 (ten) witnesses i.e., P.W.-1, Sri Jadab Debnath, P.W.-2 Sri Sujit Nath, P.W.-3 Sri Madan Mohan Chakma, P.W.-

4 , Sri Arabinda Sarkar, P.W.-5 Sri Shakti Sadhan Jamatia, P.W.-6, Sri Bhabatosh Talukdar, P.W.-7, Sri Sougat Chakma, P.W.-8, Sri Subhasish Sengupta, P.W.-9, Inspector Ratan Mani Debbarma and P.W.-10 Inspector Swapan Debbarma. The prosecution side also proved some documents(Exbt-1 to Exbt-49). The exhibited documents include *Exbt-13* which is a Memo regarding CCTV footage, *Exbt-14,14(1) to 14(30)* which is a Certificate Under Section 65-B of the Indian Evidence Act with regard to Electronic Files in enclosed pen drive along with printed out format of images. After the closure of the prosecution evidence, the accused persons were examined under section 313(1)(b) Cr.P.C. to which they denied the truth of all the prosecution evidence and declined to adduce any evidence on their behalf.

7. The learned Trial Court relying on the evidence of P.W.1, P.W.-3, P.W.4, P.W.8 and some exhibits i.e. Exbt-3 and Exbt-4 which shows the names of the accused persons as custodians of SIS, authorizing them to sign, withdrawal of slips and cash, withdrawal from UBI Kanchanpur and carrying out day to day ATM replenishment & FLM related activities, Exbt-3(i), Exbt.4(i) which shows the photographs and specimen signatures of the accused persons, and Exbt-5 which is a bonafide letter of SIS providing the names and designation of

their employees found the first point of determination as affirmative. The allegation under Section 420 of IPC was not proved against the accused persons.

8. Thereafter, learned Trial Court vide Judgment dated 03.03.2020 convicted the petitioners herein for committing offence punishable under Section 409 of IPC and sentenced them to suffer simple imprisonment for 3(three) years and to pay a fine of Rs.10,000/- in default of suffer simple imprisonment for 1(one) year.

9. The petitioner-Jahar Debbarma preferred Criminal Appeal No.6 of 2020 and the petitioner-Sanjoy Debnath preferred Criminal Appeal No.7 of 2020 before the learned Sessions Judge, North Tripura Dharmanagar.

10. The learned First Appellate Court after perusing the Judgment passed by the Trial Court, vide a common Judgment and order dated 29.09.2021 dismissed the said appeals confirming the judgment and order dated 03.03.2020 passed by the Trial Court in the following terms:-

"10. From the evidence on record, it is clear that the accused persons were the joint custodian of ATM vide I.D. no TR 13002U under United Bank Of India, Kanchanpur Branch and State Bank of India, Vaughmun Branch from 2013 onwards with proper KYC and they were entrusted with the property on the date of alleged offence i.e. on and from 08-06-2015 to 17-06-2015 and the accused persons dishonestly misappropriated Rs.9,77,100/- (Rupees Nine Lakhs Seventy Seven Thousand One Hundred only) and both the accused persons acted in furtherance of their common intention.

11. Considering the materials available before this court and on scrutiny of the judgment and evidence recorded by Ld. Court below, this court finds that in the instant appeals there is no scope to interfere with the judgment passed by the Ld. Trial court. Hence, the order of Conviction and Sentence passed by the Ld. Trial court is hereby upheld in toto.

12. In the light of the aforesaid order and observation, both the appeals are hereby dismissed and disposed of on contest. The convicts are directed to surrender before the Ld. Trial Court within a month from date to serve out the sentence.

11. Aggrieved thereby, the petitioners have filed these instant appeals and prayed to set aside both the judgment and orders dated 03.03.2020 and 28.09.2021 passed by the learned Trial Court and First Appellate Court.

12. Heard Mr.S. Bhattacharjee, learned counsel appearing for the petitioners as well as Mr. S. Debnath, learned Addl. P.P. appearing for the respondent.

13. Mr. S. Bhattacharjee, learned counsel appearing for the petitioners submits that the findings of the Courts below are perverse since the same were relied on documents that were not admissible. The learned Courts below failed to consider that acquittal of the petitioners from the charge framed under Section 420 of the IPC has bearing upon allegation made under Section 409 of the IPC. Further learned counsel submits that there is a lacuna on the part of the prosecution since CCTV footage was not examined. Stating thus learned counsel prayed to allow this instant appeal.

14. Mr. S. Debnath, learned counsel appearing for the respondents submits that the judgment and order as passed by the Court below is just and proper and needs no interference.

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

16. Though the argument of the petitioner-counsel on the point of Sections 409 & 420 of IPC is convincing to say that they have not committed any breach of trust, but this Court has not made up its mind on merits. This Court finds that when Public Money is involved and the same is loaded in the ATM Machines and the role of the petitioners herein are suspected, the crucial evidence of CCTV footage where not dealt with, either in the evidence nor in the Judgment and Order passed by the Court below, this Court expresses its concern for public money in the ATM machines.

17. It is seen from the record that the CCTV footages and the pen drives have been collected and the same are shown as exhibits [Exbt-13, 14(1) to 14(30)] but there is no discussion by the Court below on the said evidence and the investigation appears to be silent on the same. This ignorance of such crucial piece of evidence by the investigating officers as well as the Courts below needs to be considered more diligently. CCTV footages forms the crucial evidence for coming

to the conclusion to decide whether the accused persons were present in the ATM rooms on the alleged day, and if so, whether their presence is authorized or unauthorized.

18. Accordingly, both the Judgment and Order dated 03.03.2020 and 28.09.2021 is set aside and without expressing any opinion on the merits the matter is remanded back to the Trial Court for re-appreciating the evidence in the light of the CCTV footages and any other material and pass appropriate order as per the procedure. The Trial Court shall decide the matter on a priority basis on or before *1st August 2023*.

19. With the above observation and direction, these instant petitions stand disposed of. Hence stay if any stands vacated and pending application, if any, also stands closed.

CHIEF JUSTICE (ACTING)

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