

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 29 of 2001

Merajul Islam

-Vs-

The State of West Bengal

For the Appellant : Mr. Rajendra Banerjee

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Judgment on : 06.05.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is directed against an order and judgment dated 22.12.2000 passed by the Learned Judge, Special Court, Suri, Birbhum in Special Case No.3 of 1999 arising out of G.R. Case No.45/1996 in connection with Nalhati P.S. Case No.5/96 dated 06.01.1996, thereby convicting the appellant under Section 409 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 4 years and also to pay fine of Rs.2,000/- in default to suffer rigorous imprisonment for another 6 months. The period of detention undergone in custody, if any, be set off from the substantive sentence.
2. The prosecution case precisely stated the appellant was secretary of Kaitha S.K.U.S. Limited and was in-charge of Mustard Oil Mill Unit of the said co-operative society on and from 01.12.1993 to 22.08.1995. During that period, the appellant committed criminal breach of trust with respect to mustard

seed as he was in-charge of the said department. The stocks along with relevant documents were inspected by Deputed Officer, Kaitha S.K.U.S. Ltd., who was inspector of co-operative society, Nalhati Block – I.

At the time of inspection, the opening balance along with purchase of mustard seed for the relevant period was verified from book of accounts, stock register etc. On physical verification, 64.03 quintals of mustard seed was detected for the period 1994-95. The appellant was asked many times to remove the said defect or to pay the market price of the mustard seed but he did not pay any heed to such request. The appellant misappropriated and defalcated public money belonging to the co-operative society as a public servant being an employee of the cooperative society. Moreover, the appellant misappropriated and defalcated public money by tampering, over writing and changing the figures in different memos related to purchase of mustard seeds. The appellant tried to withdraw public money and to misappropriate the same by altering different purchase memos. Moreover, the appellant did not sign all the relevant books, registers and papers particularly and regularly in course of his duty with an intention to misappropriate and defalcate public money. Thereafter, the inspector of co-operative society lodged a complaint at the Nalhati P.S.

3. Based on the aforesaid complaint, Nalhati Police Station Case No.05/96 dated 06.01.1996 under Sections 403/406/409 of the Indian Penal Code was initiated for investigation.

4. Upon conclusion of the investigation, the Investigating Agency submitted charge-sheet against the appellant under Section 409 of the Indian Penal Code 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 examined certain documents.
6. The Learned Advocate for the appellant submitted as follows:-
 - i. The concerned resolution which was the foundation for the prosecution under Section 409 of the Indian Penal Code falls far short of the ingredients of Section 409 of the Indian Penal Code.
 - ii. The Secretary of Kaitha S.K.U.S. Limited did not fulfill the criteria for being prosecuted under Section 409 of the Indian Penal Code.
 - iii. The allegation of the breach in 64.03 quintals of mustard oil seed occurred over a period of 1 year and the Learned Trial Court failed to appreciate the prosecution did not prove record so far detecting of shortage caused and in that regard, there was absence of required evidence which could prove the guilt of breach of trust.
 - iv. The Learned Judge failed to appreciate the resolution was the foundation under Section 409 of the Indian Penal Code as much as initial requirement of Section 409 of the Indian Penal Code was entrustment of the articles in respect of which the breach had been committed but the judgment was silent about the contents upshot of resolution.
 - v. The Learned Judge erred in considering the resolution dated 16.10.1993 wherein the appellant along with other person including

manager of the said society therein were charged to look after the said oil mill (mustard oil).

- vi. The evidence of PW-1 and in the cross-examination, the said PW-1 failed to answer exact date of inspection and he also failed to say the exact amount of stock and stock as per the book balance. The shortage was found on verification of papers and stock but there was not specific evidence that 'what' was the total stock out of 'which' the said shortage came out.
- vii. PW-2 being the manager of the said society, who was also entrusted to look after the said oil mill as per the said resolution in his evidence, he stated that the physical verification was made in presence of manager, president and the appellant. Thereafter, the said matter was informed to the C.I. being the complainant of the instant case but the complainant himself said that the verification was made in presence of him. The said contradictory statement did prove there was no physical verification and in his statement, he also failed to give exact date of inspection.
- viii. PW-3 in his evidence stated he was not in a position to state the actual weight of mustard seed and he could not state the exact date of inspection by the said C.I.
- ix. The deposition of PW-6, the Prodhan as well as the deposition of PW-8, the Vice-President of the said society who's statement corroborated with the resolution dated 16.10.1993 was not corroborated.

