

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.No.30 of 2024

Md. Abdul Ajij,

S/O- Late Ersad Ullah,

R/O Vill- Srinathpur,

P.S.- Kailashahar (Earlier) At present Irani P.S.,

District-Unakoti Tripura.

....Complainant Appellant.

Versus

1. The State of Tripura.

2. Sri Jayanta Das,

S/O- Sri Jogendra Das,

R/O Vill- Govindapur,

P.S.- Kailashahar, District- Unakoti Tripura.

3. Sri Aditya Sankar Roy Choudhury,

S/O- Lt. Ashutosh Roy Choudhury,

R/O Vill- Govindapur,

P.S.- Kailashahar, District- Unakoti Tripura.

4. Md. Abdul Kadir,

S/O- Md. Abdul Sahid,

R/O Vill- Barkhala,

P.S.- Kailashahar, District- Unakoti Tripura.

5. Sri Nripendra Das,

S/O- Lt. Manindra Chandra Das,

R/O Vill- Rajnagar,

P.S.- Fatikroy P.S. District- Unakoti Tripura

6. Sri Krishna Mohan Sharma,

S/O- Lt. Banka Bihari Sharma,

R/O Vill- Srinathpur,

P.S.- Kailashahar, District- Unakoti Tripura

7. Smt Mukti Deb,

W/O- Sri Subir Deb,

R/O Vill- Kacharghat,

P.S.- Kailashahar, District- Unakoti Tripura.

.....Respondent(s)

For Appellant(s) : Mr. Ratan Datta, Adv,
Ms Saswati Nag, Adv.

For Respondent(s) : Mr. Raju Datta, P.P.,
Mr. Rajib Saha, Addl. P.P.
Mr. Purusuttam Roy Barman, Sr.
Adv,
Mr. Samarjit Bhattacharjee, Adv.

Date of Hearing : 28.10.2025

Date of delivery of
Judgment and Order : 31.10.2025

Whether fit for
Reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Leave Granted.

This appeal is preferred challenging the judgment and order of acquittal dated 15.05.2023 delivered by Learned CJM, Unakoti District, Kailashahar in connection with case No. CR 227 of 2015.

02. Heard Learned Counsel, Mr. Ratan Datta assisted by by Ms S. Nag appearing on behalf of the appellant and also heard Learned Senior Counsel, Mr. P. Roy Barman assisted by Learned Counsel, Mr. Samarjit Bhattacharjee appearing on behalf of the all the respondent-accused persons. Further, heard Learned Additional P.P., Mr. R. Saha appearing on behalf of the State-respondent.

03. Taking part in the hearing, Learned Counsel for the appellant first of all drawn the attention of the Court that the appellant-complainant filed this case before the Learned Trial Court alleging commission of forgery by the alleged accused persons in respect of withdrawal of money from his account by

forging his signatures and before the Learned Trial Court he adduced witnesses in support of his case, but Learned Trial Court without appreciating the evidence on record properly acquitted all the accused persons from the charge of this case. It was further submitted by Learned Counsel that admittedly in this case certain documents were produced on record but those documents were not proved and marked as exhibits and the trial was not conducted properly. So, on conclusion of argument, Learned Counsel for the appellant urged for remanding back the matter to the Learned Trial Court for denovo trial. It was also submitted by Learned Counsel for the appellant that the appellant being a poor person has got *prima facie* case and if the evidence on record is properly appreciated then it will clear that the accused persons made conspiracy and committed the offence and it was further submitted that since the appellant is a poor person being ignorant of law could not conduct the case properly through his engaged counsel, so, Learned Counsel further urged for allowing this appeal by remanding the matter back to the concerned Trial Court to allow the appellant to adduce documentary evidence in support of his case.

04. On the contrary, Learned Senior Counsel, Mr. P. Roy Barman appearing on behalf of all the respondent-accused persons first of all submitted that the present appellant twice filed complaint against the accused persons to police station

and the case was registered and in both the occasions the case was ended in final report in absence of evidence on record and furthermore, although on the statement of the appellant under Section 200 of Cr.P.C., cognizance was taken by Learned CJM, Unakoti District, Kailashahar and before the Learned Trial Court the present appellant could not adduce any documentary evidence on record to substantiate the charge. It was further submitted that regarding alleged forgery, no pass book, no withdrawal slips were produced and proved by the appellant before the Learned Trial Court and even no report of the forensic expert was obtained to substantiate that the signatures were forged by the accused persons. It was also not clearly explained what was the role of the alleged accused persons with the alleged commission of offence and furthermore, at this stage, there is no scope on the part of this Court to fill up the gap of the complainant by remanding back the matter to the Learned Trial Court again for denovo trial.

