IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 65 of 1998

Tarun Kanti Chattaraj

Vs.

The State of West Bengal.

For the Appellant	: Mr. Niladri Sekhar Ghosh, Ms. Srimoyee Mukherjee, Ms. Sompurna Chatterjee, Mr. Sourov Mondal.
For the State	: Mr. Md. Kutubuddin.
Heard on	: 27.06.2022
Judgment on	: **03.08.2022**

Shampa Dutt (Paul), J.:

The appeal

The appeal is against the judgment and order dated 12.02.1998 passed by the Ld. Additional Sessions Judge, 1st Special Court, Bankura convicting the appellant for commission of offence punishable under Section 409 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 1 ½ years and to pay a fine of Rs. 500 in default to suffer rigorous imprisonment for 6 months more.

Prosecution case

Amar Kumar Mandal, Sub-divisional Inspector, Postal, Bankura, North Sub-division, lodged a FIR with Officer-in-charge, Barjora Police Station on 06.08.1990 to the effect that on departmental inquiry the appellant while working as **Extra Departmental Branch Postmaster** of Dadhimukha E.D.B.O. (Extra Departmental Branch Office) accepted on 07.07.1989 being the amount of premium for the months of February, 1989 to June, 1989 including defaulting surcharge from the depositor of Dadhimukha 5 years R.D.A/c. No.10827. The appellant made entry of the deposit in the said R.D. Pass Book with date stamp impression and manuscript dates and also put his dated initial but did not credit the said amount to the account of the Post Office either on that date or on any subsequent date. On receipt of a complaint from the Sub-Postmaster, Beliatore Sub Office through Senior Superintendent of Post Offices, Bankura Division under his office letter no. L3/Misc-05/10/89-90 dated 16.10.1989, the complainant carried out a departmental inquiry and it transpired that the appellant formerly Extra Departmental Branch Postmaster of Dadhimukha E.D.B.O. accepted a sum of Rs. 947.52 on 12.02.1986 for crediting the amount in the S.B.A/c. No. 223351 in the name of Dadhimukha B.B.Vidyalaya P.F. (public account). The appellant entered the amount in the relevant Pass Book showing the balance after deposit as Rs. 25,548-46 duly authenticated by his initial and date stamp impression of the Post Office. The said amount accepted for deposit on 12.02.1986 was not credited to the Govt. A/c. on the date of acceptance of the money. The appellant credited the money to the Govt. A/c. on a very later date and accounted for the amount in the books of accounts of the office on 02.04.1986. Thus, the appellant did not credit the amount deposited in the Govt. A/c. on the actual date of transaction and failed to credit the same from 12.02.1986 to 06.11.1989. Further, on enquiry it transpired that the amounts shown as below in Dadhimukha S.B. Pass Book A/c. No. 223351 with date stamp impression and manuscript dates and dated initials of Sri Chattaraj (appellant) had not also been credited to the Govt. A/c.

Date of deposit	**Amount of deposit**	**Balance after deposit**	**Remarks**
08.12.1986	987=48	30,424=98	-
13.01.1987	493=75	30,918=73	-
16.02.1987	493=75	31,412=48	-
21.03.1987	493=78	31,906=23	-

16.04.1987	493=75	32,399=98	-
19.05.1987	508=75	32,908=73	-
11.06.1987	508=75	33,417=48	Balance shown wrongly in PB-33419=48
18.09.1987	1523=98	34,941=46	Date stamp wanting Balance shown wrongly Rs. 34943=46

However, it has been further stated by the complainant (PW 1) that on a later stage the appellant admitted his guilt and voluntarily credited the entire amount to the Govt. A/c. in two instalments on 19.10.1989 and on 06.11.1989 against the said defalcation.

On completion of investigation the police submitted chargesheet against the appellant for offence punishable under Section 409 IPC.

The defence case before the Trial Court is of innocence and being falsely implicated.

Charge was framed and the appellant pleaded not guilty and claim to be tried. In course of trial prosecution examined 11 witnesses and exhibited a number of documents marked exhibit 1 to 13.

On conclusion of trial, the Trial Judge by the judgment under appeal dated 12th February, 1998 convicted and sentenced the appellant as stated.

