IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 330 of 2001

Manmatha Sarkar
-Vs-
The State of West Bengal

For the Appellant (Amicus Curiae)	: Ms. Jharna Biswas
For the State	: Mr. Binay Panda Mr. Subham Bhakat Mr. Pratick Bose
Heard on	: 09.10.2023, 17.01.2024, 09.02.2024, 08.04.2024, 11.07.2024
Judgment on	: 24.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 31.05.2001 passed by the Learned Judge, Special Court, Jalpaiguri and Learned Additional Sessions Judge, 2nd Court, Jalpaiguri in Special Case No.4 of 1987 arising out of Banarhat P.S. Case No.2 dated 06.12.1981 convicting the appellant for commission of offence punishable under Section 409 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.1000/- in default to suffer rigorous imprisonment for 2 months.

2. The prosecution case precisely stated that the appellant was employed as a Post-master, Red Bank Post-Office under Banarhat P.S., Jalpaiguri.

One M.P. Baraily, Sub-Divisional Inspector of Post-offices on 04.12.81 and 05.12.81 held an annual inspection of the said Red Bank Post-offices. During inspection he examined Pass Books of S.B. Account No.98597 of Jhira Uraon, S.B. Account No.98371 of Benjamin Toppa, S.B. Account No.98135 of Michael Khalko, S.B. Account No.98336 of Lehara Baraik, S.B. Account No.98048 of Smt. Durga Baraik, S.B. Account No.98267 of Soleman Lakra, S.B. Account No.98274 of Smt. Kabitri Muchi, S.B. Account No.98749 of Reselis Tina Kujur, S.B. Account No.98740 of Fuja Uraon and S.B. Account No.98748 of Santosh Mudra. He also examined and verified the above S.B. Accounts with reference to S.B. Journals, Branch Office daily accounts, Post-office Savings Bank Journals, Account Books etc., and found a number of discrepancies in the S.B. Account Books. He detected that the amount received by the appellant in course of his official business was not entered in the account books maintained by him at Red Bank Post-office. It was alleged that the Post-master who was entrusted with documents/properties of the Department of Post did not account for in the books of accounts and therefore misappropriated the public money amounting to Rs.8070/-. It was alleged that the appellant was a public servant employed at Post-master, Red Bank Post-offices under the Control of S.S.P.O.s, Jalpaiguri. Further the appellant did not sign on number of books of accounts maintained in the said Red Bank Post-office at the material time and had forged documents and used the same as genuine for the purpose of cheating the holders of S.B. Pass Book Accounts.

3. On the basis of the aforesaid allegations, a written complaint lodged by the de-facto complainant before the officer-in-charge, Banarhat P.S. and on the basis of the written complaint with the Banarhat P.S. Case No.2 dated 06.12.81 under Sections 409/468 of the Indian Penal Code was initiated for investigation.
4. After completion of investigation, the Police submitted charge-sheet being charge-sheet no.27 dated 02.10.86 under Sections 409/468/471 of the Indian Penal Code against the appellant to which he pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 9 witnesses and exhibited certain documents.
6. The appellant had been alleged to have criminally misappropriated the deposits made by various persons.
7. In the instant case, Red Bank Post-office was discharging banking facilities by providing S.B. Account to customers and accepting deposits therefrom.
8. No seizure list was prepared by PW-4 as to when he seized the account books, daily account sheets, S.B. Journals and Pass Books in the instant case.
9. The prosecution had failed to establish the sanctity of the documents from the time the same were taken over by PW-4.
10. PW-1 did not state that he received the Pass Books and other relevant documents from PW-4.
11. There was no clear and cogent evidence led by the prosecution that the Pass Books, S.B. Journals, S.B. Account Books and S.B. Account Sheets

were maintained in an uttered manner after the same were taken possession of by PW-4.

