**(2018) 01 GAU CK 0067**

**In the Gauhati High Court**

**Case No :** 160 of 2008

SRI RUPAK CHOUDHURY — APPELLANT

Vs

SMTI JAIMATI DEKA — RESPONDENT

**Date of Decision :** 10-01-2018

**Acts Referred:**

<a href=3863>Code of Criminal Procedure, 1973</a>, <a href=3863-397>Section 397</a>, <a href=3863-401>Section 401</a>, <a href=3863-313>Section 313</a> - Calling for records to exercise powers of revision - High Courts powers of revision - Power to ex

**Citation :** (2018) 01 GAU CK 0067

**Advocate :** S.C. Keyal, Z. Kamar

**Final Decision :** Dismissed

## Judgement

1. This is a criminal revision petition, filed under Sections 397/401 of the Cr.PC, challenging the legality, propriety and correctness of the judgment

and order, dated 30.11.2006, passed by the learned Sessions Judge, Marigaon, acquitting the accused-respondent.

2. The fact leading to the case is that, the present respondent Smt. Jaimati Deka was the Branch Post Master at Baghara Post Office for several

years. During inspection by the inspector of post offices it is found that the respondent misappropriated an amount of Rs. 1,56,610/- deposited in

Recurring Deposit Account and Savings Accounts by the respective account holders. Such misappropriation was detected on 28.6.2004. The

accused-respondent had given a written statement to refund all such misappropriated money, but failed to refund the same.

3. Thereafter, the Inspector of Post Offices, Marigaon Sub-division, filed an FIR with the Marigaon Police Station which was registered as

Marigaon Police Station Case No. 166/2004, under Sections 420/409 of the IPC.

 

The police investigated into the case, collected evidence, seized

relevant documents from the custody of the post master of the aforesaid post office and after completion of the investigation, submitted charge-

sheet against the accused-respondent under Sections 420/409 of the IPC.

4. The learned trial court of Additional Chief Judicial Magistrate, Marigaon, framed a formal charge against the accused-respondent under Section

409 of the IPC. The accused-respondent pleaded innocence while the charge was explained to her and claimed to be tried. Hence the trial

commenced.

5. The prosecution examined as many as 11 (eleven) witnesses in support of its case.

6. After closure of the prosecution evidence, statement of the accused respondent was recorded under Section 313 of the Cr.PC. In her such

statement also, she is heard denying the accusations levelled against her. The defence examined none.

7. I have perused the petition as well the evidence of the 11 (eleven) witnesses examined by the prosecution including that of the investigating

officer as well as the informant.

8. It deserves a mention here that the accused was convicted and sentenced by the learned trial court of Chief Judicial Magistrate, Marigaon, to

undergo rigorous imprisonment for 4 years and to pay a fine of Rs. 20,000/-, with a default clause. But the learned Sessions Judge, Marigaon,

acquitted the accused-respondent in the aforesaid appeal, vide his judgment, referred to above.

9. I have meticulously examined the judgment of the learned trial court as well as the judgment of the learned appellate court and have also gone

through the evidence available in the record of the trial court.

10. Heard Mr. Z. Kamar, learned Senior counsel for the accused-petitioner. Also heard Mr. S.C. Keyal, learned counsel for the petitioner.

11. Let me now scan the evidence on record to find out whether the judgment of the learned trial court, recording acquittal of the present accused-

respondent, is perverse to the evidence on record or whether the same is based on evidence.

12. The PW3, PW4, PW9 are the employees of the post office and PW2 is the informant/Inspector of post offices. As per the statement in the

FIR as well as the evidence of PW2, i.e. the Inspector of Post Offices, show that on 22.6.2004, he received a complaint from one Pratima Deka,

alleging in her A/C No. 563511 in the Bhangara Post Office had been closed prematurely and she did not get the money till 22.6.2004. On

enquiry, it was found by him that no document relating to the closer of the aforesaid account was forwarded to the head office by the

accusedrespondent. He also came to know, during the enquiry, that Pratima Deka had received an amount of Rs. 7,000/- from the accused-

respondent in her individual capacity which raised suspicion in their minds. There were allegations of the same nature made against the accused-

respondent by some other witnesses also, such as Jamini Deka. His enquiry also revealed that 36 numbers of Saving Banks accounts, 27 numbers

of Recurring Deposit accounts and 4 numbers of R.P.L.I. accounts are kept in the almirah of the post office which were seized by him. The

accusedrespondent denied the allegations against her and rather claimed that she was forced by the Senior Officers of the Post Offices to give Rs.

28,000/- to the complainant and some other account holders.

13. PW1, Jamini Deka, alleged that on maturity of the accounts which she had in the aforesaid post officer for her herself and her two children got

matured in the year 2004 although in spite of assurance given to her, the accused-respondent did not pay her the amount. But, the fact remains that

she had accounts in the aforesaid post office and that she deposited money in the said accounts are found to have not been established, as neither

the passbooks, referred to by her, nor the receipts of depositing money in the post office are produced in evidence. Similar is the evidence of the

PW5, PW6, PW7, PW8 and PW10. These witnesses although claimed to have deposited the money in their accounts in the aforesaid post officer

yet, none of them had produced either account books or the money receipts of depositing the amount in the said post office. The evidence on

record makes it appear that the allegation made by the witnesses are based on oral evidence except those account books and papers, which were

seized by the informant from the post officer aforesaid. If the deposits are not proved with the individual accounts by these witnesses, they cannot

be said to have proved the deposit.

14. Although the witnesses are found to have stated in the evidence that the

 

accused-respondent misappropriated the aforesaid amount of Rs.

1,56,601/- , yet in the absence of proof of the fact that such amount was deposited by the aforesaid witnesses, it cannot be said that the accused-

respondent received the said amount.

15. Learned counsel for the accused-respondent has submitted that there is no prosecution sanction obtained before prosecuting the accused-

respondent which was necessary, she being a public servant. Learned counsel for the petitioner has also submitted that since the offence is of

misappropriation which cannot be connected with the official responsibilities, no prosecution sanction is necessary. But, in the instant case, it

appears that there is a reasonable connection between the act of the accused-respondent and discharge of her public duty as Branch Post Master.

If the accused-respondent received the amount as alleged by the PW5, PW6, PW7, PW8 and PW10, and did not enter into the relevant records

of the post office, amounts to failure to discharge of her necessary duty as public servant resulting in misappropriation of the aforesaid amount.

16. Whatever it may be, since the act alleged to have been committed by the accused-respondent can be reasonably linked with her official

responsibilities, sanction, in the considered view of this court, was necessary.

17. In the facts and circumstances of the case as well as discussions above, this court is of the considered view that the prosecution has failed to

prove the case against the accused-respondent beyond all reasonable doubt.

18. The decision rendered by the learned trial court is not found perverse to the materials on record, and therefore, no interference by this court in

exercise of its revisional jurisdiction is called for.

19. Accordingly, the criminal revision petition is dismissed.

20. Send down the LCR along with a copy of this judgment.