

istrict: Uttar Dinajpur

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, 1st COURT, RAIGANJ

PRESENT : Shri D. N. Roy Barman
Additional Sessions Judge, 1st Court
Raiganj, District: Uttar Dinajpur

TR Case No. 02 of 2010

State of West Bengal -Versus- 1. Ramendra Nath Sanyal
2. Krishnapada Sarkar

... Accused Persons

Charge : Under Sections 468, 409,120B of IPC

Advocate for the State : Mr. Swarup Biswas, Ld. PP

Advocates for the Defence : Mr. Alope Kr. Jha
Smt. Dipa Choudhury

Date of Pronouncement of Judgement : **26.06.2010**

J U D G E M E N T

This a case u/ss. 468, 409/120B of IPC.

Fact of the case, in brief that there is a District Leprosy Society under the CMOH, Uttar Dinajpur for taking special medical arrangement for leprosy patients. The CMOH, Uttar Dinajpur is the Secretary of the said society and some of the staffs of CMOH, Uttar Dinajpur was entrusted with the work of said society. A special grant is received from the government for the expenses incurred in connection with the work of the said society.

Accused no.1 Ramendra Nath Sanyal, UDC of Raiganj CMOH Office, was entrusted with the job of maintaining Cash Register of the society under the guidance of the CMOH, Uttar Dinajpur for a period of 27.03.1995 to 30.10.1998. Regarding the functioning of the said District Leprosy Society there was some allegation of corruption so District Anti Corruption Unit started enquiry. The CMOH, Uttar

Dinajpur for the relevant period of time was then transferred to the Writers' Building as Deputy Director of Health Department. On 02.08.2001 said CMOH Dr. Anuj Kr. Bhattacharjee was called on by the District Anti Corruption and Vigilance Unit at Karnajora. On scrutiny of the Cash Register of District Leprosy Society which was maintained by accused no.1 there appeared huge mal practice like over writing of amount, erasing of the amount and making some interpolation on the amount of the Cash Register in so many pages without any authentication and initial by the CMOH. It was also found that some of the corrections in the entries in Cash Book were rectified with the initial of the then CMOH. The then CMOH denied those signature/initial as his own and it is alleged that accused Ramendra Nath Sanyal forged his initial on the entries of Cash Book.

Thereafter said CMOH, Secretary of the District Leprosy Society lodged a written complaint before the Raiganj PS against accused no.1. On the basis of said written complaint police of Raiganj PS registered PS Case No.258/2001 dated 04.08.2001 u/ss. 467,468, 471, 477A, 120B, 420, 409 of IPC. Thereafter the case was endorsed to the Anti Corruption Unit which was investigated by Anti Corruption Inspector P.C. Das.

During investigation it was found that not only accused no.1 but also two other accused including the complainant Dr. Anuj Kr. Bhattacharjee are involved in cash defalcation of District Leprosy Mission. After completion of investigation police submitted charge sheet against three accused persons including FIR named accused. Police submitted CS under sections 467, 468, 471, 477A, 120B, 420, 409, 201 of IPC.

During pendency of the case accused no.2 Dr. Anuj Kr. Bhattacharjee died so the case has been filed against him. Presently accused no.1 Ramendra Nath Sanyal and accused no.2 Krishnapada Sarkar another UDC of the CMOH, Raiganj are facing trial.

Since one of the offence is u/s.409 of IPC the, case is triable by a special court under Prevention of Corruption Act.

Ld. CJM, Uttar Dinajpur forwarded the case to this court for trial of the accused u/s.409 of IPC.

This Special Court under Prevention of Corruption Act considered the charge against accused on the basis of materials placed in the case record as well as in the documents u/s.173 Cr.P.C. After hearing both sides and after going through the materials in case record as well as from the documents u/s.173 Cr.P.C, a charge u/s.468, 409, 120B of IPC was framed against the accused. Accused in reply to the charge pleaded not guilty.

No defence case has been made out.

POINTS FOR DETERMINATION.

Only point to be decided in this case whether the accused are guilty for the offence punishable u/ss.468, 409 and 120B of IPC ?

DECISION WITH REASONS

In a criminal case it is incumbent upon the prosecution to prove its case against the accused beyond the shadow of all reasonable doubts. Prosecution in order to prove its case has examined as many as 6(six) PWs and some documents have been admitted into evidence on behalf of prosecution after marking Ext.1 to Ext.4. Perused the case record and evidence adduced.

The defacto complainant Dr. Anuj Kr. Bhattacharjee was also made an accused in this case and during pendency of the case said defacto complainant died as a result of which FIR could not be proved. It appears from the FIR itself that the defacto complainant made a written complainant before the PS only when an allegation of corruption in the performance of the District Leprosy Society was enquired by the District Anti Corruption & Vigilance Unit.

