

- 1.** Allegations against the respondent no. 2/accused person, for defalcation of money of the Co-operative Credit Society, entrusted with him, as an office bearer of the said Society, are at the core of the issues, for which the respondent no.2 has faced trial.
- 2.** The judgment and order of acquittal of the trial Court dated May 31, 2011, in Special Court Case No. 15/2001 is under challenge in this appeal. On the basis of the FIR lodged by one Ajit Chowdhuri, Chairman, Employees' Co-operative Credit Society of R.T. Girls' School at

Suri, the Suri Police Station Case No. 14/99 dated 20.01.1999 was started. The FIR was lodged on 20.01.1999, under Sections 406/409/403/467/468/471 of the IPC.

3. The allegation against the respondent no.2/accused person in a nutshell was that while holding office as the Secretary of the said Co-operative Credit Society, and while being assigned with the duty to manage the loan accounts of the members thereof, the said person has defalcated and used for his own wrongful gain a sum of money amounting to Rs.2,82,024/-. Allegedly, he defalcated the money by not repaying the instalments of loan taken by the members of the Society to the Bank, which the members deposited with him as the office bearer of the said Society, for the purpose of repaying the same in bank against respective individual loanee.
4. The trial Court on July 31, 2002 framed charges against the respondent no.2 under Sections 409 and 471 of the IPC. In trial the prosecution has examined as many as fifteen witnesses including the members of the said Co-operative Society, who happened to be the teachers of the said School, the staff of the bank where the Co-operative Society used to maintain the account and the Police Personnel. One person has also been examined as the defence witness.
5. The trial Court proceeded on the premise that the prosecution though has alleged but could not bring on record sufficient evidence including documentary evidence, to substantiate those allegations against the accused persons. The trial Court has discussed the evidence on record in details. It has opined that the necessary documentary proof regarding entrustment of the money with the accused person and his misappropriation of the same by utilising the same for wrongful gain, could not have been brought on record by the prosecution. For this, the

trial Court has finally opined that the allegations under Section 409 and 471 of the IPC against the respondent no, 2/accused person were not proved in trial and ultimately acquitted him by dint of the impugned judgment as above.

6. The propriety of the said impugned judgment has been challenged in this appeal. However, in spite of grant of sufficient opportunity, none appeared to represent the appellant. Under the circumstances, Court appointed Ms. Sibangi Chattopadhyay as amicus curiae, to assist the Court in deciding the appeal.
7. It is pertinent to note in this appeal that neither the de facto complainant nor the State has come up here, to challenge the order of the acquittal of the respondent no.2. Necessary is to look for the provision when an appeal against acquittal can be filed and by whom. For this one may note as regards Sections 378 (1) (b), 378 (2) (b), 378 (4) of the Cr.P.C. Those provisions are extracted as herein below:-

“378. Appeal in case of acquittal.- [(1) Save as otherwise provided in sub- section (2) and subject to the provisions of sub- sections (3) and (5),-

(a) *****

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may,

subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal-

(a) *****

(b) *to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.*

(4) *If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.”*

8. Therefore the statutory scheme is only empowering either the State Government through the Public Prosecutor or the complainant himself (when the case was instituted upon complaint), to initiate an appeal in the High Court against the judgment of acquittal by the trial Court. Pertinent is to note in this appeal, that the appellants are not either any instrumentality of State or complainants themselves. Out of curiosity this Court, when looked into the records, could find the appellants to be the witnesses in the trial. Under such circumstances this Court is constrained to hold that none of the appellants were a party to the trial.
9. Since the appellants were not a party to the trial, therefore the appellants do not have the *locus standi* to maintain this appeal against the judgment of acquittal as impugned. Thus, the appeal should fail on the ground of the appellants having no *locus standi* and the appeal being not maintainable on this count.
10. The findings as above prompt this Court not to go into the merits of the appeal as that would be redundant in view of the fact that the appeal is not maintainable at all.

- 11.** On the discussion as above it is held that the appeal being C.R.A 550 of 2011 fails and is dismissed.
- 12.** Before parting, the Court appreciates the able assistance put in by the Ld. Amicus Curie in this case. Let the High Court Legal Services Committee take necessary steps to pay her fees in accordance with the scale applicable to “Category-A” lawyer in its panel. The same may be paid within a period of one month from the date. A copy of this order be immediately forwarded to the Secretary, High Court Legal Services Committee, for doing the needful.
- 13.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

(Rai Chattopadhyay,J.)