

Court No. 40
Item No. 14

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Rabindranath Samanta

C.R.A. 23 of 1987
Pankaj Kumar Mallick @ Pankaj Mallick
-Vs-
State of West Bengal

For the Appellant : **Ms. Saini Das, Advocate**
As Amicus Curiae

For the State : **Mr. Narayan Prasad Agarwal, Advocate,**
Ms. Subhasree Patel, Advocate

Heard on : **February 10, 2022**

Judgement on : **February 10, 2022**

Rabindranath Samanta, J. :-

I have heard Ms. Saini Das, learned Advocate for the appellant as Amicus Curiae and Mr. Narayan Prasad Agarwal, learned Advocate assisted by Ms. Subhasree Patel, learned Advocate for the State.

This appeal arises out of the judgment and order of conviction and sentence passed by the learned Judge, Second Special Court, Nadia, Krishnagar in Special Court Case No. 4 of 1985 whereby the appellant, Pankaj Kumar Mallick @ Pankaj Mallick was convicted for commission of offence punishable under Section 409 of the Indian Penal Code and sentenced to suffer simple imprisonment for three years and to pay a fine of Rs. 2,000/-, in default, to suffer further simple imprisonment for one year only.

The prosecution case, in short campus, may be delineated as under :-

The appellant Pankaj Kumar Mallick was an employee of the Government of India in the Postal Department. He was posted as the 'Savings Bank Clerk' at Krishnagar Court Post Office from February 17, 1982 to May 06, 1982. As a savings bank clerk he was entrusted to receive amount of money from the customers and to deposit the sum in the Savings Bank Account of the concerned customers. In discharge of his duties he received Rs.800/-, Rs.900/- and Rs.500/- as deposits in connection with S.B. Account Nos. 616871, 617207 and 616548 on April 10, 1982, April 21, 1982 and April 23, 1982, but he did not credit those deposits to the aforesaid accounts. He misappropriated the funds. On March 19, 1982 he in his capacity as the S.B. Clerk received Rs. 1,345/- as deposit in connection with S.B. Account No. 617310, but he also did not credit the sum in the said account. By such acts, the appellant mis-appropriated the aforesaid amount of money.

After detecting the misappropriation of the aforesaid money, Mr. M.N. Sangma, the then Superintendent of Post Offices, Nadia, North Division, Krishnagar, lodged a written complaint at Kotwali Police Station, Krishnagar on June 30, 1982. On the basis of the written complaint, Kotwali Police Station Case No. 99 dated June 30, 1982 under Section 409 of the Indian Penal Code was registered against the appellant for investigation. During the course of investigation, the Investigating Officer arrested the appellant and produced him before the Court. The Investigating Officer examined a number of witnesses under Section 161 of the Cr.P.C. and recorded their statements. The Investigating Officer seized some relevant documents pertaining to the aforesaid misappropriation of funds. After completion of the investigation, the Investigating

Officer submitted charge sheet against the appellant under Section 409 of the Indian Penal Code.

Charge under Section 409 of the Indian Penal Code was framed against the appellant, who pleaded not guilty to the charge and claimed to be tried.

To bring whom to the charge, the prosecution examined as many as six witnesses. The prosecution relied on some documents which have been marked as 'Exhibits 1 to 9/2'.

To decide the prosecution case, the learned trial Judge formulated the following points :-

1. Was the accused a 'public servant'?
2. Was he in such capacity entrusted with the sums as specified in the two charges, viz. Rs.800/- Rs.900/- and Rs.500/- and Rs. 1,345/- or with denomination over the said sums?
3. Did he commit criminal breach of trust in respect of the said sums?
4. Is the charge defective?
5. Has the prosecution proved the charge under Section 409 of the Indian Penal Code against the accused with evidence beyond all reasonable doubts?

On analyzing and appreciating the evidence on record the learned trial Judge recorded the findings that the appellant as a public servant was guilty of criminal breach of trust by misappropriating the aforesaid amount of money which was entrusted with him to deposit in the Savings Bank Accounts of different customers.