It is not known who brought the official allegation of corruption in the functioning of District Leprosy Society ? Most probably it was the District Magistrate of Uttar Dinajpur who was the Ex-officio Chairman of the District Leprosy Society. However in this case record no such complaint made by the DM-Cum-Chairman District Leprosy Society found.

The defacto complainant was called on to the Anti Corruption Unit of Karnojora on 02.08.2001 when he was already transferred to Writers' Building as Deputy Director of Health Department. Thereafter Dr. Anuj Kr. Bhattacharjee, the then CMOH lodged a written complaint

before the Raiganj PS. Said written complaint was made FIR in this case but it is not actual first information report because there was some allegation of corruption against the performance of the District Leprosy Society by somebody else on the basis of which District Anti Corruption and vigilance Unit started examining the allegation.

Therefore the written complaint submitted by Dr. Anuj Kr. Bhattacharjee cannot be treated as FIR in this case. The original FIR which most probably initiated by the District Magistrate-Cum-Ex-officio Chairman of the District Leprosy Society is missing in the case record.

Thus the written complaint submitted by defacto complainant Dr. Anuj Kr. Bhattacharjee is considered as a subsequent statement which is hit u/s.161 Cr.P.C. Said written complaint cannot be used as FIR in the evidence. It can be considered as a subsequent statement. Whatever it may be the subsequent statement of Dr. Anuj Kr. Bhattacharjee also cannot be admitted into evidence due to the death of the maker.

Apart from above technicalities the fact of the case need to be proved by other cogent and believable evidence. PW-1 Niranjana Das is one of the UDC of CMOH, Uttar Dinajpur.

PW-1 stated in his evidence that on 04.08.2001 he was posted in CMOH, Raiganj in the post of UDC and at the relevant point of time CMOH, Raiganj was Dr. Anuj Kr. Bhattacharjee. He also stated that there was a society which was engaged in eradication of leprosy disease in the district called District Leprosy Center which was functioning under the CMOH, Raiganj. PW-1 further stated that CMOH, Raiganj Dr. Anuj Kr. Bhattacharjee was the Secretary of the said District Leprosy Center by virtue of his post and accused Ramendra Nath Sanyal another UDC of the office of the CMOH was entrusted with the job of maintaining Cash Register of the District Leprosy Center.

Thus a confirmation is found from the evidence of PW-1 that accused Ramendra Nath Sanyal was in charge of the Cash Register of District Leprosy Society and as such responsible for proper and fair maintenance of Cash Register. PW-1 further stated that there was a

dispute regarding misappropriation of money of District Leprosy Center when accused no.1 was in charge of the Cash Register.

A fact of misappropriation of money of District Leprosy Society is also known to PW-1 but he failed to supply details of such misappropriation because he was then not engaged with the activities of District Leprosy Society. He honestly stated that during his job as UDC in the office of CMOH, Uttar Dinajpur he had no opportunity to go through either the Cash Register or any other documents of the said society.

PW-1 stated that Dr. Anuj Kr. Bhattacharjee, the then CMOH lodged a written complaint in respect of said Cash misappropriation but he had no personal knowledge about the contents of the written complaint.

PW-1 disclosed in his evidence that during investigation of the case by the police, some documents were seized from the office of the CMOH, Raiganj. From the evidence of PW-1 there is no whisper about the involvement of another accused Krishnapada Sarkar who was also an UDC of CMOH, Uttar Dinajpur.

So far the evidence of PW-1 is concerned it is found that there was an incident of misappropriation of money of District Leprosy Center and at that time accused no.1 was in charge of the Cashier of the said District Leprosy Society and accused no.1 Ramendra Nath Sanyal used to maintain the Cash Register. Nothing is known from the evidence of PW-1 regarding the involvement of accused no.2 Krishnapada Sarkar in the incident of misappropriation of public money of District Leprosy Society.

In his cross-examination PW-1 admitted that he had no personal knowledge about the affairs of cash defalcation case because the then CMOH used to deal with the matter confidentially. He also stated that accused no.1 did not deal with the Cash Register of the said society after 1998.

It is found from the written complaint that alleged commission of misappropriation took place in between 27.03.1998 to 30.10.1998. So it is clear that the accused no.1 was in charge of the Cash Register of the District Leprosy Society from 27.03.1995 to 30.10.1998. May be that accused no.1 was no more Cashier of the

said District Leprosy Society after October, 1998. Therefore involvement of accused no.1 in criminal misappropriation cannot be waived from 27.03.1995 to September, 1998 even if it is accepted the version of PW-1 that accused no.1 did not deal with the Cash in the year 1998.