<u>Defence</u>

The Ld. Lawyer for the appellant submitted that charge as framed against the appellant to the extent that he defalcated an amount of Rs. 5503.96 is by excluding the amount of Rs. 103 in respect of Account no. 10827. No separate charge has been framed in this respect. It is the specific case of the defence that the depositors have not claimed that there has been defalcation in respect of their accounts. It has been alleged that the offence has been committed between 12.02.1986 to 06.11.1989 but the date of defalcation as alleged do not support said dates. That the Secretary of the Dadhimukha B.B.Vidyalaya (PW 7) has also not supported the prosecution case and she was declared hostile. The complainant in his cross examination has stated that the entire amount as alleged to have been defalcated was credited to the Government by the appellant voluntarily, but on subsequent dates.

In view of the evidence on record and facts, the defence has submitted that the appellant is thus entitled to get benefit of doubt, as the prosecution has not been able to prove their case against the appellant beyond all reasonable doubt and as such he is entitled to acquittal and the judgment and **conviction under appeal is liable to be set aside**.

<u>Prosecution</u>

The Ld. Additional Public Prosecutor has argued that the Trial Court came to the right finding by holding that the charge under Section 409 of the Indian Penal Code has been proved against the appellant by way of oral and documentary evidence beyond all reasonable doubt and that the Trial Judge rightly came to the findings and convicted the appellant. **Hence the appeal is liable to be dismissed**.

Evidence

The evidence before the Trial Court.

PW 1 is the complainant Amar Kumar Mandal. He was posted as Sub-divisional Inspector, Postal, Bankura North Sub-division on 25.08.1990. At that time the appellant was posted as Postmaster in Dadhimukha Post Office. This witness being authorized by the Senior Superintendent of Post Offices, Bankura inspected S.B. A/c. No. 223351 (Exhibit 8). The said Public account was in the name of B.B. Vidyalaya P.F. Nine defalcations were found in the said Pass Book on several dates. As the appellant could not give any satisfactory application he was suspended from service. On being asked by the complainant the appellant deposited the amount on two dates that is 19.10.1989 and 06.11.1989. On inspection of R.D. Account no. 10827 (Exhibit 7) defalcation was found and on being asked again the appellant deposited the defalcated amount. A written complaint was filed and it was proved before the Court and PW 1 also identified the appellant on Dock.

Complainant's further evidence is that as per rules all transactions are shown in the S.B. Journal (Exhibit 10) and B.O. Account Book (Exhibit 10/1 and 11/1) on the same date, but the appellant did not do so. He subsequently deposited the said amount.

Exhibit 8/3 shows that an amount of Rs. 493.75 was deposited on 16.02.1987 in S.B. Account no. 223351 and the same was authenticated by the appellant Postmaster in the Pass Book, but Exhibit 10/3 and 11/3 show that the transaction was not reflected in the S.B. Journal and B.O. Account Book on the relevant date.

Exhibit 8/4 shows that an amount of Rs. 493.75 was posted on 21.03.1987 in S.B. Account No. 223351 and the same was authenticated by the appellant Postmaster in the Pass Book, but Exhibit 10/4 and 11/4 show that the transaction was not reflected in the S.B. Journal and B.O. Account Book on the relevant date.

Exhibit 8/5 shows that an amount of Rs. 493.75 was deposited on 16.04.1987 in S.B. Account no. 223351 and the same was authenticated by the appellant Postmaster in the Pass Book, but Exhibit 10/5 and 11/5 show that the transaction was not reflected in the S.B. Journal and B.O. Account Book on the relevant date.

Exhibit 8/6 shows that an amount of Rs. 508.75 was deposited on 19.05.1987 in S.B. Account no. 223351 and the same was authenticated by the appellant Postmaster in the Pass Book, but Exhibit 10/6 and 11/6 show that the transaction was not reflected in the S.B. Journal and B.O. Account Book on the relevant date.

Exhibit 8/7 shows that an amount of Rs. 508.75 was deposited on 11.06.1987 in S.B. Account no. 223351 and the same was authenticated by the appellant Postmaster in the Pass Book, but Exhibit 10/7 and 11/7 show that the transaction was not reflected in the S.B. Journal and B.O. Account Book on the relevant date.

Exhibit 8/8 shows that an amount of Rs. 1523.98 was deposited on 18.09.1987 in S.B. Account no. 223351 and the same was authenticated by the appellant Postmaster in the Pass Book, but Exhibit 10/8 and 11/8 show that the transaction was not reflected in the S.B. Journal and B.O. Account Book on the relevant date.

