IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 305 of 2001

Lambodar Mondal
-Vs-
The State of West Bengal

For the Appellant (Amicus Curiae)	: Mr. Sauradeep Dutta
For the State	: Mr. Narayan Prasad Agarwala Mr. Pratick Bose
Heard on	: 04.10.2023, 13.12.2023, 18.01.2024, 22.02.2024, 01.03.2024
Judgment on	: 19.08.2024

<u>Ananya Bandyopadhyay, J.:-</u>

1. This appeal is preferred against judgment and order dated judgment and order dated 23.05.2001 passed by the Learned Additional Sessions Judge, 3rd Court, Suri, Birbhum in Special Court Case No.12 of 1988, convicting thereby the appellant of the charges framed against him for committing offences punishable under Sections 409/468/420 of the Indian Penal Code, sentencing him to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.2000/- in default to suffer rigorous imprisonment for 6 months under Section 409 of the Indian Penal Code to suffer simple imprisonment for 1

year and to pay a fine or Rs.1000/- in default to suffer simple imprisonment for a further term of 3 months for the offence under Section 468 of the Indian Penal Code and to suffer simple imprisonment for 1 year and to pay a fine of Rs.1000/- in default to suffer simple imprisonment for 3 months for the offence under Section 420 of the Indian Penal Code and all the sentences to run concurrently.

2. The prosecution case precisely stated Labpur Mastali Money Order No.286 dated 02.05.81 for Rs.5/- being payable to one Prabir Kumar Shom, was sent by the appellant who also used to work as a Postal Assistant in Labpur Post Office. The money order however was received by Bolpur Post Office on 22.05.81, duly invoiced in high value money order list prepared by Sainthia Railway Mail Service dated 20.05.81. The money order was accordingly made over to Nemai Chandra Laha, beat Postman, Bolpur Post office on 23.05.81 and he had accordingly paid the sum to the addressee on that date itself. For the aforesaid reason, the Government suffered a loss of Rs.400/- and departmental enquiry was conducted. One Gopal Rajak who at the relevant point of time worked as Sub-Post Master, Labpur Mastali Post Office was found to have checked the aforesaid money order and had sent the same to Labpur Post Office for further disposal after listing it as a low value money order. On receipt of the said money order it was alleged that the appellant had manipulated the said amount from Rs.5/- to Rs.405/- and sent it to Sainthia Railway Mail Service after invoicing it as high value money order. The hand-writing on the body of the said money order was said to be of the appellant. It was also contended that the aforesaid money order was received

by Sainthia Railway Mail Service on 02.05.81 being invoiced as high value money order. The high value list of Labpur Post Office was allegedly in the hand-writing of the appellant. Prabir Kumar Shom, the recipient of the said money order was examined who allegedly disclosed that he was a supplier of building materials and the appellant had procured some building materials for construction of his house and it was agreed on the appellant will pay him by money order. Prabir Kumar Shom, however, allegedly could not produce any document in support of the bona-fide transaction. It was as such alleged that the appellant in collusion with Prabir Kumar Shom, had committed offences punishable under Sections 409/467/468 and 120B of the Indian Penal Code.

6. Based on the written complaint Labpur P.S. Case No.8/114 dated 02.05.81 under Sections 409/468/420 of the Indian Penal Code was initiated.
7. Charge was framed against the appellant, to which he pleaded not guilty and claimed to be tried.
8. After registration of the aforesaid case, PW-11 took over the investigation of the aforesaid case. As he was transferred prior to completion of such investigation, the investigation was entrusted to PW-10, who after completion of a purported investigation, submitted charge-sheet against the appellant and prayed for discharge of Prabir Kumar Shom. Charges were framed against the appellant on 20.09.90 for his alleged involvement for commission of offences punishable under Sections 409/468 and 420 of the Indian Penal Code and as the appellant pleaded not guilty of the charges so framed against him, he was placed on trial to answer the same.