PW-2 Subhash Ch. Dey another employee of the office of the CMOH, Uttar Dinajpur stated in his evidence that there was one section in the office of the CMOH, Uttar Dinajpur known as District Leprosy Mission and said Mission was working under the guidance of CMOH, Uttar Dinajpur. PW-2 stated that accused no.1 Ramendra Nath Sanyal was the UDC of the office of the CMOH but he failed to state that accused no.1 was connected with the work of said District Leprosy Mission. In this regard PW-2 stated that I am unable to recollect who was the UDC of the CMOH Office in charge of the functioning of District Leprosy Mission. PW-2 stated that he heard about an incident of misappropriation of public money of District Leprosy Mission but he does not know about the details of such cash defalcation case.

Evidence of PW-2 is hearsay because he heard about an incident of cash misappropriation of District Leprosy Mission. It is found from the evidence of PW-2 that he is not at all aware about the functioning of District Leprosy Mission.

In his cross-examination of PW-2 disclosed that one UDC Niranjan Kr. Das was in charge of the cash of District Leprosy Society of Uttar Dinajpur and those documents were produced by the defence during cross-examination of PW-2 but said documents were not admitted into evidence for the purpose of shifting the responsibility from the shoulder of accused no.1 though the defence lawyer produced those documents and shown the same to the witness. That document was not admitted into evidence because that document was not tendered by defence as evidence on behalf of the defence. It is also found from the cross-examination of PW-2 that said document shows that an order was issued by the CMOH, Uttar Dinajpur on 12.10.1998 and by that order UDC Niranjan Kr. Das was placed in charge of Accounts and Cash of District Leprosy Center, Uttar Dinajpur.

Therefore it is clear that during the period under investigation i.e. 27.03.1995 to 31.10.1998 UDC Niranjan Kr. Das was not in charge of

the Accounts and Cash of the District Leprosy Society, Uttar Dinajpur. Niranjan Kr. Das was entrusted with the job of maintaining Cash and Accounts of the District Leprosy Society on and from 12.10.1998 on the basis of order of the CMOH.

PW-3 Badal Mitra is a Casual driver of CMOH, Uttar Dinajpur and being the driver of CMOH, Raiganj he had no access to the activities of District Leprosy Society. PW-3 stated that by virtue of a driver of CMOH he knows that there is a District Leprosy Society at Uttar Dinajpur which used to work under the CMOH, Uttar Dinajpur. He further stated that he is not aware of any fact about misappropriation of money of said District Leprosy Society. It is very natural that an official driver is not supposed to know about the documentary record of the official activities. His job was to drive the vehicle of the CMOH only. Therefore evidence of PW-3 is not helpful in this case.

PW-4 Kartick Ch. Das is a Watcher Constable of District Anti Corruption & Vigilance Unit of Uttar Dinajpur and on 04.08.2001 he together with Anti Corruption Inspector Pratap Ch. Das had been to CMOH Office at Raiganj. He also stated that Inspector Pratap Ch. Das seized some documents like Cash Book, Treasury Challans and other papers under a seizure list at Vigilance Office, Karnojora in his presence and he signed on the seizure list as witness.

PW-4 also stated that again on 08.08.2001, 09.08.2001 and 14.08.2001 some other documents in connection with the same case was seized by the ACI in his presence at Vigilance Office and he signed all those seizure list as witness. PW-4 also stated that said vigilance case was registered in connection with misappropriation of public money in the Office of CMOH, Uttar Dinajpur.

It appears from the evidence of PW-4 that all documents seized by the IO took place in the Office of the District Anti Corruption & Vigilance Unit situated at Karnojora, Raiganj. Now question comes how those documents came to the Vigilance Office from the Office of the CMOH, Raiganj which is situated in the Raiganj town. Thus the Cash Register, inventory list, Pass Book, copy of treasury challan which were all seized by the police at Karnojora not from the office of the CMOH, Uttar Dinajpur which is situated at Raiganj town. The seized articles being public documents are supposed to be preserved

in the office of the CMOH at Raiganj town but none of the seizure list showing seizure of those documents from the office of the CMOH, Raiganj. It is funny thing.

It appears from the case record that one seizure list dated 04.08.2001 was made in the office of CMOH by which important documents like counterfoils of cheques of District Leprosy Society, some Cash Vouchers in six bundles for the year 1995-1998 (part of 1998), Auditors report of District Leprosy Society and a register for receiving grant by the District Leprosy Society were seized from the office of the CMOH, Uttar Dinajpur in presence of CMOH Dr. Shyamal Kr. Jha, Manimohan Saha, UDC and Amjad Ali, GDA of CMOH but unfortunately said seizure list were not proved either by seizure officer or by above mentioned seizure witnesses. Another seizure list was made on the same date in respect of some other documents of District Leprosy Center but said seizure list was also not proved in this case either by calling seizure officer or by seizure witnesses.

