THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. NO.102 OF 2009

SRI ANKUR DEBBARMA,
S/O Late Arindra Debbarma,
R/O Krishnanagar Thakur Palli Road,
P.S. West Agartala,
Dist. West Tripura.

.... *Petitioner*

- Vs –

THE STATE OF TRIPURA

.... *Respondent*

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the petitioner	:	Ms. R. Guha, Advocate
For the respondent	:	Mr. R.C. Debnath, Addl. P.P.
Date of hearing	:	**10.02.2015**
Date of delivery of Judgment & order	:	**20.02.2015**

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER

This criminal revision petition under Section 397 read with Section 401 of CrPC is directed against judgment and order dated 16.11.2009 passed by learned Sessions Judge, Agartala, West Tripura in Criminal Appeal No.4(1)/2009 whereunder the learned Sessions Judge upheld the judgment and order of conviction and sentence dated 05.03.2009 passed by learned Chief

Judicial Magistrate, Agartala, West Tripura in case No.G.R.622 of 2003 under Section 489 of IPC.

2. Heard learned legal aid counsel, Ms. R. Guha for the petitioner and learned Addl. P.P., Mr. R.C. Debnath for the State respondent.

3. Prosecution case in short is that the accused-petitioner Ankur Debbarma, while was working as an Upper Division Clerk(U.D.C.) in the Tribal Welfare Directorate of the Government of Tripura, by an order dated 18.07.2001 was deputed in the office of District Tribal Welfare Officer(for short, DTWO), West Tripura for working as Cashier and he joined in the post of Cashier in the office of DTWO on 27.07.2001 and continued till 26.10.2002. Sri Santirai Riyan, DTWO(PW2) in the month of October, 2002 directed Sri Ankur Debbarma, the accused petitioner to hand over the charge of Cashier to Sri Subodh Debbarma(PW3) since Sri Riyan, who was the DDO of the office smelt something wrong in the functioning of Sri Ankur Debbarma and accordingly Sri Ankur Debbarma on 26.10.2002 handed over the charge of Cashier to Sri Subodh Debbarma and it was found that there was a shortage of cash amounting to ₹2,47,396/- which was reflected in the cash book at the time of handing over and taking over of the charge. PW2, Sri Santirai Riyan brought the fact to the notice of the higher authority and the Director, Tribal Welfare Department of the Government of Tripura by a letter dated 12.11.2002 directed lodging of FIR against the accused-petitioner, Ankur Debbarma and accordingly PW1, Sri C.K. Jamatia who succeeded Sri Santirai Riyan in the post of DTWO lodged written FIR on 24.06.2003 and accordingly PW8, SI Ranga Dulal Debbarma of West Agartala P.S. registered West Agartala P.S. Case No.120 of 2003 under Section 409 of IPC and an investigation was taken up.

3.1. After completion of investigation charge sheet was submitted by PW9, SI Runu Dey against the accused-petitioner under Section 409 of IPC for criminal misappropriation and criminal breach of trust and accordingly cognizance was taken by the learned Chief Judicial Magistrate and thereafter trial was taken up against the accused.

3.2. In course of trial, charge was framed against accused Ankur Debbarma for commission of offence punishable under Section 409 of IPC to which he pleaded not guilty and claimed to be tried.

3.3. To prove the charge, prosecution examined nine witnesses, namely—

PW1, Sri C.K. Jamatia, District Tribal Welfare Officer,
PW2, Sri Shantirai Reang, District Tribal Officer,
PW3, Sri Subodh Debbarma, Casher,
PW4, Sri Pradip Acharjee, Extension Officer,
PW5, Meghdoot Debbarma, Surveyor,
PW6, Milan Chakraborty, LDC, O/O DTWO,

PW7, Sri Shibendra Sarkar, PW7, Accountant, O/O DTWO,
PW8, SI Rangadulal Debbarma, first I.O.
PW9, SI Runu Dey, second I.O.