12. PW-4 failed to establish that the alleged irregularities in accounts were intimated to the appropriate superior authorities namely the Superintendent of Post-Officer.
13. The Antagonistic attitude of PW-4 towards the appellant was evident from the fact that he illegally prevented him from discharging his duties by superseding him although he had no power to do so.
14. The customers in whose Pass Books alleged discrepancies were detected were not examined.
15. PW-2 and PW-8 were the only two customers who were examined by the prosecution for the first time in Court. They were not interrogated at the time of investigation and their evidence was therefore highly unreliable.
16. PW-2 failed to show any paper that he had applied for withdrawal of Rs.1000/-.
17. The prosecution failed and/or neglected to prove the entries in the Pass Book of PW-2 in the course of his evidence and the best evidence was withheld from the Court.
18. PW-8 was a highly unreliable witness and he was not examined in the course of investigation.
19. PW-8 could not remember the number of his account and the evidence of PW-8 was not sufficient to bring home a conviction against the appellant.
20. PW-5 and PW-6 were most vital witnesses for cross-examination and no evidence were laid by the prosecution to those witnesses.
21. The prosecution intentionally and willfully withheld the best evidence in the instant case from the Learned Trial Court.

22. It was evidence of PW-4 that the overseer held monthly inspection of the activities of a Branch Post-office but no complaint was made by such overseer with regard to the alleged activities of the appellant in the instant case.
23. No complaint was made by any customer to the Superior Postal Authorities against the appellant in the instant case.
24. The principal investigating officer in the instant case could not be examined and the same caused extreme prejudice to the appellant.
25. PW-4 was not a competent person to depose and prove the handwriting and/or signature of the appellant.
26. The evidence of the hand-writing expert PW-9 was reliable and his evidence was rejected by the Learned Trial Court.
27. The evidence on record did not establish the ingredients of the alleged offence beyond reasonable doubt.
28. The Learned Amicus Curiae representing the appellant further submitted that:-

   i. The prosecution failed to prove and establish the case against the appellant beyond all reasonable doubt.
   ii. There was no evidence of entrustment and the prosecution failed to prove that the appellant was entrusted with the properties during the relevant time as such it could not be held that the appellant had committed any offence under Section 409 of Indian Penal Code.
   iii. The Learned Judge himself admitted in his judgement only on the basis of the oral evidence the Learned Judge came to the

conclusion that the discrepancies in the account books are sufficiently proved. No documentary evidence is there in this regard. Neither any witnesses nor any account holders/depositors abled to show any documentary evidence to prove the discrepancies in their account books. Only on the basis of the oral evidence in this regard the Learned Judge adjudicated the case which is not permissible in law.

iv. None of the depositors/customers in whose pass books alleged discrepancies were detected were examined.

v. The Learned Judge mechanically relied upon the evidence of the prosecution witnesses as gospel truth and came to a finding of guilt against the appellant.

vi. In the examination of the appellant under Section 313 of the Code of Criminal Procedure, it was revealed from the last question that the F.I.R., maker i.e., PW-4 suspected some financial fraud as well as it was revealed from the evidence of the PW-4 that on the basis of the suspicion he inspected and lodged the F.I.R. The entire prosecution case was initiated on the basis of the suspicion but prosecution failed to establish and prove the allegation of the case at all. Nobody could be convicted on the basis of suspicion of anybody. The Learned Judge himself admitted that on the basis of the oral evidence he came to the conclusion.

29. The Learned Advocate for the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses and the appeal shall be dismissed.

30. A circumspection of the prosecution witnesses revealed as follows:-

i. PW-1 deposed that he was an assistant working in the Postal Department. On 06.06.83 he was posted in the office of the Superintendent of Post-offices, Jalpaiguri. On 06.06.83 D.E.O., Banarhat seized certain books of accounts and other registers concerning Red Bank Post-office. The seizures were made under four different seizure lists prepared in his presence by the D.E.O., under his pen and signature whereupon he signed which were marked as Exbts.1 to Exbts.-1(C).

ii. During his cross-examination PW-1 stated he did not remember the time of seizure. He did not remember how many pass books and other registers had been seized.