Further evidence of the complainant is that the appellant further defalcated an amount of Rs. 103 deposited on 07.07.1989 in respect of R.D. Pass Book no. 10827 in the name of Animesh Mukherjee. The said amount was entered by the appellant in the Pass Book but the same was not reflected in R.D. Journal and B.O. Account Book. Endorsement in the Pass Book has been marked Exhibit 9/1 and R.D. Journal in Exhibit 12. The total amount allegedly defalcated by the appellant was a sum of Rs. 5606.96. On being cross examined the complainant has admitted that the B.O. summary is maintained by the Accounts Officer in respect of the all Branch Offices under his control and that in every Post Office Postmaster is supposed to maintain a book of the Postmaster, and has admitted that he did not examine the book of the Postmaster as it was not required. He has further stated that the counterpart of pay in slip was not produced by the depositor before him as at that time pay in slip in two parts was not used.

PW 2, 3 & 4 are staff & officers of the department and are seizure witnesses.

PW 6 is the Police Officer who recorded the formal FIR.

PW 7 Aloka Chakrabartty who was a teacher of Dadhimukha B. B. Vidyalaya in the year 1979 in the absence of the Headmistress, she looked after the accounts of the school herein being S.B. Pass Book no. 223351. The evidence of this witness is very relevant to the present case which is being reproduced as follows:-

" I cannot say who has written that Pass Book. The P.F. Amount of the teachers and non-teaching staff of Dadhimukha Bireswar Jr. High School was deposited at Dadhimukha P.O. one Postal Inspector came to our school in 1989 (on a day). I was present in the school at that time. The Inspector did not show me the Pass Book which is marked 'X' for identification. While she was an operator of the S.B. A/c. relating to P.F., some amount was deposited in that S.B. A/c. but she could not remember if any amount was deposited in that S.B. A/c. in 1986-87. She admitted that she made a statement to the Postal Inspector on 23.10.89 and 06.11.89, but she did not make this statement out of her own accord."

PW 8 was declared hostile by the prosecution. This witness though declared hostile has categorically stated in his evidence that there was no defalcation in respect of the amount of Rs. 740 deposited in his Account no.

10827 on 11.09.1989. This witness has further stated he did not notice any discrepancy in the balance in his Pass Book on 10.11.1989 and 28.11.1989.

PW 9 Krishnadas Chattaraj was the Secretary of Dadhimukha B. B. Vidyalaya from 1972 to 1982. This witness is not a relevant witness as he was not the Secretary of the School from 1982 to December 1989. But has categorically further stated that during his tenure there was no discrepancy in their account. This witness was also declared hostile by the prosecution.

PW 10 has identified the handwriting of the appellant being conversant and has stated that though he signed Exhibit 6 and 7 as per instruction of the Inspector he cannot say on what he put his signature.

PW 11 is the Investigating Officer in this case. He seized the relevant documents in this case examined witnesses collected sanctioned order (Exhibit 13) and submitted chargesheet. On being cross examined this witness has categorically stated that he did not seize any document from Dadhimukha High School.

Analysis of evidence

The oral evidence and documentary evidence as recorded by the Trial Court shows that the complainant filed a written complaint against the appellant on 25.08.1990 on the basis of which Barjora P.S. case no. 44 of 1990 under Section 409 IPC was started. The written complaint (Exhibit 1) was filed on conducting a Departmental Inquiry.

It was found that the appellant while working as Extra Departmental Branch Postmaster, Dadhimukha, E.D.B.O. :-

(1) On 07.07.1989, accepted a sum of Rs. 103/- as premium for the months of February 1989 to June 1989 including defaulting surcharge from the depositor (PW 8) of R.D. Account no. 10827 and made the relevant entry in the R.D. Pass Book with date, stamp and initial.

Offence as alleged by the complainant in this matter is that the appellant did not credit the said amount to the account of the post office (S.B. Journal and B.O. Account Book).

(2) On 12.02.1986 the appellant allegedly accepted a sum of Rs. 947.52 paisa for crediting the amount in the Savings Bank Account no. 223351. The appellant made the relevant entry in the Pass Book of Dadhimukha B. B. Vidyalaya P.F. with initial and stamp. It is alleged that the said amount was also not credited to the Government Account (S.B. Journal and B.O. Account Book) on that day, but at a later date on 02.04.1986.

