

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 651 of 2004

An application under Sections 397 and 401 of the Code of Criminal Procedure, 1973.

AFR Bhabani Shankar Choudhury Petitioner

-Versus-

State of Odisha Opp. Party

Advocate(s) appeared in this case :-

For Petitioner : M/s. S.K. Mund, D.P. Das, J.K. Panda, P.K. Ray & S. Panigrahi, Advocates

For Opp. Party : Mr. S.K. Mishra, Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
20th June, 2022

SASHIKANTA MISHRA, J.

The petitioner in the present revision is an accused in GR case No. 330 of 1995 of the Court of learned Chief Judicial Magistrate, Sundargarh charged for the offence under section 408 of IPC. The said case

corresponds to Hemgir P.S. Case No. 32 of 1995. In the present revision, he has challenged the order dated 01.09.2004 passed by learned trial court in framing charge under section 408 of IPC against him.

2. The prosecution case, in brief, is that a complaint was lodged before the Hemgir Police Station by one Manoranjan Sahu, BDO of Hemgir Block alleging that the petitioner, who was the president of Large-sized Multipurpose Cooperative Society (LAMPCS) of Gopalpur, misappropriated Government money to the tune of ₹2 lakhs meant for IRDP beneficiaries along with one Khyama Sagar Singh, the Ex-Managing Director of the said Society. Investigation was thereafter conducted into the allegations and upon completion of the same, charge-sheet was submitted against the petitioner and the said Khyama Sagar Singh under Section 408 of IPC. The Court below after examining the allegations and the materials placed by the prosecution including statement of the witnesses examined by the investigating officer, held that there is ground for presuming that the accused persons have committed the offence under section 408 of IPC and

accordingly framed charge under the aforementioned Section against them.

Questioning the correctness of the order framing charge as aforesaid, the petitioner has approached this Court in the present revision.

3. Heard Sri H.K. Mund, learned counsel for the petitioner and Sri S.K. Mishra, learned Additional Standing Counsel for the State.

4. Sri Mund has made a two-fold argument: Firstly, being an elected president of the society the petitioner is neither a clerk nor a servant and therefore, Section 408 of IPC is not attracted; and Secondly, entrustment of property/money being the most essential ingredient of the offence under section 408, the same not having been proved, prime facie, framing of charge by learned Court below is not legally tenable.

5. Sri Mishra, on the other hand contends that being elected as the President of the Society does not mean that the Society does not exercise any control over the petitioner, rather he remains responsible to the society. Therefore, there is a fiduciary relationship

between the petitioner and the society for which, he must be treated as a servant of the Society. As regards proof of entrustment, it is contended that several witnesses examined by the I.O. have clearly and unequivocally stated about the role played by the petitioner along with the other accused in misappropriating Government money. Therefore, according to Sri Mishra, learned Court below has rightly framed charge under section 408 of IPC against the petitioner.

6. As regards the question of framing charge, it is trite law that at that stage the Court has to form a presumptive opinion regarding commission of the offence but is not expected to delve deep into the evidence to see whether adequate materials exist to return a finding of guilt against the accused. In other words, all that the Court is required to do at the stage of framing charge is to sift through the evidence and materials placed by the prosecution and to form a prima facie opinion as to whether the same suggest commission of the alleged offence by the accused or not.

7. Coming to the case at hand, as already stated, it is contended that the basic ingredients necessary to constitute the offence under section 408 of IPC are absent. According to Sri Mund, the petitioner was elected as President of Gopalpur LAMPCS. As such, he was required to preside over the meetings and was responsible for policy decisions for smooth management of the institution. Therefore, he is neither a clerk nor a servant of the society.

8. For better appreciation of this contention, it would be proper to examine the relevant provision of law as quoted hereunder:

408. Criminal breach of trust by clerk or servant. —Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Thus, it is clear that in order to constitute the offence under section 408, the following need to be proved:

- i) the accused was a clerk or servant of the person reposing trust which, in the instant case would be the society (LAMPCS);
- ii) in such capacity the accused was entrusted with property or had dominion over it; and
- iii) the accused dishonestly misappropriated such property or converted the same to his own use, etc.