- x. No one of the witnesses was able to state the exact date of inspection for physical verification of stock and the total stock wherefrom the shortage was detected.
- xi. The record depicted the shortage continued throughout the year but there was no day to day complaint though the records and papers of the said oil mill was maintained by the manager and the accounts of the said oil mill was maintained by the manager.
- xii. The entire mischief was done by the said manager of the society as the accounts and records were maintained by the said manager but due to village political rivalry, the appellant was implicated in the aforesaid case and should be acquitted.

7. The Learned Advocate for the State submitted as follows:-

- i. The Complaint was lodged Koytha Samabay Krishi Unnayan Samity Ltd., through Mahadeb Bera, Deputed Officer and Inspector of Co-operative Societies. The complaint raised the following allegations:-
 - a) Appellant misappropriated 64.03 quintals (6,403 kg) of mustard seeds belonging to K.S.K.U.S.L. (calculated by verifying books of accounts, balance of stock alongside actual physical balance).
 - b) Appellant misappropriated and also attempted to misappropriate public money by fraudulently manipulating memos of purchase though charge was not filed in respect of the same.
 - c) Appellant did not maintain books and registers properly with intention to misappropriate public money.

ii. The statements of prosecution witnesses revealed:-

- a) PW-1, Mahadeb Bera, Complainant and Deputed Officer and Inspector of Co-Operative Societies deposed K.S.K.U.S.L. used to deal with processing of mustard oil. Appellant was the Secretary of K.S.K.U.S.L. and in-charge of mustard oil processing unit by virtue of resolution passed by K.S.K.U.S.L. From April 1994 to March 1994, there was a shortage of 64.03 quintal (6,403 kg) of mustard seeds. The shortage was detected on verification of papers and stock. PW-1 was present during inspection and verification of stock and could not state the exact amount of stock as per book of balance without perusal of record. The stock was weighed in PW-1's presence.
- b) PW-2, Abdul Salek, Assistant Manager and Cashier at K.S.K.U.S.L. present during inspection and verification of stock, supported the evidence of PW-1. However was unable to state the exact weight of mustard seed without perusal of the relevant register.
- c) PW-3, Shafiqul Alam, Manager at K.S.K.U.S.L. reiterated the evidence of PW-1 and PW-2 and was able to produce the resolution by which appellant was entrusted to look after oil mill (Exhibit-A). He stated the police seized documents such as cash book, daily resolution book, vouchers of purchase and sale of mustard seed. He stated the shortage was detected on

31.03.1995 through physical verification and PW-1, appellant and 'manager' were present.

- d) PW-4, Mir Sadirul Jamer, Chairman of K.S.K.U.S.L. at the relevant time stated the oil mill department ran smoothly till 31.03.94 and there was a shortage from 01.04.1994 till 31.03.1995. He proved the signature of the appellant over the resolution as he was present when the resolution was passed.
- e) PW-5, Nazed SK., peon at K.S.K.U.S.L. seizure and the list witness endorsed for several documents seized by the police.
- f) PW-6, Nurul Pradhan of Kaitha Gram Panchayat, stated his signature to be on the resolution passed by K.S.K.U.S.L. whereby the appellant was entrusted to run the oil mill. He was declared hostile.
- g) PW-8, Vice President of board of K.S.K.U.S.L. was declared hostile.
- h) PW-9, Sudhir Kumar Kundu (Superintendent of Police), was the investigating officer on the case. He prepared seizure list for all documents seized (Exhibits-2 and 3). He confirmed PW-6 stated that the appellant used to look after stock register and purchase register of the oil mill and there was a shortage of mustard seed for 01.04.1993 to 31.03.1995.

iii. The Learned Trial Court's observations are noteworthy to the following extent:-

- a) There was no dispute that the appellant was a “public servant” as he was employee of co-operative society at the relevant time.
- b) It was clear from resolution (Exhibit-4) that the appellant was entrusted to look after mustard oil department.
- c) The prosecution witnesses consistently maintained there was shortfall after physical verification was carried out and that was reflected in entries in registers (Exhibits-7 and 8).
- d) The prosecution witnesses could not be disbelieved solely because they could not recall exact quantity and dates of inspection.
- e) The appellant admitted in Section 313 of the Cr.P.C., statement that he was in charge of mustard oil.
- f) The prosecution had proved the contents of letter (Exhibit-A) by which appellant admitted his fault and prayed for time to deposit and the said letter had not been denied by the appellant.

iv. It was submitted that the Learned Trial Court had correctly convicted the appellant and sentenced them for offence committed under Section 409 of the Indian Penal Code for the following reasons:-

- a) The appellant had not contested his conviction on merits and in any event the Ld. Special Judge relied on a letter in which the appellant admitted his guilt which had not been disputed which was marked as Exbt.-A.