iii. PW-2 deposed he was a resident of Redbank Tea Estate within Banarhat Police Station. There was a post-office at Redbank Tea Estate. He used to keep his money in that post-office in savings bank account. He had kept in deposit a sum of about Rs.5,000/- in installments. He did not remember the date. He intended to withdraw a sum of Rs.1,000/- from his account and approached the post-master, Manmatha Nath Sarkar. He did not get the money on requisition. The post-master told him that he would be receiving the money after a few days when the fund was available. A week after he was called by the post-master to his house who paid him a sum of Rs.900/- without obtaining an acknowledgement from him. His pass book was kept back by the post-master which was not delivered to him. He did not remember the number of the pass book, excepting the said sum of Rs.900/- he never drew any amount from his account. He did not lodge any complaint with the postal authority.

iv. During his cross-examination PW-2 stated that he was not interrogated by any police officer. He did not have any paper to show that he had applied for withdrawal of a sum of Rs.1,000/- from his account. He did not remember the date or year of opening the savings bank account. He deposited money in his account in two installments. He was given a pass book.

v. PW-3 deposed that he was an employee under the postal department. On 06.06.83 he was also attached to the office of the Senior Superintendent of Post-office. There was a Fraud Section attached to their office. In 1983 he was attached to the Fraud Section. On 06.06.83 police seized a few pass books, post office journals, accounts books, daily accounts etc., concerning Red Bank Branch Post-office from his custody. Four seizure lists were prepared in his presence by the police officer and he signed which were marked as Exbts.-1/1 to Exbts.-1(c)/1. The fourteen daily accounts sheets of Red Bank Branch Post-office which were seized from him. The daily accounts sheets were maintained in ordinary course of business were marked as Exbt.-2 to Exbt.2(m). Ten pass books were seized from him, which were maintained by the Red Bank Post-office in ordinary course of business marked as Exbt.-3 to Exbt.-3(1). Two post-office savings bank journals maintained by the Red Bank Post-office in ordinary course of business were marked as Exbt.-4 to Exbt.-4(a). Two account books were seized from him, which were maintained by the Red

Bank Post-office in ordinary course of business marked as Exbt.-5 to Exbt.-5(a). The books, registers and sheets were seized by the Inspector of Post-officers, Dooars Sub-Division and handed over them.

vi. Transactions concerning saving accounts were required to be entered in the pass books and also in the saving bank journals. Daily accounts of all transactions were sent to accounts office from the Branch Post-office. Those were sent by the Branch Post-Master in daily accounts sheets. The daily accounts sheets bear the signatures of the Branch Post-Master. The post-master had also to put his initials against all the entries of savings bank journal and also of the pass book.

vii. PW-4 deposed he was a Sub-Divisional Inspector of Post-Offices at Darjeeling Sub-Division, Darjeeling. On 04.12.81 he visited Red Bank Branch Post-office in connection with annual inspection. In course of inspection he detected one pass book bearing no.98597 in the name of Jhirga Oraon. At the time of verification of the pass book with the savings bank journal he found a discrepancy of Rs.270/- which was not entered in the journal and as such the same was not credited in the Govt. accounts which raised his suspicion. He continued the inspection on 05.12.81. On that day he contacted several depositors including one Benjamin Toppo holder of saving bank pass book A/C no.98371. The pass book reflected a balance of Rs.4,200/- and odd. However the journal reflected that sum of Rs.4,000/- had been withdrawn from that pass book on 13.10.81 and the balance was not to be Rs.4,200/- and odd. He also found discrepancy in a number of other saving bank A/C cases. The appellant was the then post master of Red Bank Branch Post-office. So long he was posted in the Dooars Sub-division he found him to act as the post-master of that post office.

viii. All deposits and withdrawals made from a saving bank A/C were required to be entered in the respective pass book and also in the journal. One branch post office A/C book was also to be maintained. All financial transactions undertaken in the branch post-office were required to be entered in the account book. Withdrawals and deposits from saving bank account were also required to be entered in the account book. The Red Bank Branch Post-office was under Banarhat accounts office. The post-master was required to send daily account to the Accounts Officer, Banarhat. Only two employees in Red Bank Branch Post-office. The appellant was the post-master and there was another man named Harke Bahadur Chettri, was employed as runner-cum-delivery man. The post-master himself was required to make entries in the pass books, journal, account books and daily account sheets. Daily account sheets which were sent to accounts office had to be supported by voucher namely, withdrawal forms, deposit slips, money order coupon etc. He suspected fraud. He then took in his custody all the necessary books, journals, account books etc. He also took in his custody four pass books. Three of them were taken from the holders of the pass book, while the fourth bearing no.98597 was taken from the post office where it was found. He put the appellant i.e., post master under suspension i.e., he was placed by him on put off duty. He entrusted the work to an overseer (mail) named Chittaranjan Debnath and kept those registers, pass books etc., in his safe custody.