9. The prosecution cited 11 witnesses and exhibited certain documents.

10. The Learned Amicus Curiae representing the appellant submitted as follows:-

    i. Although 11 witnesses had been examined to substantiate the prosecution case, however, few of the salient features of the prosecution case which can connect the appellant to the commission of the alleged offences have not been proved. The money order had been remitted by the appellant and as such, it contains the hand-writing of the appellant on the body of the money order. Nobody however has come forward to substantiate the prosecution case that the figures and/or words which were subsequently used to transform the aforesaid money order from Rs.5/- to Rs.405/- was of the hand-writing of the appellant. Similar was the case of the high value list prepared at Labpur Post Office. There was no substantive evidence to substantiate that the aforesaid list had been prepared by the appellant. On the contrary evidence laid by the prosecution suggests that the aforesaid money order had been checked at various stages by superior officers of the post officer. The conduct of the appellant at best could have attracted the negligence in performing his duties but could not at any stretch of imagination be said to attract the provisions of the Indian Penal Code.

11. The Learned Amicus Curiae submitted that the entire prosecution case was based on circumstantial evidence and the same failed to prove conclusively the involvement of the appellant who committed the offence under Section 409 of the Indian Penal Code as the element of entrustment of property was not granted upon him.

12. The Learned Advocate for the State submitted that the prosecution witness no.6 and 9 proved the act of the appellant in committing the offence in his official capacity being entrusted with the money for its proper transportation. During the course of his official duty he committed the offence of forgery as deposed by the prosecution witness no.9. Accordingly, the prosecution having been successful in proving its case and the appeal shall be dismissed.

13. The Hon'ble Supreme Court held the following in the case of ***Sadhupati Nageswara Rao v. State of A.P.***[1]:-

> ***"14.*** *In order to prove the offence of criminal breach of trust which attracts the provision of Section 409 IPC, the prosecution must prove that one who is, in any manner, entrusted with the property, in this case as a dealer of fair price shop, dishonestly misappropriates the property, commits criminal breach of trust in respect of that property. In other words, in order to sustain conviction under Section 409 IPC, two ingredients are to be proved, namely,*
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> *(i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty-bound to account for; and*

[1] (2012) 8 SCC 547

(ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under Section 405 IPC….”

14. In ***Ram Narayan Popli v. CBI***[2] the following was held by the Hon'ble Supreme Court:-

> ***“360.*** *Sections 407 to 409 make special provisions for various cases in which property is entrusted to the enumerated categories of persons who commit the offence. The offence of breach of trust and dishonest misappropriation are sufficient to constitute an offence under the relevant provisions.*
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> ***361.*** *To constitute an offence of criminal breach of trust, there must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract; and the misappropriation or conversion or disposal must be with a dishonest intention. When a person allows others to misappropriate the money entrusted to him, that amounts to a criminal breach of trust as defined by Section 405. The section is relatable to property in a positive part and a negative part. The positive part deals with criminal misappropriation or conversion of the property and the negative part consists of dishonestly using or disposing of the property in violation of any direction and of law or any contract touching the discharge of trust.*
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> *xxx*
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> ***365.*** *As noted by this Court in Jaikrishnadas Manohardas Desai v. State of Bombay [AIR 1960 SC 889 : 1960 Cri LJ 1250] to establish the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence*

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[2] (2003) 3 SCC 641

being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted if proved, may, in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion.

366. *Section 420 deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients : deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself.*

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368. *Section 468 deals with forgery for the purpose of cheating. The offence is complete as soon as there was forgery with a particular intent.*

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373. *The definition of the offence of forgery declares the offence to be completed when a false document or false part of a document is made with specified intention. The questions are (i) is the document false, (ii) is it made by the accused, and (iii) is it made with an intent to defraud. If at all the questions are answered in the affirmative, the accused is guilty.*

> ***374.*** *In order to constitute an offence of forgery the documents must be made dishonestly or fraudulently. But dishonest or fraudulent are not tautological. Fraudulent does not imply the deprivation of property or an element of injury. In order to be fraudulent, there must be some advantage on the one side with a corresponding loss on the other. Every forgery postulates a false document either in whole or in part, however small.*
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> ***375.*** *The intent to commit forgery involves an intent to cause injury. A person makes a false document who dishonestly or fraudulently signs with an intent or cause to believe that the document was signed by a person whom he knows it was not signed."*

