

**ORISSA HIGH COURT
CUTTACK**

GOVERNMENT APPEAL NO.14 OF 1988

From the judgment dated 19.12.1986 passed by Sri D.L.C.K. Patnaik, C.J.M., Bolangir in G.R. Case No.533 of 1979/T. R. No.295 of 1985.

State of Orissa
Appellant

Versus

Chittaranjan Padhan Respondent

For appellant : Addl. Govt. Advocate

For respondent : Mr. H.S. Mishra

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 12.07.2006

PRADIP MOHANTY, J. This appeal is directed against the judgment and order dated 19.12.1986 passed by the learned Chief Judicial Magistrate, Bolangir in G.R. Case No.533 of 1979/T.R. No.295 of 1985 acquitting the respondent of the charge under Sections 409 and 477-A, IPC.

2. The case of the prosecution is that the accused-respondent was working as Peon in the District Central Co-operative Bank Limited, Bolangir. He was ordered to act as Secretary of the Society. Accordingly, he took over the charge of the office of Secretary

of the society on 21.02.1978 from one Nityananda Pradhan, S.F.D.A. Inspector of the Puintala Block. The informant-Rashbihari Mishra, Extension Officer, Puintala Block and Administrator of the Society (P.W.2) got information in the month of February, 1979 that the accused-respondent was collecting loans and not depositing the same in the District Central Co-operative Bank, Bolangir. To ascertain the correct position, P.W.2 asked the accused-respondent to produce the cash book and receipt book of the society for his verification, but he refused to do so. P.W.2 brought this fact to the notice of the Assistant Registrar, Co-operative Societies, Sonepur on 04.02.1979. The Assistant Registrar inspected the society before whom the accused-respondent produced the cash book and receipt book. Though the cash book showed a balance of Rs.14,419.08, the accused-respondent could not produce the amount. Thereafter, the accused-respondent was placed under suspension on 13.02.1979 and was directed to hand over charge to Subodh Bag, Assistant Secretary of the society by 15.02.1979, but without handing over the charge, the accused-respondent remained absent from the society unauthorizedly. Some days thereafter, he handed over the records and after verification of records, FIR was lodged by P.W.1 and ultimately charge-sheet was filed under Section 409 and 477A, IPC.

3. The plea of the respondent was complete denial of the allegation. His further plea was that he being a peon was never acted as the Secretary of the society and was never in-charge of cash or cash book of the Society. He took a specific plea that P.W.2 asked him to wash his clothes and do other private menial works. On his refusal to do so, a false case has been instituted against him.

4. In order to prove its case the prosecution examined as many as twenty-four witnesses and relied on 42 exhibits. The respondent examined one witness in support of his plea.

5. Learned Chief Judicial Magistrate, who tried the case, by his judgment dated 29.12.1986 acquitted the respondent of the above charge. Against the said judgment, the State has preferred this appeal.

6. Mr. Behera, learned Additional Government Advocate submits that in absence of any contra evidence, the trial court ought to have accepted the handwriting expert's report. P.Ws.1 to 9 and 11 to 17 have categorically stated that the accused-respondent collected amounts towards repayment of the loans taken by them. Therefore, the trial court committed grave illegality in acquitting the respondent.

7. Perused the judgment and the evidence of the witnesses. There is no doubt that the accused-respondent was initially appointed as Peon in the District Central Co-operative Bank. P.W.2 stated in his evidence that the accused was working as Peon and by order of the Secretary of the Bank he was posted to act as the Secretary of the Society. P.W.10 in his evidence stated that he handed over charge to the accused-respondent. P.W.21 was working as the Secretary of the District Central Co-operative Bank from December, 1979 to July, 1982. P.W.23 was also working as Secretary of the Bank during the year 1978 and 1979. In their cross-examination both P.Ws.21 and 23 admit that they cannot say the exact period during which the accused-respondent was the Secretary of the Society. P.W.24, who is the I.O., denied to have seized any original copy of the appointment order of the accused-respondent as Secretary. There is no specific evidence on record to show that the accused-respondent was in-charge of the cash as well as the cash book of the Society. Rather, P.W.2 in his evidence stated that the cash book was not maintained from 31.12.1977 to 31.01.1978. Moreover, P.W.2's statement does not show that accused-respondent

was the custodian of the cash of the Society. Therefore, the evidence on record is not clinching to establish that the accused respondent had acted as Secretary of the Society during the relevant period and he was the custodian of the cash and cash book of the Society. Further, P.W.24, the I.O. in his cross-examination stated that his investigation did not reveal any specific misappropriation by the accused-respondent between 13.02.1979 to 28.02.1979. The handwriting expert (P.W.22) in his cross-examination has denied to have known the accused-respondent. He also denied to have any personal knowledge of the signatures under Exts.37, 38 and 39 series. He admitted that the reference was not made to him through court and he submitted the reasons under Ext.40/2 only at the time of his examination in the court.

8. For the above reasons, this Court does not find any illegality or irregularity in the impugned order warranting interference. The argument advanced by the Addl. Government Advocate has no force.

9. In the result, the Government appeal has no merit and the same is dismissed.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
 July 12, 2006 / *Samal*