ix. He also lodged an ejahar with the officer-in-charge of Banarhat P.S. which was marked as Exbt.-6. He sent a supplementary report to the officer-in-charge of Banarhat P.S., in respect of the subsequent detection marked as Exbt.-6(a).

x. He knew the hand-writing and signature of the appellant. The first entries in the pass books marked as Exbt.-3 (series) were made in the accounts office, while all other subsequent entries were made by the appellant under his pen and signature. He found discrepancies in respect of entries made in those pass books with those made in the journals, daily accounts sheets, accounts books etc. All those books, register journals, sheets, etc., taken by him in custody were subsequently sent by him to the Senior Superintendent of Post-office, Jalpaiguri, under registered post. When printed forms were not available, forms similar to the form to be used for the purpose of S.B. journals and other journals. Those S.B. Journals (Exbt.-4 series) were written and signed by the appellant. Those accounts sheets (Exbt.-2 series) were written and signed by the appellant. Seal of the Branch Post-office had been used on those daily accounts sheets. He knew the writings and signatures of the appellant.

xi. During his cross-examination PW-4 stated that besides the annual inspection held by him, the oversear (mail) also conducts monthly inspection in all branch post offices. Red Bank is a Branch Post. It was never a Sub Post-office. Appointing authority of Post-master and Staff of Branch or Sub Post-office was the Superintendent of Post offices in the division. He was also the authority of dismissal and removal. Post-master of branch post-office was a public servant. Between the period from 13.05.80 to 20.12.80 he found some discrepancies in respect of S.B. A/C no.98366 of Lahara Baraik there were shown two withdrawal of that A/C in respect of Rs.2000/- on 03.05.80 and of Rs.1000/- on 20.12.80. During inspection the depositor A/C holder told that he did not withdraw the money. Depositors complained before him and on that basis he enquired.

xii. PW-7 deposed that he was a S.I. of Police, attached to P.S. Kalimpong in the district of Darjeeling. On 06.12.81 he was a S.I. of Police posted at Banarhat P.S. On that date he was in-charge of Banarhat P.S. in absence of the Officer-in-Charge. While performing his duty he received one written complaint from one M.P. Baraily, Sub-divisional Inspector of Post-Office, Dooars Sub-divisioni, whereupon he drew up Banarhat P.S. Case No.2 dated 06.12.81 under Section 409/468/471 of I.P.C., against the appellant i.e., Manmatha Sarkar, Branch Post-master of Red Bank Branch Post-office. The formal F.I.R., was marked as Exbt.-7 & Exbt.-7/1. After recording the case he himself took up investigation. He arrested the appellant. The seizure list dated

06.06.83 was in the hand-writing of said D. Chakraborty, S.I. of Police and D.E.O., Banarhat, marked as Exbt.-8 and Exbt.-8/1.

xiii. The seizure list dated 06.06.83 was also in the handwriting of said D. Chakraborty, D.E.O., Banarhat marked as Exbt.-9 and Exbt.-9/1. Other seizure lists in the hand-writing of said D. Chakraborty, D.E.O., Banarhat were marked as Exbt.-10 and Exbt.-10/1.

xiv. PW-8 deposed that she resided at Redbank Tea Garden. She had a savings account with the RedBank Branch Post-office. She could not say the number of her said account. Her mother had rupees fourteen hundred in cash, which she deposited at the post office and opened an account. Out of that amount she had withdrawn Rs.100/- only. She did not withdraw further amount from her said account. Subsequently she came to know some money was withdrawn from her said savings bank account without her knowledge.

