

**ORISSA HIGH COURT,  
CUTTACK**

**CRIMINAL REVISION NO.550 OF 1995**

From an order dated 02.09.1995 passed by Shri A.K.Patnaik, SDJM, Keonjhar in G.R.Case No.342 of 1987 (T.C. No.599 of 1988).

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Managing Director,  
Saharpada LAMPS

.....

Petitioner

Versus

Nanda Kishore Tanty

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Opposite Party

For Petitioner - M/s D.Nayak,  
D.P.Pradhan,  
R.K.Pradhan and  
S.Swain

For Opp.Party - M/s A.K.Rath and  
B.Dash

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**PRESENT:-**

**THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

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Date of hearing and judgment : 25.04.2006  
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**PRADIP MOHANTY, J.** In this revision, the informant-petitioner has challenged the order dated 02.09.1995 passed by the learned SDJM, Keonjhar in G.R. Case No.342 of 1987 (T.C. No.599 of 1988) acquitting the opposite party of the charge under section 408 IPC.

2. The case of the prosecution is as follows:-

The opposite party, while serving as the Branch Manager of Saharpada LAMPS, was entrusted with collection of loans from the members of the said LAMPS. After receipt of several allegations from different members, an enquiry was conducted, during which it was detected that the opposite party, after collecting loans from different

loanees in his official capacity, had misappropriated the amount without depositing the same in the loan account. F.I.R. was lodged by the Managing Director of Saharpada Branch before the Officer-in-charge of Patna Police Station, which was registered as Patna P.S. Case No.69 of 1987 and investigation was taken up, on completion of which chargesheet under section 408 IPC was submitted against the opposite party.

3. The defence plea was complete denial of the allegation. It was specifically pleaded that the opposite party was working as Salesman of the LAMPS but not as Branch Manager. There was no entrustment to him for collecting any loan amount, which is alleged to have been misappropriated by him.

4. In order to prove the case, prosecution examined as many as 12 witnesses and proved 12 exhibits. The defence examined three witnesses including the opposite party. The learned SDJM, Keonjhar, who heard the case, on appreciation of the evidence and other materials available on record, held the opposite party not guilty and acquitted him of the charge. Hence the present revision.

5. Learned counsel for the petitioner submits that at the first instance the trial court committed serious mistake in framing charge under section 408 IPC alone on the report of the I.O. No charge has been framed with regard to the offence of forgery. He contends that the impugned order of acquittal is based on erroneous findings pursuant to improper appreciation of evidence on record. He further contends that the trial court has committed serious miscarriage of justice by recording an order of acquittal inasmuch as the entrustment has been well proved and there is ample material against the opposite party. According to the learned counsel for the petitioner, whether or not the opposite party was working as the Branch Manager at the relevant point of time does not affect the prosecution case in any manner since it has been proved that he was a servant of the LAMPS and was entrusted to collect loans. In support of his above contentions, he has placed reliance on **Ranjit Barik - v-**

**State of Orissa**, (1994) 7 OCR 262; and **U.Gopal Reddy -v- State of Orissa & another**, (2003) 24 OCR 45.

6. On the other hand, learned counsel for the opposite party supports the impugned order and vehemently opposes the aforesaid contentions made on behalf of the petitioner. He submits that no procedural irregularity has been committed by the court below. He also submits that the scope of interference with an order of acquittal is very limited. Ultimately, he contends that this being an old case of the year 1987, no useful purpose will be served even if the evidence is reappraised. In support of his contentions, he has placed reliance on **K.Chinnaswamy Reddy -v- State of Andhra Pradesh and another**, AIR 1962 SC 1788; and **Nakmudia Naik -v- Rukhadhar Sabar and others**, (1997) 12 OCR 364.

7. Learned counsel for the petitioner made strenuous effort to persuade this Court to re-appreciate the evidence on record. I am afraid, this Court while dealing with a revision of the present nature should not embark upon re-appreciation of evidence, which is done only in some exceptional cases, namely, where certain material evidence has been omitted or certain inadmissible evidence has been taken into consideration. In this context, reference may be made to **Chinnaswamy's** case (supra), wherein the apex Court has held as follows:-

“ It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of S. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places

limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised.”

Relying upon the aforesaid ratio, this Court in ***Nakmudia Naik's*** case (supra) opined that this Court should not embark upon re-appreciation of evidence unless certain material evidence has been omitted or certain inadmissible evidence has been taken into consideration by the trial court. However, in ***Gopal Reddy's*** case (supra), this Court found that the appellate court had committed manifest illegality in picking and choosing stray instances of some contradictions or omissions. Therefore, this Court set aside the order of acquittal and remanded the matter to the appellate court for fresh consideration. While doing so, this Court held that when the findings recorded by the trial court were based on sound appreciation of evidence on record and totality of the circumstances, it was not permissible for the appellate court to pick and choose one point or other and to record an order of acquittal without duly considering the whole scenario and the evidence.

8. This Court has gone through the evidence and other materials available on record and it does not find any illegality or irregularity to have been committed by the trial court. Further, in the instant case, the charge-sheet has not been exhibited. No endeavour has been made by the prosecution to prove the entrustment and criminal breach of trust. Though there are some minor errors in the impugned judgment, the same cannot be a ground to set aside the judgment of the trial court. The decision in ***Ranjit Barik's*** case (supra), relied on by the learned counsel for the petitioner, is of no help to the petitioner as the facts of that case are totally different from the present one. There, the dishonest misappropriation having been proved, this Court passed an order of conviction. But the position in the present case is not so.

9. As to improper framing of charge, this Court is of the opinion that it is not open for the prosecution to challenge the same after conclusion of the trial and pray for modification at the revisional stage. In this case, F.I.R. was lodged in the year 1987, charge was framed in the

year 1988 and judgment was delivered in the year 1995. Hence, at this belated stage, there is absolutely no scope to question the correctness of framing of charge. Further, the petitioner has not been able to show any prejudice to have been caused to him due to the alleged improper framing of charge.

10. For the foregoing discussions, this Court is not inclined to interfere with the impugned judgment and order of acquittal. The revision is devoid of any merit and is dismissed accordingly.

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**Pradip Mohanty, J.**

Orissa High Court, Cuttack  
April 25, 2006 / ***Routray***