Learned Senior Counsel further submitted that this is an old pending matter and inspite of allowing opportunity the appellant-complainant failed to substantiate the charge by adducing documentary evidence on record. So, Learned Senior Counsel submitted that there is no merit in this appeal and urged for dismissal of this appeal.

05. Reliance was placed by Learned Counsel, Mr. S. Bhattcharjee appearing on behalf of the respondent-accused

persons to a judgment of the Hon'ble Supreme Court of India in **Babu Saheba Gouda Rudra Goudar & Ors. vs. State of Karnataka** dated 19.04.2024 114 in **Crl.A.No.985 of 2010** reported in **(2025) 1 TLR (SC)** wherein in para Nos.37, 38, 39 & 40 Hon'ble the Apex Court observed as under:

"37. This Court in *Rajesh Prasad v. State of Bihar and Another*, (2022) 3 SCC 471 encapsulated the legal position covering the field after considering various earlier judgments and held as below :

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An Appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 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. ”

38. Further, in *H.D. Sundara v. State of Karnataka*, (2023) 9 SCC 581 this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows :

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The Appellate Court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The Appellate Court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

39. Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record; and

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The Appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent

findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."

Relying upon the said judgment, Learned Counsel, Mr. Bhattacharjee drawn the attention of the Court that the facts and circumstances of the present case is squarely covered by the principle of the said judgment and finally urged for dismissal of this appeal.

06. Heard both the sides at length and perused the record of the Learned Trial Court as well as the judgment delivered by the Learned Trial Court. In this case initially present appellant filed one FIR to O/C of the concerned P.S. and after completion of investigation the I.O. submitted final report for want of evidence and against the final report the appellant filed objection and on the basis of the objection, Learned CJM proceeded to record the statement of the complainant under Section 200 of Cr.P.C. and accordingly, the statement was recorded and after recording statement of the complainant cognizance was taken and process was issued against all the respondent-accused persons. It was the assertions of the appellant that he was an MGNREGA beneficiary and worked under different projects under the same scheme. In the year 2008-2010 the remuneration of the said scheme used to be deposited/credited in the accounts of the beneficiaries in the post-office and as a beneficiary he had an account at Baburbazar post-office for deposit of money of his remuneration in the said account. The passbook of the said

account was kept by MGNREGA Master, Sri Krishna Mohan Sharma and thereafter, the same was kept by MGNREGA Master Md.Abdul Kadir and all the passbooks of the beneficiaries were used to kept by the MGNREGA Masters on the plea that it was necessary to keep the passbooks with them so that the entries in the passbooks could be tally with the job cards.

In the year 2010, at the time of withdrawal of money from his account he could understand that a sum of total Rs.6,000/- was withdrawn by someone from his account. For verification of the matter, he approached the officials of the Baburbazar Post Office where his account was maintained but got no cooperation. After that he filed the RTI application but that was not considered and thereafter, he sought redress to Kailashahar Post Office where he could collect the information and copies of some withdrawal forms. It came to his knowledge that some money was withdrawn from his money forging his signature. It was further submitted that during the period when the withdrawal was made that time Subrata Bhattacharjee, Aditya Choudhury, Mukti Deb and Nripendra Das were the Post Masters of the respective Post Office.

07. Before the Learned Trial Court charge under Section 408/409/420 of IPC was framed against all the accused persons to which they pleaded not guilty of offence and

claimed to be tried. Now in a prosecution under Section 408 of IPC the prosecution should prove the following ingredients:

- (i) That the accused was entrusted with some property;
- (ii) That the accused was so entrusted as a clerk or servant;
- (iii) That the accused had dominion over such property; and
- (iv) That the accused committed breach of trust in respect of that property.

Further in a prosecution under Section 409 of IPC, the prosecution also should prove the following ingredients:

- (i) That the accused was a public servant, or a banker or merchant or agent or factor or broker or an attorney;
- (ii) That in such capacity the accused was entrusted with certain property or he gained dominion over such property which was not his own; and
- (iii) That the accused committed breach of trust with respect to such property.

Further to establish charge under Section 420 of IPC following ingredients are to be proved:

- (i) That there must be deception i.e. the accused must have deceived someone,

(ii) that by the said deception the accused must induce a person,

(a) to deliver any property; or

(b) to make, alter or destroy the whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property.

(iii) that the accused did so dishonestly.

08. To substantiate the charge the appellant-complainant has adduced his witnesses. For the sake of convenience, let us discuss herein below the relevant synopsis of the evidence on record. It is further to be noted here that initially on the basis of FIR of the appellant although the case was registered, but the case was ended in final report for want of evidence and challenging the final report the present appellant filed objection and after recording statement cognizance was taken by Learned Trial Court. Now let us see what was the evidence on record.