xv. PW-9 deposed that he was a handwriting expert and examiner of questioned documents attached to Questioned Documents Examination Bureau under C.I.D., West Bengal. In connection with Banarhat P.S. Case No.2 dated 06.12.81 under Section 409/468/471 I.P.C. He received one typed application dated 07.11.75 and one Branch office daily account dated 23.05.81 of Red Bank Branch Post-office containing signatures encircled and marked by him as “Q” and “S” respectively. Those were sent by the S.I. of Police, D.E.B., Banarhat Zone, Jalpaiguri district with his report dated 12.03.84 and 06.08.86.

xvi. He carefully examined and compared all the signatures considering all aspects. During examination he observed that the signatures marked as “Q” was full signature executed in slow and detached form whereas the signature marked as “S” was short signature executed with relatively speedy and connected form. Inspite of that agreements inserted characteristics were found between them and considering those, he opined that the signature marked as “Q” was very probably written by the writer of the signature marked “S”. Nothing more could be said from the model of signature occurring in mark “S”.

xvii. During his cross-examination PW-9 stated that the disputed signature and the standard signature were not before the Court on that day nor those were with his record. Without going through those signatures it was not possible for him to say whether one was a long signature and the other was short signature. The witness volunteered that he could not state anything beyond the report. In the report he had not given the reasons for coming to the conclusion that the signature marked “Q” and “S” were most probably done by the one and the same person in the report, the characteristics of the two signature had not be mentioned. In his report he did not specifically mention the scientific instruments used by him in finding out the similarities and dissimilarities. There might have been some variations which were of natural consequence in respect of same person. He did not take photographs of disputed and standard signatures nor he enlarged the same for any test.

31. The Hon'ble Supreme Court held the following in ***Kailash Kumar Sanwatia v. State of Bihar***[1]:-

> *"**7.** Section 409 IPC deals with criminal breach of trust by a public servant, or by a banker, merchant or agent. In order to bring in application of the said provision, entrustment has to be proved. In order to sustain conviction under Section 409, two ingredients are to be proved. They are:*
>
> *(1) the accused, a public servant, or banker or agent was entrusted with property of which he is duty-bound to account for; and*
>
> *(2) the accused has committed criminal breach of trust.*
>
> ***8.** What amounts to criminal breach of trust is provided in Section 405 IPC. Section 409 is in essence criminal breach of trust by a category of persons. The ingredients of the offence of criminal breach of trust are:*
>
> *(1) Entrusting any person with property, or with any dominion over property.*
>
> *(2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so as to do in violation—*
>
> *(i) of any direction of law prescribing the mode in which such trust is to be discharged; or*
>
> *(ii) of any legal contract made touching the discharge of trust."*

32. In ***N. Raghavender v. State of A.P.***[2] the following was held by the Hon'ble Supreme Court:-

> ***"Ingredients necessary to prove a charge under Section 409IPC***

[1](2003) 7 SCC 399
[2](2021) 18 SCC 70

45. *Section 409IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See Sadhupati Nageswara Rao v. State of A.P. [Sadhupati Nageswara Rao v. State of A.P., (2012) 8 SCC 547 : (2012) 3 SCC (Cri) 979 : (2012) 2 SCC (L&S) 638])*

46. *The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409IPC. The expression "criminal breach of trust" is defined under Section 405IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405IPC, the following ingredients must be satisfied:*

46.1. *Entrusting any person with property or with any dominion over property.*

46.2. *That person has dishonestly misappropriated or converted that property to his own use.*

46.3. *Or that person is dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.*

47. *It ought to be noted that the crucial word used in Section 405IPC is "dishonestly" and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled* *with dishonest intention, there is no criminal breach of trust. The second significant expression is "misappropriates" which means improperly setting apart for ones use and to the exclusion of the owner.*

***48.** No sooner are the two fundamental ingredients of "criminal breach of trust" within the meaning of Section 405IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409IPC, for which it is essential to prove that:*

(i) The accused must be a public servant or a banker, merchant or agent;

(ii) He/She must have been entrusted, in such capacity, with property; and

(iii) He/She must have committed breach of trust in respect of such property.