(3) The complainant has stated that the following deposits shown in Dadhimukha S.B. Pass Book deposits shown in Dadhimukha S.B. Pass Book (A/c. No. 223351) with date stamps impression and manuscript dates and dated initials of the appellant formerly E.D.B.O./Dadhimukha E.D.B.O. have not been credited in the

Government A/c. and no respective entries made in the relevant books of account.

Date of deposit	Amount of deposit	Balance after deposit	Remarks
08.12.1986	987=48	30,424=98	-
13.01.1987	493=75	30,918=73	-
16.02.1987	493=75	31,412=48	-
21.03.1987	493=78	31,906=23	-
16.04.1987	493=75	32,399=98	-
19.05.1987	508=75	32,908=73	-
11.06.87	508=75	33,417=48	Balance shown wrongly in PB. Rs. 33419=48
18.09.87	1523=98	34,941=46	Date stamp wanting balance shown wrongly Rs. 34,943=46

The Complainant has stated that the appellant allegedly admitted his guilt and credited the entire amount to the Government Account in two installments that is on 19.10.1989 and 06.11.1989.

Charge was framed against the appellant to the effect "that on 18.05.94 on the allegation that in his capacity as E.D.B.O. Postmaster **between 12.02.1986 and 06.11.1989** at Dadhimukha E.D.B.O. he being a public servant in the employment as Postmaster of the said Branch Post Office was entrusted with certain property, viz Rs. 5504.86p. and he committed criminal breach of trust in respect of the said amount" and accordingly charge was framed against the appellant for offence punishable under Section 409 of the Indian Penal Code.

Section 409 Indian Penal Code:-

409. Criminal breach of trust by public servant, or by banker, merchant or agent. – Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ingredients of offence:-

The essential ingredients of the offence under Section 409 are as follows:-

(1) Accused was a public servant, or a banker or merchant or agent or factor or broker or an attorney;

(2) In such capacity accused was entrusted with certain property or he gained domain over such property which was not his own;

(3) Accused committed criminal breach of trust with respect to such property.

The Trial Court considering the evidence on record both oral and documentary came to a finding of guilt of the appellant and convicted him under Section 409 of the Indian Penal Code and sentenced him to suffer 2 for ½ years and to pay a fine Rs. 500 i.d. to suffer 2 ½ and 3 months more.

The Trial Court believed the evidence of PW 1 to the extent that on the basis of a Departmental Inquiry, the alleged defalcation by the appellant was detected and he was suspended accordingly. No documents relating to the proceedings of the Departmental Inquiry was produced before the Trial Court by the prosecution. Nor did the Trial Court call for the same to prima facie see the basic document which is very foundation of the present case. The Trial Court further came to a finding that as the relevant entries were made in the Pass Book and the same allegedly not being entered in the relevant registers, there was **temporary defalcation.**

The Trial Court further held that the prosecution case to the effect that the amount received in respective Saving Accounts were noted in the respective Pass Books but the said amount was not entered in the relevant S.B. Journal and B.O. Accounts Book. Subsequently it is alleged that on the direction of the complainant the appellant allegedly deposited the defalcated amount in the Government Account.

The essential ingredients to constitute an offence under Section 409 of the Indian Penal Code has already been noted above.

Firstly a person has to be a **Public Servant** ……… In the present case admittedly the appellant was working as an Extra Departmental Branch Postmaster of Dadhimukha E.D.B.O. at the relevant time.

An **Extra Departmental** Postmaster is governed by a body of rules called the posts and telegraphs **Extra Departmental** Agents (conduct and service) Rules, 1964 issued under the authority of the Government of India.

Rule 2 (b) of the Rules defining "**Extra Departmental** Agent" includes within the category among others **Extra Departmental** Branch Postmasters.

The Supreme Court held in **Superintendent of Post Offices Vs. P.K. Rajamma etc.** (1977 AIR 1677, 1977 SCR (3) 678) that **Extra Departmental** Agents **held Civil posts** under the Union of India.

The Court considered the explanation as to what the **'Civil post'** is, in **State of Assam and others Vs. Kanak Chandra Dutta (1967 AIR 884, 1967 SCR (1) 679)**.

The Court observed:-

> *"….. a civil post means a post not connected with defence and outside the regular civil services. A post is a service or employment …… There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration."*

The Court also held in **Superintendent of Post Offices Vs. P.K. Rajamma** (1977 AIR 1677, 1977 SCR (3) 676).