15. The following was observed by the Hon'ble Supreme Cout in the case of ***R. Venkatkrishnan v. C.B.I.***[3]:-

> ***"147.*** *In Raghunath Anant Govilkar v. State of Maharashtra [(2008) 11 SCC 289 : (2009) 1 SCC (Cri) 130 : (2008) 2 Scale 303] the Court noted that Section 406 which provides the punishment for criminal breach of trust simpliciter and Section 409 IPC are cognate offences in which the common component is criminal breach of trust. When an offence punishable under Section 406 is committed by a public servant (or holding any one other of the positions listed in the section) the offence would escalate to Section 409 of the Penal Code. In Supdt. and Remembrancer of Legal Affairs v. S.K. Roy [(1974) 4 SCC 230 : 1974 SCC (Cri) 399] , this Court held: (SCC p. 235, para 12)*
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> *"12. To constitute an offence under Section 409 IPC, it is not required that misappropriation must necessarily take place after the creation of a legally correct entrustment or dominion over property. The entrustment may arise in 'any manner whatsoever'. That manner may or may not involve fraudulent conduct of the accused. Section*

[3] (2009) 11 SCC 737

409 IPC, covers dishonest misappropriation in both types of cases; that is to say, those where the receipt of property is itself fraudulent or improper and those where the public servant misappropriates what may have been quite properly and innocently received. All that is required is what may be described as 'entrustment' or acquisition of dominion over property in the capacity of a public servant who, as a result of it, becomes charged with a duty to act in a particular way, or, at least honestly."

16. The following was observed by the Hon'ble Supreme Court in the case of ***Mariam Fasihuddin v. State***[4]:-

> ***"The offence of cheating under Section 420 IPC:***
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> ***22.*** *Section 420 IPC provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415 IPC distinctly defines the term 'cheating'. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as 'cheating' if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.*
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> ***23.*** *It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that*

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[4] 2024 SCC OnLine SC 58

person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made."

17. The Learned Trial Court in the impugned judgment, inter alia, observed as follows:-

"The evidence on record clearly goes to show that the accused Lambodar Mondal was a public servant attached to Labpur P.O. as postal assistant and in such capacity entrusted with the dispatch of the money order in question from that dominion over it at the relevant time. Evidence on record clearly established that the accused himself being the sender of the money order filled up the money order form with his own handwriting and Rs.5/- was converted into Rs.405/- by manipulation and misappropriated the govt. money of Rs.400/-.

I have carefully examined the documents and found that only 0.25 paisa was charged as commission fee for Rs.5/- vide money order form no.286 but actual payment was made of Rs.405/- to the payee Prabir Kumar Some. That part has been clearly proved by adducing evidence of PW-5 on 23.05.81.

In view of the aforesaid positive evidence both oral and documentary the conclusion is that the accused himself signed on the money order form and manipulated the money order form in respect of the amount both in figure and in words by Rs.405/- in *place of actual amount of Rs.5/- payable to the payee. Therefore, there are sufficient materials to hold that the accused was entrusted to dispatch the money order form in official capacity at the relevant time and date and he had dominion over the same. All the PWs were cross-examined at length but nothing has come out from the mouth to disprove the case of the prosecution. The evidence on record is sufficient to hold that the accused misappropriated the govt. money and the prosecution has been able to establish the charge under Sections 409/468/420 I.P.C. beyond reasonable doubt. I do accept the argument advanced by the prosecution that the accused is liable to be convicted for the offence committed by him.*

The act of the accused clearly goes to establish that he had an intention to forge the document, namely money order form (Exbt.-1) for the purpose of cheating and dishonestly induced the govt. deceived the deliver by converting the figure of Rs.5/- into Rs.405/- both in figure and words and committed breach of trust in his capacity of public servant entrusted with property during his employment at Labpur P.O."

18. The corroborative piece of evidence of PW-6 and PW-9 fortified the prosecution case. The appellant being the employee of the postal department was entrusted in dealing with the money order being the custodian of money till its disbursement to the relevant destination.

19. The appellant deliberately changed the money order receipt of the original entry in exhibit of Rs.5/- of low value into Rs.405/- of high value which was prepared by the appellant.

20. The Learned Trial Court has rightly passed the order and this Court is not inclined to interfere with the same.

21. The prosecution however failed to prove the offence committed under Section 468 and 420 of the Indian Penal Code.

22. In view of the above discussions, the conviction under Sections 409/ 468/ 420 of the Indian Penal Code is modified to Section 409 of the Indian Penal Code. The sentence is modified to the extent of imprisonment undergone by the appellant.

23. I record my appreciation for the able assistance rendered by Mr. Sauradeep Dutta Learned Advocate as *Amicus Curiae* in disposing of the appeal.

24. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

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

(Ananya Bandyopadhyay, J.)