***49.** Accordingly, unless it is proved that the accused, a public servant or a banker, etc. was "entrusted" with the property which he is duty-bound to account for and that such a person has committed criminal breach of trust, Section 409IPC may not be attracted. "Entrustment of property" is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was "entrusted" to the accused, it is not necessary to prove further, the actual mode of entrustment of the property or misappropriation thereof. Where the "entrustment" is admitted by the accused or has been established by the prosecution, the burden then shifts on the accused to prove that the obligation vis-à-vis the entrusted property was carried out in a legally and contractually acceptable manner."*

33. PW-2 who had a savings account in the post office stated to have been called by the Post Master to his house who paid him a sum of Rs.900/- without obtaining an acknowledgement from him. He could not state the number of the passbook except the aforesaid sum of Rs.900/-. He did not

draw any further amount from his account. Moreover, he did not lodge any complaint with the postal authority. He was not interrogated by the police on earlier occasion. He could not state the date or year of initiating the savings account. He also could not show any document in support of the withdrawal of a sum of Rs.1,000/- from his account.

34. It had been further stated by PW-3 that the daily account sheets were signed by the branch post master. PW-4 during his inspection found a discrepancy of Rs.270/- which was not entered in the journal and was not credited in the Government accounts. With regard to another account, a balance of Rs.4,200/- and odd was mentioned which had also reflected a sum of Rs.4,000/- to have been withdrawn from the passbook on 13.10.1981. If out of Rs.4,200/- Rs.4,000/- was withdrawn, the balance should not have shown to be Rs.4,200/- and odd. During investigation, it also revealed that the account holder did not withdraw Rs.2,000/- on 03.05.1980 and Rs.1,000/- on 20.12.1980.

35. PW-8 deposed to have opened an account with Rs.1,400/- and to have withdrawn Rs.100/- only and subsequently she learnt certain money to have been withdrawn from her savings account without her knowledge.

36. None of the account holders lodged any complaint for illegal withdrawal of money from their savings account without their individual intervention having noted reduction in the amount of deposits in their respective savings account which could have been easily detected on updating of the passbooks of the individual account holders. PW-4 irrespective of any such complaint lodged against the appellant based on suspicion filed the complaint and issued the order of suspension against the appellant without proper evidence and plausible reasons only by virtue of being Post

Master. The appellants could not have been entirely responsible for depositing money in individual accounts noting the same in the registers maintaining the bills, accounts, etc and other ancillary functions. Moreover, the rudimentary element in an offence under Section 409 was to entrust any person with property or with any dominion over the property. The Post Master cannot exclusively be the person to have dominion over any property which had not been entrusted to him in personal capacity. Moreover, it is to be proved that the person entrusted with any such property dishonestly misappropriated the same converting it to his own use with further intention to dishonestly use and dispose of that property in order to willfully subject a person to suffering in violation of any direction of law prescribing the mode in which such trust is to be discharged or any legal contract made touching the discharge of trust.

37. The prosecution has failed to prove the criminal breach of trust on the part of the appellant to have misappropriated the property, i.e., the sum of money entrusted to him for wrongful gain in contravention of any legal contract express or implied. The account holders in the post office did not enter into a legal contract with the Post Master in individual capacity entrusting him the said amount of money so deposited in individual account in pursuance of any contract between the two.

38. The prosecution failed to prove that the appellant had misappropriated the account holders' money or disposed it of or even converted it for his personal use. Merely on the basis of suspicion by PW-4, the appellant could not be convicted.

39. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.

40. Under such facts and circumstances, the judgment and order dated 31.05.2001 passed by the Learned Judge, Special Court, Jalpaiguri and Learned Additional Sessions Judge, 2^{nd} Court, Jalpaiguri in Special Case No.4 of 1987 arising out of Banarhat P.S. Case No.2 dated 06.12.1981 is set aside.

41. Accordingly, the instant criminal appeal being CRA 330 of 2001 stands disposed of.

42. There is no order as to costs.

43. I record my appreciation for the able assistance rendered by Learned Advocate Ms. Jharna Biswas as Amicus Curiae, representing the appellant, in disposing of this appeal.

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

45. 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.)