> *"…. it is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State."*

The Court further held:-

> *"…. the rules make it clear that these extra departmental agents work' under the direct control and supervision of the authorities who obviously have the right to control the manner in which they must carry out their duties. There can be no doubt therefore that the* ***relationship*** *between the postal authorities and the* ***extra departmental*** *agents* ***is one of master and servant****."*

Admittedly it is the case of the prosecution that the appellant was posted as an **Extra Departmental** Postmaster of Dadhimukha Sub Post Office and was thus under the direct control and supervision of the postal authorities and the relationship between the postal authorities and the said **Extra Departmental** Agent is one of master and servant.

PW 1 has clearly stated in this evidence that "….. on receiving the pay in slip the Postmaster makes entry in the daily account, a part of it is kept in his custody and the Accounts Office after receiving that pay in slip incorporated that amount in the register. After incorporating the transaction in the account, the Accounts Officer sends the same to the Head Office. The Head Office is to prepare the consolidated stamp of the account, enter the amount in the Ledger Book and used to send to Savings Bank Control Organization. **One B.O. Summary is maintained by the Accounts Officer in respect of all the Branch Offices under his control**. In every Post Office the Postmaster is supposed to maintain one book known as book of Postmaster.

In the present case the **Extra Departmental** Postmaster being the convict/appellant was under the direct control and supervision of the postal authorities, more so specifically the Accounts Officer, who in turn sent all the registers to the Head Office. The Accounts Officer maintains the B.O. summary in respect of all the Branch Offices under his control. The laches on the part of the appellant as allegedly detected by the complainant was neither supervised nor detected by the postal authorities who were in control and had power of supervision over the daily work of the **Extra Departmental** Postmaster. The complainant in this case went for inspection on the strength of a letter written by the Senior Superintendent of Post Office, Bankura. Surprisingly, the Accounts Officer who was admittedly in control and also had the power of the supervision over several Branch Offices including that of the appellant, was neither examined nor was any statement produced before the Court.

A Criminal trial commences with the framing of charge. In the present case charge was framed by the Ld. Special Judge, on 18th May, 1994. **The charge** read over and explained to the appellant was as follows:-

"That you on or about the **12th day of February, 1986 to 6th November, 1989** at Dadhimukha E.D.B.O. Branch Post Office, P.S. Barjora, District Bankura, being a public servant in the employment as Postmaster of the said Branch Post Office and in such capacity entrusted with certain property as such the amount of Rs. 5503.96p. (Rupees five thousand five hundred three and ninety six paisa) only, to wit committed criminal breach of trust of the said amount."

Section 212 of the Cr.P.C. provides:-

(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and

the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219:

Provided that the time included between the first and last of such dates shall not exceed one year.

In this case the charge as framed by the Trial Court includes the period from the **12 day of February, 1986 to 6th November, 1989** which is not in accordance with Section 212 of Cr.P.C. as the period herein **exceeds beyond the period of 1 year**.

Though the charge framed is not in accordance with Section 212 of Cr.P.C. this Court has to keep in mind **Section 215 of the Cr.P.C.** which lays down :-

<u>Section 215 in the Cr.P.C., 1973</u>

Effect of errors. – No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

The **Supreme Court** in Criminal Appeal no. 1051-1054 of 2021 with Criminal Appeal no. 1055-1059 of 2021, (**Nasib Singh Vs. The State of Punjab**) vide judgment dated 8th October, 2021 laid down the **principle on retrial** in paragraph 28 of the judgment as follows:-

“**The principles that emerge from the decisions of this Court on retrial can be formulated as under:-**

(i) The Appellate Court may direct a retrial only in ‘exceptional’ circumstances to avert a miscarriage of justice;

(ii) Mere lapses in the investigation are not sufficient to warrant a direction for retrial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed;

(iii) A determination of whether a ‘shoddy’ investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence;

(iv) It is not sufficient if the accused/prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the Appellant Court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process;

(v) If a matter is directed for re-trial, the evidence and record of the previous trial is completely wiped out; and

(vi) 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.”

So even if it is seen that the charge framed by the Trial Court in this case was not in accordance with the provision of Section 212 of Cr.P.C, the circumstances in the present case **do not warrant a retrial**. More so in view of the fact that there is exhaustive oral and documentary evidence on record for consideration of the Court. Section 215 of Cr.P.C. has to be also kept in mind while considering if a case is to be remitted for retrial. The materials on record in this case also do not come under any of the grounds for retrial as laid down by the Supreme Court in the judgment under reference.

