

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 845 of 2004

Bihit Kumar Ganta

....

Petitioner

Mr. P.C. Chhinchani, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. Ishwar Mohanty

Additional Standing Counsel

**CORAM:
THE CHIEF JUSTICE**

ORDER

16.09.2022

Order No.

07. 1. Questioning the Judgment of the Adhoc Additional Sessions Judge, (FTC) Gunupur, dismissing the Criminal Appeal No.119 of 2002, filed by the Petitioner, which in turn confirmed the judgment and order dated 10th January 1996, passed by the learned Civil Judge (Sr. Divn.)-cum-J.M.F.C., Gunupur in G.R. Case No.157 of 1994 (T.R. No.76 of 1995), convicting the present Petitioner for the offence punishable under Section 409 of IPC and sentencing him to undergo Rigorous Imprisonment (RI) for two years and to pay a fine of Rs.1,500/- and in default to undergo RI for six months, the present revision petition has been filed.
2. It requires to be noted here at the outset that by an order dated 15th December 2004, the Petitioner was directed to be enlarged on bail and the realization of the fine amount was stayed.

3. The case of the prosecution was that on receipt of a complaint, the Postal Inspector, Gunupur held an enquiry at the Branch Post Office, Puttasing on 20th December, 1993. During the enquiry, he found there had been misappropriation of Government money in various Savings accounts, Recurring Deposit accounts and Money orders, received in the said Post Office. The Postal Inspector then informed the Senior Superintendent of Post Offices (SSPO), Koraput-Jeypore, who also enquired into the matter. The SSPO, after obtaining clearance from the Post Master General, Berhampur Region, directed the Postal Inspector, Gunupur to lodge an FIR at the Puttasing Police Station.

4. During enquiry, the Police seized 48 R.D. Pass books, S.B. Pass books, R.D. and S.B. Journals, money order receipts, appointment orders and leave application of the present Petitioner/accused. The statement in writing given by the Petitioner before the SSPO, was also seized. It was found that the Petitioner, who was the Post Master of the Puttasing Branch office at the relevant time, had misappropriated a sum of Rs. 13,908. After completion of investigation, a charge sheet was submitted against the present Petitioner.

5. The defence of the Petitioner was that he had accounted for all the R.D. and S.B. Deposits and entered them in the respective Journals; he had also sent money order amounts to the addressees, but, a false case had been foisted against him by manufacturing the S.B. and R.D. Journals, suppressing the originals and obtaining a confessional statement from him under threat and coercion.

6. The amount stated to have been misappropriated was Rs.13,908/-. It appears that at one stage when the bail petition of the Petitioner was rejected by the Subordinate Court, he filed CRLMC No.2393 of 1994 in this Court. While disposing of the said petition, this Court noted that the Petitioner had deposited, subsequent to the commencement of the case against him, Rs.15000/- and on that basis, directed him to be enlarged on bail.

7. As many as sixteen witnesses were examined on behalf of the prosecution and three on behalf of the defence. The trial Court, on an analysis of the evidence, concluded that the Petitioner, who had been entrusted with the deposited amounts, had himself maintained the relevant Pass books and journals. Ext-54 was the hand written statement of the Petitioner/accused, admitting to having misappropriated the aforementioned sum.

8. The trial Court disbelieved the plea that this was obtained from him under coercion. The trial Court concluded that the entrustment or dominion over the amount by the Petitioner had been clearly established. Further, it was held that even if the Petitioner had deposited the misappropriated sum subsequently, it would still amount to temporary misappropriation which came within the purview of Section 409 of IPC. On that basis, the trial Court proceed to hold him guilty of the aforementioned offence and sentenced him in the manner indicated hereinbefore.

9. The Appellate Court again discussed the entire evidence and came to the same conclusion thereby holding both the conviction and sentence awarded by the trial Court.

10. This Court has again been taken through the evidence by learned counsel appearing for the Petitioner and the Court is unable to find any error having been committed either by the trial Court or the Appellate Court in finding the Petitioner guilty of the offence under Section 409 of IPC. The evidence was quite clear and pointed unerringly to the guilt of the present Petitioner.

11. It was then argued on the strength of the decisions of the Supreme Court of India in *Jaydev Shrichand Danani v. State of Gujarat AIR 1992 SC 2152* and *N.K. Illiyas v. State of Kerala 2012 AIR SCW 2496*, that the sentence should be confined to the period of more than one month already undergone by the Petitioner.

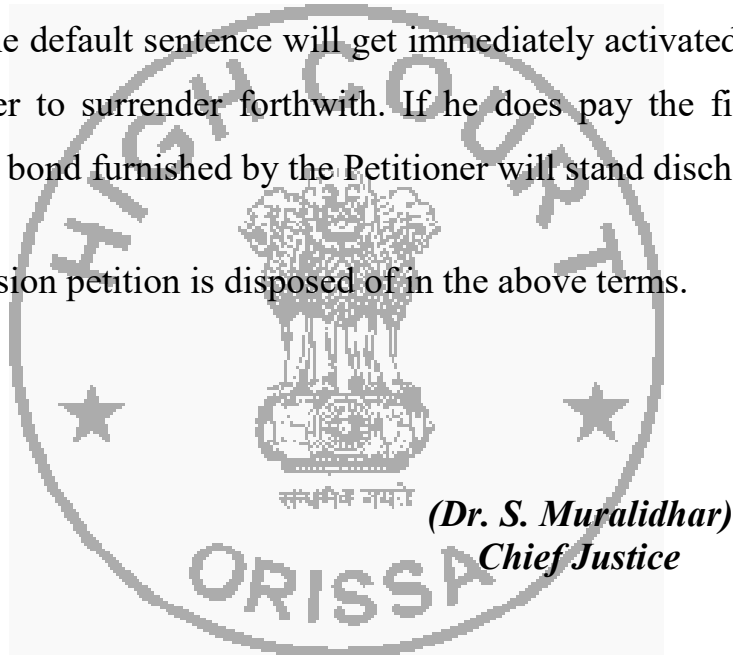
12. This Court has perused both the decisions. In *Jaydev Shrichand Danani v. State of Gujarat (supra)*, the Supreme Court was hearing the appeal in the year 1992, whereas the offence had taken place in the year 1969, which was more than 23 years earlier. Nevertheless, the offence was one under Section 409 of IPC. As far as *N.K. Illiyas v. State of Kerala (supra)* is concerned, the temporary misappropriation was only of a sum of Rs.1,839/- pertaining to the telephone dues for a period of less than one month in the year 1992.

13. As far as the present case is concerned, the offence is of the year 1993, which is about 30 years ago and the amount involved is of

Rs.13,908/-. The age of the present Petitioner appears to be 54 years at present. The Petitioner is stated to have undergone more than a month's imprisonment. He has already deposited back a sum of Rs.13,908/-.

14. Keeping in view all of the above factors, the Court confines the sentence to the period undergone by the Petitioner but increases the fine amount to Rs.15,000/- (which is an addition to the amount already deposited by the Petitioner) while affirming the default sentence of RI of six months. If the fine amount is not paid on or before 1st November, 2022 then the default sentence will get immediately activated, requiring the Petitioner to surrender forthwith. If he does pay the fine amount then the bail bond furnished by the Petitioner will stand discharged.

15. The revision petition is disposed of in the above terms.



S. Behera