3.4. Prosecution also proved the following documents in support of its case:

Exbt.1—signature of the informant in the FIR,
Exbt.1/1—FIR,
Exbt.1/2—FIR printed form,
Exbt.1/3—endorsement on the FIR printed form,
Exbt.2/1—joining report of accused Ankur Debbarma dated 27.07.2001,
Exbt.P.1—the letter of the accused dated 26.10.2002 seeking time to deposit the shortage amount shown in the Cash Book,
Exbt.2—signature of witness Subodh Debbarma in the seizure list dated 26.06.2003 of the Cash Book,
Exbt.2/1—the seizre list dated 26.06.2003 of the Cash Book,
Exbt.3—signature of witness Subodh Debbarma in the seizure list dated 12.04.2004.
Exbt.3/1—signature of witness Pradip Acharjee in the seizure list dated 12.04.2004,
Exbt.3/2—seizure list dated 12.04.2004 of the joining report of accused dated 27.07.2001 and the prayer of accused dated 26.10.2002 seeking time,
Exbt.P.3 series—the Cash Account Book of the Office of DTWO seized by I/O,
Exbt.P.4—the signature of PW.2 Shantirai Reang, the DDO at page 205 of the Cash Book,
Exbt.4/1—the signatures of PW.3 Subodh Debbarma in the Cash Book at page 205 at the time of taking over of charge,
Exbt.4/2—the signatures of PW.3 Subodh Debbarma in the Cash Book at page 205 at the time of taking over of charge,

Exbt.5—Internal Audit Observation of the Cash Book submitted by the Team of the Office of DTWO,
Exbt.6 series—hand sketch map and index of hand sketch map of the Office of DTWO.

3.5. After closure of the prosecution evidence accused was examined under Section 313 of CrPC and in his turn accused examined one defence witness, namely DW1, Paresh Chandra Nama, a staff of District Tribal Welfare Officer, working in the Receipt & Dispatch Section and through DW1 accused proved a letter dated 11.11.2002 addressed to DTWO, West Tripura, Agartala which is marked as Exbt.D.3.

4. Learned Chief Judicial Magistrate at the conclusion of trial passed impugned judgment dated 05.03.2009 holding the accused petitioner guilty of the charge framed against him under Section 409 of IPC and sentenced him to suffer RI for five years and to pay a fine of ₹50,000/- in default of payment to suffer further RI for six months.

5. Aggrieved, the accused petitioner preferred Criminal Appeal No.4(1)/2009 in the Court of learned Sessions Judge and learned Sessions Judge by impugned judgment dated 16.11.2009 dismissed the appeal and upheld the judgment and order of conviction and sentence and hence this revisional application.

6. Since the learned engaged counsel of the petitioner did not turn up at the time of hearing of the revisional application, learned counsel, Ms. R. Guha was engaged as a legal aid counsel to conduct the case on behalf of the petitioner and accordingly she argued the case.

7. The first argument advanced by learned counsel, Ms. Guha is that the accused-petitioner was a staff of Tribal Welfare Directorate. By an order dated 18.07.2001 he was deputed in the office of DTWO, West Tripura for two months. He joined the post on 27.07.2001. There is nothing in the evidence on record that after expiry of two months his engagement was further extended by any official order and so holding him guilty for misappropriation during the period from 01.11.2001 to 26.10.2002 was totally illegal and hence the judgment and order of conviction and sentence are liable to be interfered.

7.1. The second argument advanced by learned counsel, Ms. Guha is that the prosecution has failed to prove as to on which date the alleged misappropriation was committed by the accused. Prosecution case is that an amount of ₹2,47,396/- was misappropriated but how and when it was misappropriated that has not been brought on record and hence the accused is entitled to get benefit of doubt.

7.2. The third argument advanced by learned counsel, Ms. Guha is that the office of the District Tribal Welfare Officer used to maintain accounts in the T.L.A. Branch of S.B.I. and those bank accounts were not verified as to whether the amount alleged to have misappropriated was actually there in the bank account or not and she has further submitted that PWs 6 and 7 were not at all authorized persons to enquire into the alleged misappropriation and their audit report(Exbt.5) should not have been relied upon by the trial Court and their evidence has no value at all. No audit was done by A.G. in respect of the alleged account of the charged period and hence charge framed against the accused cannot be said to have proved and the accused is entitled to get benefit of it.

8. Learned Addl. P.P., Mr. Debnath countering the submission of learned legal aid counsel has submitted that the accused took up the charge of Cashier on 27.07.2001. The initial order issued by the Director of Tribal Welfare deputing the accused was for two months but after elapse of two months he was never withdrawn and he continued in the post which he himself admitted by writing the letter Exbt.P2 wherein he approached the DTWO for allowing him time to hand over the cash amount which was found short on the date of his handing over of charge. Even Exbt.D.3, which the accused relied also, shows that he continued in the post of Cashier till his handing over of charge on 26.10.2002. So this argument of the learned legal aid counsel on behalf of the accused-petitioner has no basis.