The Trial Court relied upon the following entries in the relevant documents:-

(1) Passbook in respect of Dadhimukha B.B.Vidyalaya P.F. Account no. 223351 (marked **Exhibit 8** and entries marked **Exhibit 8** series).

(2) R.D. Passbook Account no. 10827 of Animesh Mukherjee (marked **Exhibit 9**) and the relevant entry has been marked as **Exhibit 9/1**.

(3) S.B. Journal marked **Exhibit 10** series.

(4) Entries made in Passbook marked **Exhibit 9,** subsequently entered in the R.D. Journal and B.O. Account have been marked as **Exhibit 11** and **12** series.

On perusal of the Branch Office accounts book for the period from 01.08.1988 to 31.08.1989, it is found that the entries in **each page** of the accounts book is checked and verified by a superior officer. The register, on the relevant date that is 07.07.1989 shows no entry. The next register is for the period from September, 1989 to August, 1990 in respect of Beliatore, Sub-Post Office. This register also is duly verified by the superior authority (marked 'X' for identification). The charge was framed for the period from February, 1986 to 6th November, 1989.

It is the case of the prosecution that the appellant voluntarily deposited the total defalcated amount on two days that is on 19.10.1989 and 06.11.1989. On scrutiny of the entry dated 19.10.1989 in the said register, there is an amount of Rs. 5503.96 which has been noted on the top as non credit of the amount of deposit in Dadhimukha S.B. Account no. 223351 for the period of 08.12.1984 to 18.09.1987 by the Branch Postmaster Dadhimukha. But the said entry has not been proved before the Court nor marked as Exhibit. The total register has been marked 'X' for identification but the relevant entry has not been proved thus not marked Exhibit. In respect of alleged deposit of the defalcated amount on 06.11.1989. It is seen that an entry of Rs. 103 has been put in the column of unclassified. The said entry has also not been proved, thus not marked Exhibit.

The **S.B. Journal** for the period from 19.12.1984 to 27.10.1989 of Dadhimukha Branch Post Office shows that the **entries** in the said Journal, have been **made by several persons**, as it shows that the said Journal contains entries in **different handwriting**. As such the said Journal prima facie was not maintained by one single person.

Exhibit 10 shows an entry dated 06.12.1986 wherein the total amount of deposit on the said day amounting to Rs. 4335.72 has been marked as **Exhibit 10/1** and the said Journal has been marked as **Exhibit 10**. The relevancy of this **Exhibit 10/1** in Journal marked **Exhibit 10** has not been specifically discussed by the Trial Judge. The said amount has also not been mentioned in the formal change **Exhibit 8** series, Passbook of the P.F. Account no. 223351 of Dadhimukha B.B.Vidyalaya shows entries as follows:-

Date	Amount	Exhibit
08.12.86	987.48	8/1
13.01.87	493.75	8/2
16.02.87	493.75	3
21.03.87	493.75	8/4
16.04.87	493.75	8/5
19.05.87	508.75	8/6
11.06.87	508.75	8/7
18.09.87	1523.98	8/8

The S.B. Journal does not show any entry dated 08.12.1986.

The entry in the Passbook amounting to Rs. 493.75 is not shown in the S.B. Journal on the relevant date that is 13.01.1987, but the same has neither been proved nor marked Exhibit before the Trial Court. The blank space after the date 15.01.1987 in the S.B. Journal has been marked as **Exhibit 10/2**. There is no such entry dated 15.01.1987 in the Passbook marked **Exhibit 8**. The Trial Court held that **Exhibit 10/1** series are entries in S.B. Journal but no comparison has been made relating to the said entries with the respective Passbook. As such the entry marked **Exhibit 10/2** has not been explained as there is no such connected entry in the Passbook marked **Exhibit 8. Exhibit 8** being P.F. Account no. 223351 and **Exhibit 9** being Passbook of Account no. 10827. The Trial Court did not compare **Exhibit 10/2** with **Exhibit 8** and **9**.

Exhibit 10/3 shows several entries dated 16.02.1987 entered in the S.B. Journal. **Exhibit 8** which is the relevant Passbook shows an entry of Rs. 493.75, in P.F. Account no. 223351. Though the said amount is not reflected in the S.B. Journal, there are several entries in respect of other accounts. **Exhibit 8/8** appears to be in a different handwriting.