Now the question is, whether the accused petitioner being elected as the President of the Society can be treated as a clerk or servant. As submitted by Sri Mund, in course of hearing, the petitioner was one of the elected members of the Cooperative Society which forms the Board of the Society. The Board is presided over by the President. The Managing Director is the Chief Executive Officer of the Society and sues and can be sued on its behalf. The role of the President is confined to presiding over meetings of the Board which takes policy decisions and therefore, the President has nothing to do with the day-to-day functioning of the Society's affairs.

9. The words 'clerk' and 'servant' have not been defined in the Indian Penal Code. Therefore, they have to be assigned their ordinary dictionary meanings. The Advanced Learner's Dictionary, 9th Edition, refers to 'Clerk' as a person whose job is to keep the records or accounts in an office, shop/store etc. 'Servant' is referred to as a person who works in another person's house, and cooks, cleans, etc. for them; a person who works for a company or an organization. As per Black's Law Dictionary, 7th Edition, 'Clerk' means a public official whose duties include keeping records and accounts; the court officer responsible for filing papers, issuing process, and keeping records of court proceedings as generally specified by rule or a statute or an employee who performs general office work. As per the said dictionary, a 'Servant' means a person who is employed by another to do work under the control and directions of the employer.

10. Thus, it is seen that the term 'servant' has a broader connotation than the word 'clerk'. In other words, a clerk is a person who is engaged to do a specific work by the employer but a servant is a person who can be

assigned with any work by the employer but both are under the control of the employer. If the argument of Sri Mund is accepted it would imply that the elected President, or for that matter the other members of the Society operate beyond its purview, which would obviously be a preposterous proposition. Whether elected or not the President and other members of the board remain individually and collectively responsible to the Society and therefore they cannot, in law, do anything contrary to the Society's interest. To the above extent therefore, even the President would have to be treated as a 'servant' of the Society within the meaning of Section 408 of IPC. The contention raised by Sri Mund cannot, therefore, be accepted.

11. The next point urged by Sri Mund is that even assuming that the petitioner can be treated as a clerk or servant of the society, fact remains that in the absence of clear proof of entrustment of the allegedly misappropriated amount, the charge under section 408 of IPC cannot be framed. A perusal of the FIR and the statement of the beneficiaries/witnesses examined by the

Investigating Officer would reveal that the petitioner is alleged to have collaborated with the Managing Director of the Society to obtain their signatures on blank papers showing payment of government money to them but actually misappropriated the same. In fact, the FIR also reveals that a part of the misappropriated money meant for the IRDP beneficiaries was deposited in the account of the petitioner at Cooperative Bank, Hemgir. This is enough to presume that the petitioner had control over the money in question or at least power to deal with it. Thus, it can be said that he had dominion over the money in question. This would therefore, be a case where government money was transferred to the society for being disbursed to the concerned beneficiaries under the IRDP scheme. The fact that the petitioner and the other accused dealt with the money as alleged is sufficient to hold that the same was deemed to have been entrusted by the society to them and/or they had dominion over it. The argument of Sri Mund in this regard is, therefore, untenable.

12. Having dealt with the preliminary contentions raised by Sri Mund, this Court also deems it proper to examine the materials on record to see if the Court below was justified in framing charge under section 408 of IPC. As already stated, the petitioner was operating in the capacity of a servant of the Society and government money was deemed to have been entrusted to him in such capacity. The FIR allegations are prima facie supported by the statements of the beneficiaries, who were examined by the IO. Most of the said beneficiaries have stated in their Section 161 Cr.P.C. statements that the President and Managing Director obtained their signatures on blank papers and misappropriated the subsidy received from the PD, DRDA. As already stated hereinbefore, the Court at the stage of framing charge is not required to delve deep into the materials on record to ascertain their probative value. All that is required at this stage is to see if the materials on record are sufficient for the Court to presume that the alleged offence was committed by the accused. In view of the above discussion, this Court is left with no doubt that there are sufficient materials to form a

presumptive opinion regarding commission of the alleged offence by the petitioner and therefore, the Court below must be held to have rightly framed charge against the accused petitioner under Section 408 of IPC.

Of course, this does not mean that the right of the accused to raise the contentions also during trial basing on the evidence adduced is foreclosed by this order.

13. For the foregoing reasons therefore, this Court finds no justified reason to interfere with the impugned order. The criminal revision is therefore dismissed. Since the original case is of the year 1995, learned Court below is directed to try and dispose of the same as expeditiously as possible, preferably within a period of eight months from today.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 20th June, 2022/ A.K. Rana