Now the point which falls for determination is as to whether the conviction and sentence as recorded by the learned trial Judge, is sustainable on facts and in law.

Since, the instant appeal is the first appeal before this Court, I scrutinize the evidence both ocular and documentary.

P.W. 1 M.N. Sangma, the then Superintendent of Post Offices, North Division, Krishnagar, Nadia has testified that the appellant Pankaj Kumar Mallick was a Savings Bank Clerk as Krishnagar Court Post Office from February 17, 1982 to May 06, 1982. P.W. 1 narrates the prosecution case as stated in the F.I.R. As noticed by the learned trial Judge, I find that P.W. 1 was not cross-examined on behalf of the appellant/convict.

P.W. 2 Gita Rani Biswas, another Clerk of the aforesaid Post Office has stated that the appellant was a Savings Bank Clerk in the said Post Office from February 1982 to May 1982. This witness also speaks of the allegations as made in the F.I.R.

P.W. 3 Narayan Chandra Modak in his evidence has stated that Pankaj Kumar Mallick (identified in Court) was the Savings Bank Clerk in the said Post

Office. He states that because of misappropriation of funds he was suspended for some time.

P.W. 5 Kumud Ranjan Biswas in his evidence has stated that at the material point of time he was the Postmaster of the said Krishnagar Court Post Office. At that time the accused Pankaj Kumar Mallick was the savings bank clerk. Two passbooks relating to Savings Bank Account Nos. 616871 and 617310 were issued from Court Post Office and those passbooks belonged to Shyamaprasad Banerjee and Sandhya Banerjee jointly and Subhra Adhikary. It is in his evidence that the deposits which were made by the customers were not credited to the aforesaid accounts of the Post Office. This witness has also deposed that the amount of money which was to be credited in Savings Bank Account No.616871 and 617310 were not credited. This witness indicts the appellant that he was responsible for non-crediting the amount in the aforesaid savings accounts. This witness was cross-examined extensively, but nothing has been elicited from his cross-examination to discredit the evidence as adduced by him in examination-in-chief.

I have perused the exhibited documents which are on record. What the learned Court has observed, I am of the same view that during the period from February 17, 1982 to May 06, 1982 the appellant received the aforesaid amount of money in respect of the savings bank accounts as stated above, but he did not credit those deposits in the savings bank accounts.

On careful assessment and appreciation of evidence on record I find that the learned Court below has rightly convicted the appellant for commission of offence punishable under Section 409 of the Indian Penal Code.

I do not find any justification to interfere with the conviction as recorded by the learned Trial Judge.

As indicated above, the appellant was sentenced to suffer simple imprisonment for three years and to pay a fine of Rs.2000/-, in default, to suffer further simple imprisonment for one year.

From the case record I find that the appellant was arrested and produced before the learned Trial Court on July 15, 1982 and ultimately he was released on bail by virtue of the order passed by the learned Sessions Judge, Nadia on December 11, 1982. As I find the appellant was in judicial custody for about five months.

The instant criminal case was lodged on June 30, 1982. Since June 1982 the appellant had to continue and pursue with the appeal. After he was convicted and sentenced as above he preferred the instant appeal in the year 1987. That being so, the appellant has been pursuing the aforesaid criminal case and the instant criminal appeal for more than 34 years.

Because of the continuance of the criminal proceedings and the appeal since long it goes without any saying that the appellant has suffered mental pain and agonies. As I find from the evidence on record, he was placed under suspension because of the charge levelled against him for criminal breach of trust.

Having considered the nature of the offence, the long pendency of the criminal proceedings and the age of the appellant, I think that if the sentence is reduced to the simple imprisonment for five months which he has also served it

will sub-serve interest of justice. Accordingly, the sentence as imposed by the learned Trial Judge is reduced to simple imprisonment for five months which he has already served.

In view of the above, findings as above, the appeal is dismissed.

As the appellant has already served the sentence he is not required to serve any part of the sentence.

Send back the relevant case records to the learned Court below along with the copy of this judgment and order.

Photostat certified copy of this judgment and order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(*Rabindranath Samanta, J.*)

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