Exhibit 10/4 is an entry marked 24.03.1987. The entry marked **Exhibit 10/4** is not clear as to whether the said entry is dated 24.03.1987, as it is seen that **there is an entry** in the S.B. Journal between the date 20.03.1987 and 24.03.1987.

Exhibit 8 shows no entry dated 24.03.1987. The entry marked **Exhibit 10/4** is not clear as to its relevancy with the entry dated 21.03.1987 in **Exhibit 8**. Though it is found that the entry dated 21.03.1987 has not been entered in the said S.B. Journal, the said entry marked **Exhibit 8/4** has not been compared with the S.B. Journal nor proved nor marked Exhibit.

The next disputed entry in **Exhibit 8** is dated 16.04.1987. **Exhibit 10/5** is entry dated 16.04.1987 in the S.B. Journal. The entry dated 16.04.1987 in **Exhibit 8** has been marked **Exhibit 8/5.** There is no such connected entry in the S.B. Journal (proved).

Entry marked **Exhibit 8/6** dated 19.05.1987 also does not figure in the entries dated 19.05.1987 marked **Exhibit 10/6** in the S.B. Journal (proved).

Next entry dated 11.06.1987 in **Exhibit 8** is marked **Exhibit 8/7.** The entries dated 11.06.1987 in S.B. Journal marked **Exhibit 10/7** does not show the said entry marked **Exhibit 8/7** (proved).

The next entry dated 18.09.1987 marked **Exhibit 8/8** has also not been entered in the S.B. Journal dated 18.09.1987 (marked **Exhibit 10/8)**.

From the said comparison of the entries in the S.B. Journal and the Passbook marked **Exhibit 8** it is found that the prosecution has clearly proved that some of the entries marked **Exhibit 8** series have not been entered in the S.B. Journal (Exhibit 10 series). Some of the entries and the dates do not tally with the dates in **Exhibit 8** but as discussed above it is clear that the entries in **Exhibit 8** were not entered on the respective dates in the S.B. Journal (Exhibit 10 series).

It is the case of the complainant that on being asked the appellant voluntarily deposited the defalcated amount subsequently. The said deposits on 19.10.1989 and 16.11.1989 though shown in the register, **were not proved** before the Trial Court. But the register produced show the said deposits.

Pass Book of Account no. 10827 has been marked **Exhibit 9** as a whole. **Exhibit 11** series is the relevant B.O. Account Book and entries therein, which show that the entries were also not made in the said B.O. Account Book.

Exhibit 12 is the R.D. Journal which also proves that the entries in the relevant Pass Book, were not entered on the relevant date in the respective registers.

Thus from the said registers and the relevant Pass Books produced, proved and exhibited before the Trial Court, it is seen that the prosecution has been able to prove beyond reasonable doubt that the appellant being in charge of the Sub-Post Office Dadhimukha as an Extra Departmental Postmaster has failed to make relevant entries in the respective Journals on the date of deposits as entered in the Pass Books. It has also been admitted by the complainant and the prosecution that the appellant/convict subsequently voluntarily deposited the said amounts, which is reflected in the Beliatore Sub-Post Office Register. It has also been admitted by the complainant that all the Branch Post Office along with other Branch Office was under the supervision of an Accounts Officer and that the B.O. Summary was also maintained by the said Accounts Officer in respect of all Branch Offices under his control. It is also seen that **each page** of the registers produced bear an endorsement to the effect that it is checked and verified by the authorized person. Inspite of the said supervision, the defalcation was not detected by the supervising authority thus providing opportunity to commit the crime. These lack of supervision or control by the authority creates the circumstances to commit such defalcation/fraud.

PW 2, PW 3 and PW 4 are staff and officers of the Postal Department and seizure witnesses.

PW 7 Aloka Chakrabartty is the person concerned in respect of **Exhibit 8** being the Pass Book of P.F. Account no. 223351. This witness on oath could not even recollect if she has seen the Pass Book marked **Exhibit 8**, though it relates to the school Dadhimukha B.B.Vidyalaya where she was in-charge to look after the account in the absence of the Headmistress.

PW 8 is the account holder of Account no. 10827 marked **Exhibit 9**. This witness has categorically stated that he did not notice any discrepancy in his Pass Book.