PW-5 Joydeb Choudhury is one of the owner of a medicine shop of Raiganj under name and style Surendra Nath Medical Hall. Said PW-5 deposed that he used to supply medicine to the District Leprosy Society on the basis of quotation submitted by him. That PW-5 was the medicine supplier to District Leprosy Society on contractual basis. PW-5 stated that he used to supply medicine to the society on the basis of requisition sent to him and he also stated that he received the payment of cost of medicine from the office of CMOH by way of Account Payee Cheques.

PW-5 failed to state whether the cheques received by him from the CMOH Office, Raiganj was entered in his Book of Accounts or not as those are of old documents. PW-5 identified of accused no.1 as the person who used to receive medicine on behalf of the District Leprosy Society. He also stated that sometimes Store Keeper used to receive medicine from his shop on behalf of the society. From the evidence of PW-5 it is found that he is a medicine supplier and he used to supply medicine to the District Leprosy Society on contractual basis and he received the prices of the medicine supplied by him by way of Account Payee Cheques.

From the evidence of PW-5 nothing is available in respect of alleged defalcation of cash by the accused persons.

In cross-examination PW-5 stated that he is unable to recollect who used to sign on the cheques which were received by him as cost of payment of medicine because those are the incident of long ago. PW-5 also stated that he has no grievance against the District Leprosy Society or any portfolio holder of the District Leprosy Society regarding payment of medicines supplied by him.

PW-6 Asish Kr. Karmakar another watcher Constable of Police stated in his evidence that he is no way connected with the investigation of this case because he joined in the service in the year 2009. He stated another Asish Kr. Karmakar was the Watcher Constable of DIB Constale posted at Raiganj. Thus there was a mistake in issuing summons to the wrong witness due to having any name. Therefore evidence of PW-6 is not at all relevant in this case.

In a case u/s,409 IPC for misappropriation of public money a case is based upon the documentary evidence. The police during investigation seized some documents which are patent from the seizure lists but those seized documents are not produced in court for identification by the seizure witnesses. Without documentary proof no charge of cash defalcation can be proved. There is another allegation of forging of signature and initial of the defacto complainant by accused no.1. To substantiate such allegation specimen signature and hand writing of accused no.1 were taken by the police in presence of witnesses but it is not known whether police compared the hand writing and signature of accused no.1 with the signature/initial present in the Cash Register with the help of hand writing expert. Unless there is examination of hand writing and signature in questioned documents with the specimen hand writing and signature of the accused a charge of forgery cannot be proved.

In this case important witness is the IO of the case but said IO could not be traced out in spite of making several attempt by the prosecution to examine the IO. In the absence of IO a case u/s.409 IPC is impossible to prove because IO will prove the seizure of original documens seized by him. Unfortunately in this case neither IO has been examined nor any seized documents have been produced before the court to prove a fact of misappropriation of public money.

It is found from the evidence on record that accused no.1 was in charge of the Cash of District Leprosy Society during the period under investigation but no documentary evidence is forthcoming in support of such contention though the accused no.1 admitted in his examination u/s.313 Cr.P.C that he was in charge of cash of District Leprosy Society for a considerable period of time except in the year 1998.

A fact of misappropriation of money of District Leprosy Society there is no direct evidence of such fact because the witnesses examined failed to state about such fact of misappropriation of public money. Due to absence of any oral as well as documentary evidence regarding involvement of accused no.1 in the misappropriation of public money of District Leprosy Society accused no.1 cannot be held guilty for commission of such misappropriation of public money.

Regarding involvement of another accused Krishnapada Sarkar there is not a single whisper regarding his involvement in such incident of misappropriation of public money and as such it is needless to mention that nothing is proved against accused no.2.

After considering all aspects of the case I have no hesitation to hold that the prosecution has failed to prove any charge against any of the accused. Thus the accused are entitled to get a benefit of doubt in this case.

Hence, it is,

Ordered,

that accused 1. Ramendra Nath Sanyal and 2. Krishnapada Sarkar being not found guilty of the offence punishable u/ss. 468, 409,120B of IPC, are hereby acquitted of the charge under the provisions of Section 235(1) Cr.P.C.

They be released from their bail bond.

Alamat of the case be returned to the person/office from whom/which seized after expiry of the period of appeal.

At my dictation,

Judge

(D. N. Roy Barman),

Additional Sessions Judge,

1st Court, Raiganj, Uttar Dinajpur