8.1. It is further submitted by learned Addl. P.P. that the accused made transactions as a Cashier and made entries in the cash book. While handing over of charge on 26.10.2002, it was found that there was a shortage of ₹2,47,396/-. No particular date is necessary to prove the criminal misappropriation since it is evident that on the date of handing over of charge the cash amount which was supposed to be in the cash was found short and so the charge of defalcation has been proved.

8.2. He has also submitted that PWs 6 and 7 along with another staff of the Tribal Welfare Directorate were deputed to inspect the cash book and other relevant records in course of investigation as per requisition made by I.O. and accordingly as per order of the Director, Tribal Welfare, the DTWO arranged for verification of the cash book and other records by PWs 6, 7 and another Accountant and they submitted a joint report after verification which has been marked as Exbt.5 and that document clearly shows that there was a shortage of ₹2,47,396/- which the accused defalcated and accordingly that report has been considered by the trial Court in addition to other evidence on record and there is nothing wrong in the judgment and order of conviction and sentence passed by the trial court and affirmed by the appellate Court.

9. It is an admitted position that the accused petitioner while was working as UDC in the office of the Directorate of Tribal

Welfare, Government of Tripura, by an order dated 18.07.2001 passed by the Directorate of Tribal Welfare, was deputed in the office of the DTWO, West Tripura and he joined his duties on 27.07.2001. In his examination under Section 313 of CrPC the accused petitioner admitted the fact that he joined the office of DTWO on 27.07.2001 and he contended that he continued till 30.08.2001. The trial Court and the appellate Court considered oral and documentary evidence in respect of the services of the accused in the office of DTWO *w.e.f.* 27.07.2001.

9.1. PWs 1, 2, 3, 4, 5, 6 and 7, who all were colleagues of the accused-petitioner made consistent statements that the accused was working as Cashier in the office of DTWO from 27.07.2001 to 26.10.2002, the date when he handed over the charge to PW3. Exbt.P.1 is a letter written by accused himself on 26.10.2002 to the DTWO for granting him time to hand over the shortage amount shown in the cash book. In his examination under Section 313 of CrPC in response to question No.8 regarding Exbt.P.1, the accused admitted that by writing that letter he sought time to show adjustment and not for payment of shortage amount and that he also wrote letters for auditing the accounts. The accused thereby admitted the fact that after joining on 27.07.2001 he continued in the post of Cashier of the office of DTWO and his stand that he continued in the post of Cashier for two months was contradicted by the accused himself. By examining DW1 the accused brought on record Exbt.D.3, a letter written by the accused on 11.11.2002 in respect of the alleged shortage. He handed over charge on 26.10.2002 and on 11.11.2002 he wrote Exbt.D.3 and that is the stand of the accused which means he continued in the post of Cashier till he handed over charge on 26.10.2002. The cash book which was maintained by the accused has been proved as Exbt.P.3 series and the entries made in the cash book have been proved by PW2 which is enough to arrive at a conclusion that the accused worked as a Cashier during the period from 27.07.2001 till 26.10.2002 which covers the period of defalcation as mentioned in the charge.

10. It is the definite case of the prosecution that on the date of handing over of the charge, *i.e.* on 26.10.2002 there was found a shortage of cash ₹2,47,396/-. That entry has been made in the cash book itself on the date of handing over of the charge. The learned Chief Judicial Magistrate in his judgment considered the evidence on record as a whole including that of the entries made in the cash book, day to day, and arrived at a definite finding about the alleged defalcation. Referring to Section 212(2) of CrPC, learned Chief Judicial magistrate in his judgment contended that proof of misappropriation of gross amount is sufficient to hold the charge and there is no legal requirement of proving as to on which date what amount was siphoned out from the cash of the office.

10.1. Learned counsel, Ms. Guha in the course of her argument referred the decision of Gauhati High Court in the case of

Prabin Goswami v. State of Assam reported in ***(2001) 2 GLR 522*** and the case of ***Dilip Debnath v. State of Tripura*** reported in ***(2007) 2 GLR 769***. In the case of ***Prabin Goswami***(supra) the Court found, there was no entrustment and hence conviction was set aside. The case of ***Dilip Debnath***(supra) is on a different context and I find no relevance on that decision in the facts of this case. In the present case, the accused was entrusted with the charge of Cashier and it is proved with overwhelming evidence on record. He joined the office of DTWO by submitting letter in his own hand dated 27.07.2001 which is marked as Exbt.P.2. He was entrusted with the charge of Cashier of the office of DTWO and he has admitted, even in his examination under Section 313 of CrPC, that he worked as Cashier for two months but it has been categorically held by the trial Court as well as the appellate Court that he was the Cashier of the office for the period from 27.07.2001 to 26.10.2002 and I find that finding was correctly made by both the lower Courts.