The Trial Court rightly held that these witnesses were not persons who could depose anything relating to the relevant entry in the respective Journals as they had access to only their own Pass Books and not the Journals of the Post Office.

The identification of the appellant has not been challenged. The handwriting has been denied by the appellant but the same has been proved by **PW 10 Ashoke Rajguru** who was conversant with the handwriting of the appellant. He has also deposed that the appellant wrote the petition marked as **Exhibit 6** and **7** in his presence and signed the same.

<u>Motive of Crime.</u>

Motive in a case of defalcation is primarily for personal gain.

The dictionary defines:-

Defalcation as:-

(1) misappropriation of money or funds held by an official, trustee, or other fiduciary.

(2) the sum misappropriated.

Fraud as:-

Wrongful or criminal deception intended to result in financial or personal gain.

Fraud Triangle

In order to deter, detect and investigate fraud, one must understand how and why people commit fraud. The concept states that there are three components which, together, lead to fraudulent behavior. They are:-

(1) a perceived un-shareable financial need (motive/pressure),

(2) a perceived opportunity to commit fraud, and

(3) the rationalization of committing the fraud.

Motive/Pressure

(1) Personal financial pressure.

(2) Addiction.

Opportunity

(1) Lack of internal control.

(2) Senior management not watching.

Rationalization

(1) “I haven’t received a raise”.

(2) “ It’s only a loan: I’ll pay it back.”

The “opportunity” element of the fraud triangle refers to the circumstances that allow fraud to occur. Even in organizations with an excellent control environment, fraud is possible if employees circumvent controls being placed in a position of complete trust. There may be collusion among employees or a lack of adequate management review. There is a nearly endless list of reasons a person would feel compelled to commit fraud. It could be personal financial problems, such as mounting medical bills, gambling debts or a spouse laid off from their job, employee’s compensation tied to financial performance, or greed. Rationalization of committing fraud involves fabricating a moral excuse to justify the fraud. Many fraudsters view themselves as honest, ordinary people and not as criminals, so they have to come up with some reasoning to reconcile the act of committing fraud.

From the above discussion and definition it can only be held that as the appellant was In-charge of Dadhimukha Sub Post Office being the Extra Departmental Sub Postmaster, was in **total control** of the daily affairs of the said Post Office and as such the circumstances provided him with opportunity to commit the crime. The materials on record also prima facie show that there was no proper supervision over the functioning of the Sub Post Office. The circumstances of there being any financial need has not been proved before the Trial Court by the prosecution. As such the Court can only come to the finding that the appellant's sole motive was for illegal financial gain.

Conclusion

The analysis of evidence as discussed above clearly proves the prosecution case beyond reasonable doubt. The innocence of the appellant has not been proved, nor caused any shadow of doubt over on the prosecution case.

From the findings based on both oral and documentary evidence it is seen that the Trial Court came to the right finding and it has been established by the prosecution that the appellant as a public servant committed criminal breach of trust in respect of an amount of Rs. 6555.28 paisa (altered at the time of judgment).

This is a very old case dated 06.08.1990 relating to alleged defalcation for the period from February, 1986 to November, 1989.

The incident occurred more than 30 years back. Thus considering the case of the prosecution and the complainant, that it was a case of the temporary defalcation, as the amounts were subsequently deposited

voluntarily by the appellant, and the facts and circumstances of the case/the materials on record, this court is of the view that if the sentence of the appellant is modified to a certain extent keeping in mind the age of case (almost 30 years) and **the hope that the appellant during all these years (almost 30 years) had the opportunity of introspection and the feeling of regret, the same shall serve the interest of justice**.

The initiation, trial, conviction and appeal has taken away the most important part of the appellant's mental, social and working life.

Substantive sentence imposed on the appellant is accordingly modified and he is directed to suffer rigorous imprisonment for a period of 25 (twenty five) days. The sentence of fine imposed by the Trial Court is enhanced to a sum of Rs. 10,000 (ten thousand) in default to suffer rigorous imprisonment for 6 months more for offence punishable under Section 409 of Indian Penal Code.

Bail bond of the appellant is cancelled. The appellant is directed to surrender forthwith and serve out the remainder of his sentence (if any) within one month from date.

In the event he fails to do so, trial court shall take appropriate steps to apprehend him and execute the sentence in accordance with law.

The period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentences imposed upon him in terms of Section 428 Cr.P.C.

The appeal is, allowed to the aforesaid extent.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)