- b) The grounds of appeal did not raise maintainability of criminal proceedings which was clearly raised as an afterthought.
- c) In any event, the appellant was a “public servant” for purposes of Section 409 of the Indian Penal Code in light of Section 8 of the West Bengal Co-operative Societies Act, 1983 (“1983 Act”), which stated *“every officer of a co-operative society shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code”*. “Officer” was given a broad definition under Section 2 (31) of the 1983 Act as including *“a Chairman, Vice-Chairman, secretary, joint secretary, assistant secretary, managing director, manager, deputy manager...”*.
- d) The appellant was also a “public servant” under Section 21 (9) of the Indian Penal Code which stated:-

“Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government], or to make any survey, assessment or contract on behalf of the Government), or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government), or to make, authenticate or keep any document relating to the pecuniary interests of (the Government), or to prevent the infraction of any law for the protection of the pecuniary interests of the Governments”.

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

- i) PW-1 deposed he was the de facto complainant of that case. For the period 1987 to 06.03.2000, he was posted at Nalhati as Co-operative Inspector and the Kaitha S.K.U.S. Ltd., was under his jurisdiction. The said co-operative society used to process mustard seeds and the appellant was the secretary of the said co-operative society who was in-charge of mustard seed and oil department. He further deposed that he visited the said co-operative society during December 1983 to April 1995. There was difference of weight regarding actual mustard seed and the opening balance as per stock register and the shortage 64.03 quintals. The said shortage was found on physical verification. He further deposed for the period April 1994 to March 1995, there was shortage of 64.03 quintals of mustard seeds which was informed to higher officer and the Nalhati P.S. was also informed in writing. He proved the written complaint.
- ii) PW-1 in his cross-examination stated that the society was under their administration and the shortage was detected on physical verification. However admitted it was not possible for him to state the exact amount of stock as per book balance without perusal of record. However, he stated that weighment was conducted in his presence by one Nasir Sk. and Board of Directors was present. He further stated in his cross-examination that the appellant was in-charge of the said department and used to maintain the stock. He further stated by resolution the appellant was entrusted in-charge

of such activities. He denied the defence suggestion that the appellant was not in-charge of the mustard oil department of the society and he did not inspect the society.

- iii) PW-2 deposed he was an assistant manager-cum-cashier of the co-operative society. He stated in his evidence that the appellant was in-charge of mustard oil department of the society and used to purchase mustard seeds, mustard oil etc. The appellant performed as the Secretary in the year 1993 and was entrusted to look after the entire department of mustard seed and oil department. He further stated there was discrepancy regarding actual stock of mustard seed and the shortage 64 quintals for the period of 1993 to 1995. He further stated Mir Badrujaman, Safiqul Alam, Manager and C.I. Mahadev Bera were present at the time of inspection when shortage was detected. He was also present at the time when C.I. lodged complaint at the P.S. He proved his signature in the seizure list.
- iv) PW-3 deposed as the manager of the society that the appellant took over charge as secretary of the society on 01.12.93 and was in-charge of mustard oil department. He was entrusted to look after the said department as per their resolution and in that meeting Mir Badrujaman was the President. He further stated Minute of the Meeting was reduced into writing by Mir Badrujaman and he proved the same. He further stated there was verification of stock from 01.12.93 to 31.03.94 and 01.04.94 to 31.03.95. There

was 64 quintals of shortage with respect to mustard seed for the period 01.04.94 to 31.03.95 and the said shortage was detected on physical verification in presence of manager, president and the appellant. The said fact was informed to C.I. Mahadev Bera who came and verified the stock and the shortage was confirmed. Subsequently, C.I. Mahadev Bera lodged complaint. Police seized certain documents and the registers from the society and he took those articles on executing Jimmanama. He proved the Jimmanama and the relevant documents and register.