10.2. Once entrustment is proved and it is found that there was misappropriation of the fund, the onus is on the accused to show that he did not commit misappropriation as alleged. The Supreme Court in the case of ***N. Bhargavan Pillai v. State of Kerala*** reported in ***(2004) 13 SCC 217*** has held:

> *"13. It is fairly well-settled position in law that actual mode of entrustment or misappropriation is not to be proved by the prosecution. Once entrustment is proved,*

it is for the accused to prove as to how the property entrusted was dealt with. In Jiwan Dass's case(supra)[Jiwan Dass v. State of Haryana : (1999) 2 SCC 530] the factual position was entirely different. It was held that the undertaking given in that case could not be held to be confession or admission. In the present case, the factual scenario as noticed by the trial Court and the High Court is different. It was not only on the basis of the undertaking that the conviction was recorded, but the other evidence on record also unerringly proved entrustment. Therefore, it was for the accused to prove as to how the property entrusted with him was dealt with. No material was placed in that regard. Therefore, the Courts below correctly held entrustment to have been proved. The concurrent findings of fact recorded by the courts below relating to entrustment and misappropriation in our view are well merited and fully justified on the basis of evidence on record and do not suffer from any perversity or patent error of law to warrant interference."

10.3. Similarly in the case of ***Mustafikhan v. State of Maharashtra*** reported in ***(2007) 13 SCC 623*** the Supreme Court has held that where an entrustment has been carried out as accepted and the obligation has been discharged. In para 12 of the judgment, the Court has observed:

"12. It is not necessary or possible in every case to prove as to in what precise manner the accused had dealt with or appropriated the goods. In a case of criminal breach of trust, the failure to account for the money, proved to have been received by the accused or giving a false account of its use is generally considered

to be a strong circumstance against the accused. Although onus lies on the prosecution to prove the charge against the accused, yet where the entrustment is proved or admitted it would be difficult for the prosecution to prove the actual mode and manner of misappropriation and in such a case the prosecution would have to rely largely on the truth or falsity of the explanation given by the accused. In the instant case, there is no dispute about the entrustment."

10.4. In the present case, the accused alleged to have defalcated an amount of ₹2,47,396/- which was found short in cash on the date of his handing over his charge and the accused could not come out with any explanation about the shortage. By writing letter on the date of his handing over of charge, *i.e.* Exbt.P.1, he rather sought time to hand over the amount which was found short. It is, therefore amply proved that there was shortage of fund in the cash and that amount was misappropriated by the accused.

11. PW6 was working as an LDC of the office of Tribal Welfare Directorate in the Accounts Section and PW7 was an Accountant of the office. They along with another Padma Debbarma, Accounts Officer of Tribal Welfare Department audited the cash book of the office of DTWO as per order of the superior authority and such audit was arranged on the requisition made by I.O. of the case.

PWs 8 and 9 made specific statements in their deposition that they requested the superior authority of the accused for an audit of the cash book in which the defalcation was alleged. The evidence on record clearly shows that as per the order of Director, Tribal Welfare the audit was taken up by the team of three accounts experts of the office, *i.e.* PWs 6, 7 and another Padma Debbarma and they submitted the internal audit report which is marked Exbt.P.5 wherein it is clearly mentioned that there was a shortage of ₹2,47,396/-. The accused put in evidence Exbt.D.3, a letter written by him on 11.11.2002 to the DTWO wherein he stated that an amount of ₹2,35,683/- was transferred in SBI, TLA Branch and that was overlooked. That contention of the accused has not been supported by any other item of evidence rather the cash book shows that there was shortage of ₹2,47,396/-. If the amount was credited in any bank account of the office of DTWO he would definitely make entry in the cash book showing the amount as in the bank but there is no such evidence.

The trial Court, as I find very lucidly examined the entries made in the cash book and arrived at a reasoned and consistent finding. I find no reason at all to re-appreciate the evidence in a revisional application since in my considered opinion the evidence was rightly considered and appreciated by the trial Court. In paragraphs 12(a) to 12(m) the trial Court recorded a reasoned finding in respect of the misappropriation alleged to have committed by the accused. I, therefore, find no merit in the revisional application and hence the revisional application stands dismissed.

12. Send back the L.C. records along with a copy of the judgment.

JUDGE