09. PW-1 is the I.O. who conducted initial investigation of the case filed by the appellant. He in his examination-in-chief very specifically stated that during investigation it did not reveal to him that the signature of the appellant was forged although the complainant alleged that his signature was forged. He further stated that during his investigation he did not verify the fact as to whether the signature on the withdrawal slips, which were seized during investigation of the

case were actually the signature of the informant or not. It was further stated that the withdrawal slips dated 31.12.2008 and 13.02.2009 does contain the signature of Krishna Mohan Sharma as being the identifier of the signatures which such withdrawal slips contains. He further stated that during investigation it also revealed that the Post Master of Baburbazar Post Office did not verify the signatures in the said withdrawal slips dated 31.12.2008 and 13.02.2009. Again he stated that during investigation it was not revealed that the GRS and the Post Officials had hatched a criminal conspiracy to forge the signature of the complainant to get illegal gain.

His cross-examination was reserved but later on the appellant failed to produce the said witness for his cross-examination by the respondent-accused persons. So, virtually there is no scope to place any reliance upon his evidence. Even if his examination-in-chief is believed it transpires that he specifically stated that during investigation nothing revealed that the signature of the informant/complainant was forged.

10. Similarly, PW-2 is the seizure list witness who put his signature on the seizure memo as a witness regarding seizure of some withdrawal slips and passbooks.

11. PW-3 is the complainant-cum-appellant who also reiterated the same statement made during recording statement under Section 200 of Cr.P.C.

He was cross-examined by the respondent-accused persons. During cross-examination by the respondent-accused, he stated he did not submit any MNREGA book in connection with the case. He again stated that in the year 2011 he filed a criminal case against the accused persons namely Krishna Mohan Sharma and Nripendra Das in the 'Permanent Lok Adalat' in respect of alleged withdrawal of money amounting to Rs.6,000/-.

12. PW-4, Abdul Salam is the brother of the appellant, is the hearsay evidence who stated that the appellant informed him that the accused persons, Krishna Mohan Sharma, Jayanta Das and Md. Abdul Kadir fraudulently withdrawn his money from his passbook by forging his signature maintained in Baburbazar Post Office.

13. PW-5, Md. Habibur Rahaman stated that during the period from the year 2008 to 2010 in the Srinathpur Gram Panchayat there had been huge embezzlement of Govt. money from MNREGA fund and during that period at about 01.00 PM he was in his shop situated near Baburbazar Post Office heard some hue and cry outside his shop and that time he came out and found a big gathering nearby the Baburbazar Post Office where he could know that some amount of money was fraudulently withdrawn from his account by forging his signature. Further he stated that the appellant sought information from the Post Office which was refused to furnish

to him and it was further submitted that the MNREGA book of many persons of Srinathpur used to be kept in the custody of the concerned GRS of Srinathpur Gram Panchayat.

During cross-examination he stated that about 5 numbers of withdrawal slips had been forged by putting signatures thereon in Bengali purporting to be that of the complainant.

14. I have heard the arguments of both the sides. Admittedly in this case, the appellant could not adduce and prove any documentary evidence in support of his allegation against any of the accused persons. No passbook is produced and proved, no withdrawal slips were produced and proved in this case. Even no expert report like evidence of scientific expert is proved to substantiate the charge against the accused persons. In a case of this nature, it was duty of the appellant to prove with specific date and time that the accused persons had committed forgery of his signatures having made conspiracy with the staff of the Post Office. Surprisingly, in this case nothing is proved in this regard by the appellant. Police also conducted investigation and ultimately they filed final report, rather the I.O., who conducted investigation and submitted final report was called for as witness by the appellant in this case who in his examination-in-chief very specifically stated that in course of his investigation it did not reveal to him that the signature of the accused was forged and

more interestingly he was not tendered for cross-examination by the accused persons. Situated thus, no reliance can be placed upon the evidence of the said witness, PW-1. PW-2 is nothing but a seizure list witness. PW-4 is the brother of the appellant is a hearsay witness. Similarly, PW-5 is also a hearsay witness. So, legally, there is no scope to place any reliance upon their evidence and even from their evidence also nothing revealed against any of the respondent-accused persons showing their involvement with the alleged offence. Now, only the appellant to substantiate the charge deposed against the respondent-accused persons. But from his evidence, it cannot be ascertained when the accused persons committed the offence and in which time and what was their role in the alleged commission of offence and from which period the accused persons were the concerned GRS of the respective panchayat, nothing could be inferred from the evidence of PW-3, i.e. the appellant. Similarly, what was the role of the staff of the Post Office, how they have/had committed the offence, is/was explained by the appellant in this case and in a case of this nature, in absence of proper police investigation, it is very difficult for an individual to substantiate any sort of charge regarding forgery of signatures until and unless the withdrawal slips are examined by the scientific expert with the signature of the appellant it cannot be ascertained that his signatures were forged by the accused