- v) PW-3 in his cross-examination stated that he proved the document by which the appellant agreed to work on the basis of resolution. He further in cross-examination stated that the appellant was present in the meeting in which the said resolution was taken.
- vi) PW-4 deposed he was a chairman of Kaitha Samabai Samiti at the relevant time. The appellant was secretary at the relevant time and entrusted to look after mustard seed and mustard oil department of their samiti on the basis of resolution. The said resolution was taken under his Presidentship. The appellant was also present in the said meeting and put his signature, which was marked as Exbt.-4/1. The resolution was reduced into writing by him and the resolution was identified as Exbt.-4. The oil mill department ran smoothly upon 31.03.94. There was shortage of mustard seed from 01.04.94 to 31.03.95.

- vii) PW-5 deposed he was a peon, attached to Kaitha Samabai Samiti. The accused was secretary of their society and also in-charge of oil mill of the society. Police seized many documents from their society under a seizure list which was marked as Exbt.-2/2. The purchase vouchers for mustard seed, was marked as Exbt.-9 collectively. The register for purchase of mustard seed and maintained in their office in due course of official business, marked as Exbt.-10 collectively. The documents were also seized by police, marked "X" for identification.
- viii) PW-6 and PW-8 were declared hostile by the prosecution.
- ix) PW-7 deposed he returned as Assistant Register, Co-operative Society, Birbhum in the year 1997. Mahadeb Bera, the Deputed Officer and Inspector of Co-Operative Societies was known to him. He told him about shortage of mustard seeds at K.S.K.U.S.L. Details was not known to him.
- x) PW-9 deposed he was a S.I. of police. In the year 1996, he was attached to D.E.B., Nalhati and as per order of D.S.P., D.E.B., he was endorsed to investigation the case. In course of investigation, he seized certain documents from the said Samabai Samiti under a seizure list which were marked as Exbt.-2 and Exbt.-3. The said seizure lists were prepared under carbon process. Some of the documents were released in favour of the Samiti on executing a jumbanama. He also examined available witnesses.

He examined witness Furkan Ali and recorded his statement. He stated before him that on verification of stock, it was detected there was 64.03 quintals of mustard seed. The formal F.I.R., was filed up by O.C. Nalhati P.S., which was marked as Exbt.-11. The endorsement of O.C. Asim Kr. Mondal over the written complaint, was marked as Exbt.-1/1.

He examined witness Nurul Azam and recorded his statement. He stated before him that the accused used to look after stock register, purchased register of oil mill. He further stated that there was shortage of mustard seed for the period 01.04.1993 to 31.03.1995. After completion of investigation, he submitted charge-sheet against the accused.

- xi) During his cross-examination PW-9 stated that he did not verify the stock. He did not make any weightment during investigation. He possessed document to show when the accused joined but he had no paper to show when he was working, there for the last time. As the accused was absconding, he did not get any scope to arrest him. He did not record his statement.

9. The document marked as Ext-4 being the Resolution dated 16.10.1993 delineated the respective duties and responsibilities of the individual functionaries, being the Secretary and Manager jointly, with specific and categoric entrustment of key to be within the custodian of the Manager. The entire process of investigation palpably discerned the ineffective and perfunctory action wherein the shortage in the quality of mustard seed was

not notified to be diminishing on a regular basis. The inventory was not verified. The cumulative and collective responsibility was described as an entrustment.

10. The maintenance of records and balance of accounts was to be jointly supervised by the Secretary and the Manager with the key of the oil mill to be in exclusive possession of the Manager. The investigating agency in a pugnacious manner endorsed the motivated complaint filed against the appellant heedlessly and abstractly filed the charge-sheet without any relevant document as well as independent oral evidence to prove the charges against the appellant.
11. The Trial Court based on a document which itself is confessional in nature marked as Ext-A, misconstrued and misinterpreted the same to be an admission on the part of the appellant if it all it was an inadvertence the same had been redressed through payment of Rs.15,000/- on 31.07.1995 and Rs.19,533/- on 10.10.1995 at the Oil Mill Section of the Co-operative Society.
12. In view of the above discussions, the prosecution failed to prove the ingredients of constitute the offence under Section 409 of the Indian Penal Code.
13. Under such facts and circumstances, the order and judgment dated 22.12.2000 in Special Case No. 3 of 1999 arising out of G.R. Case No. 45/1996 in connection with Nalhati P.S. Case No. 5/96 dated 06.01.1996 is set aside.

14. Accordingly, the instant criminal appeal being CRA 29 of 2001 is allowed.

The criminal appeal being CRA 29 of 2001 stands disposed of.

15. There is no order as to costs.

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

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

(Ananya Bandyopadhyay, J.)