persons. From the record of the Learned Trial Court, it appears that certain documents were procured by the appellant but not a single document was produced and proved by the appellant has marked as exhibits in support of his case. Thus, it appears that the entire case was conducted by the appellant in a very casual manner and before this Court, at this stage, there is no scope to fill up the gaps by remanding the matter back to the Learned Trial Court again and since on perusal of the evidence on record, it appears that the appellant even by adducing oral evidence also could not give any specific account against any of the accused persons showing their individual responsibility and liability with the alleged commission of offence. Thus, it appears that the present appellant has got no case to stand the charge against any of the accused persons and Learned Trial Court after considering the evidence on record, in my considered opinion rightly delivered the judgment and order of acquittal for which I do not find any scope to interfere with the said judgment of the Learned Trial Court.

15. In this regard, it is apposite to refer herein a judgment of Hon'ble the Apex Court in **M.R. Ajayan vs. State of Kerala and Ors.** dated 20.11.2024 reported in **(2024) SCC OnLine SC 3373** wherein in para Nos.32 & 33 observed as under:

"32. On this aspect, we must make reference to the judgment of this Court in Nasib Singh v. State of Punjab (3-Judge Bench) [(2022) 2 SCC 89], wherein it was stated:

"33. The principles that emerge from the decisions of this Court on retrial can be formulated as under:

33.1. The appellate Court may direct a retrial only in "exceptional" circumstances to avert a miscarriage of justice....

33.6. The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice:

(a) The trial court has proceeded with the trial in the absence of jurisdiction;

(b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and

(c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade."

33. More recently, in Sunita Devi v. State of Bihar (2-Judge Bench) (2024 SCC OnLine SC 984), this Court summarized the power of an Appellate Court to order retrial:

"8. Every trial is a march towards the truth. It is the primary duty of the Court to search for the truth using the procedural law as its tool. Such a procedural law may have a substantive part extending certain inalienable rights to both, the accused and the victim. By non-compliance of the procedural law, justice cannot be allowed to derail. Anyone, who complains of an unfair trial, is duty bound to satisfy the Court that he stands prejudiced by it. This does not mean that a Court can be lackadaisical in following the rules and procedures meant to ensure justice.

9. A fair trial is the heart and soul of criminal jurisprudence. The principle of democracy lies in a fair trial. It is not only a statutory right, but also a human right, which would be violated when the safeguards provided under the Statute are not followed. The absence of a fair trial would seriously impair and violate the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. What is important to be seen is the existence of a failure of justice, which is obviously one of fact. A mere violation per se would not vitiate the trial, especially when the degree of substantivity exhibited in a statute is minimal.

27. An Appellate Court has got ample power to direct re-trial. However, such a power is to be exercised in exceptional cases. The irregularities found must be so material that a re-trial is the only option. In other words, the failure to follow the mandate of law must cause a serious

prejudice vitiating the entire trial, which cannot be cured otherwise, except by way of a re-trial. Once such a re-trial is ordered, the effect is that all the proceedings recorded by the Court would get obliterated leading to a fresh trial, which is inclusive of the examination of witnesses."

(Emphasis supplied)"

From the aforesaid observation made by the Hon'ble Apex Court, it appears that the Appellate Court may direct retrial or denovo trial only in exceptional circumstances to avert a miscarriage of justice. Before the Learned Trial Court the present appellant-complainant failed to take proper steps for producing and proving the relevant documents to substantiate the charge levelled against the accused persons, even no forensic expert was produced to substantiate that the signature of the appellant-complainant were forged by the accused persons and no such effort in this regard was taken by the appellant-cum-complainant inspite of having the assistance of his lawyer. Even no prayer was made by the appellant before the Learned Trial Court.

16. Situated thus, at this stage, there is no scope on the part of the appellant to fill up the gaps that have arisen in the judgment by remanding back the matter to the Learned Trial Court for denovo trial. As such the present appeal bears no merit and accordingly the same is liable to be rejected/dismissed henceforth.

17. In the result, the appeal filed by the appellant bears no merit, accordingly, the said stands dismissed. The judgment and order of acquittal delivered by Learned CJM, Unakoti

District, Kailashahar in connection with case No. CR 227 of 2015 dated 15.05.2023 is hereby upheld accordingly. The respondent-accused persons are also stands discharged from the liability of this appeal.

Send down the record to the Learned Trial Court along with a copy of this judgment/order.

With this observation, this appeal stands disposed of.

Pending application(s), if any, also stands disposed of.

JUDGE



AMRITA DEB Digitally signed by
AMRITA DEB
Date: 2025.11.01 17:06:50
+05'30'

Purnita