GAHC010161082011

2026:GAU-AS:2232

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./148/2011

JITU DUBEY
S/O SRI GUPTESWAR DUBEY, R/O D M LOHIA ROAD, NEAR KANYA PATHSALA, TINSUKIA, P.O., P.S. and DIST. TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the Petitioner : Ms. M Nirola

Advocate for the respondent : Ms. A Begum, Addl. PP

Date on which judgment is reserved :

Date of pronouncement of judgment : 16.02.2026

Whether the pronouncement is of the operative part of the judgment : No

Whether the full judgment has been

pronounced : Yes

JUDGMENT & ORDER (Oral)

Heard Ms. M Nirola, learned counsel for the petitioner as well as Ms. A Begum, learned Additional Public Prosecutor appearing for the State respondent.

2. This is a revision petition filed under Section 401 read with Section 397 of the Cr.PC by which the petitioner has challenged the judgment and order dated 14.02.2011 passed by the learned Additional Sessions Judge (FTC) No. 1, Tinsukia in Criminal Appeal No. 33(4)/2009 affirming the judgment and order dated 26.10.2009 passed by the learned Chief Judicial Magistrate, Tinsukia in GR Case No. 123/2007. The petitioner has also challenged the said judgment and order passed by the learned Chief Judicial Magistrate by which the learned Court convicted the petitioner under Section 408 of the IPC and sentenced him to undergo rigorous imprisonment for 1 (one) years with fine and default stipulation.

FACTS

3. An FIR was lodged by the informant stating *inter alia* that he is the authorised distributor of Igo Marketing (Colour TV, DVD etc) and that his employee, i.e., the petitioner had collected orders and received money from the dealers. It is alleged that the said employee stopped coming to the office since 25.12.2016 and that after scrutinising the office records, it was detected that the petitioner has misappropriated huge sum of money. It was also alleged that the petitioner had not deposited the Money Receipt Book No. 10 bearing pages from Sl. Nos. 551 to 600 by alleging further that he had intentionally collected money from the dealers to cheat them.

4. The Police on receipt of the ejahar registered the case and upon completion of the investigation submitted charge-sheet under Sections 406/420 of the IPC against the petitioner.

5. The learned Court of the Chief Judicial Magistrate, Tinsukia thereafter framed charges against the petitioner under Section 408 of the IPC, which was read over and explained to the petitioner, who pleaded not guilty and claimed to be tried.

6. The prosecution had examined 5 (five) witnesses, including the Investigating Officer and thereafter the petitioner was examined under Section

313 of the Cr.PC and on completion of the trial, the learned Court convicted and sentenced the petitioner, as mentioned above.

EVIDENCE

7. The informant was examined as the PW-1 and he in his evidence stated that his wife is the proprietor of the establishment namely, Igo Marketing Limited which is an electronic distributor firm and that they distributed products like TV, DVD, etc., to Dibrugarh and Tinsukia district. The said witness stated that he has the power of attorney to look after the said firm. This witness further stated that the petitioner was working in their establishment from May, 2006 at a monthly salary and his duty was to collect orders and received payment from their dealers and for this they had issued money receipt book to the accused. He also stated that during collection of the money from the dealers, the original receipt was given to the parties by keeping the counter foil, carbon copy in the receipt book. He also stated that the petitioner everyday deposits the collected money to the informant that is shown in the carbon copy of the receipt book. On 25.10.2006, the informant stated that he came to the firm to take the money receipt book, bills, price list, etc., but the accused was found absent in the said evening and it was informed that due to illness, he could not come to the duty and it was also stated that on the said day, the petitioner did not returned the receipt book No. 10 with serial No. 551 to 600 and the collected money. The informant further stated that it was not the accused responsibility to deliver the products which is actually done by the firm. The informant being suspicious checked the receipt given to the customers and compared the same with counter foil, carbon copy of the receipt book and found dissimilarities written in the original receipts and the amount found written in the carbon copy. It was found that the petitioner has written less amount in the carbon copy compared to the amount in the original receipt. It was also stated that in few cases, the petitioner did not deposit the money as well and as such, it was found that the petitioner has misappropriated lakhs of rupees.

8. The informant also stated that after lodging of the ejahar, the petitioner came and returned the receipt book and told him that he had spent all the collected amount. Thereafter, the informant had specifically stated the difference of amount of money that is written in the carbon copy and the original receipt. This witness was cross- examined at length and he denied that he prepared the receipt after lodging of the case. Further he affirmed that he has the power of attorney given by the owner of the company i.e., his wife.

9. PW-2 stated that the petitioner was the salesman of the firm and that the duty of the petitioner was to collect orders from dealers for which he was provided with a receipt book and that each day the petitioner was supposed to return the collected amount along with the receipt book. But on 25.12.2006, the petitioner was stated to have taken away the receipt book containing fifty numbers of pages and the discrepancy was seen later.

10. PW-3 stated that his son is a distributor of the firm and that he also collects orders from the dealers and was given a receipt book. This witness also stated about the same fact that the petitioner did not return on a particular day and also had not returned the receipt book and that it was found out that original receipt contained more amount than the counter foil in respect of other receipt book.

11. PW-4 is a seizure witness and was also declared as a hostile witness.

12. PW-5 is the Investigating Officer, who stated that during the investigation, the petitioner handed over a receipt book containing pages from 551 to 576 and he seized the said book vide seizure list No. 2.

13. These are the prosecution witnesses.

14. The petitioner was examined under Section 313 of Cr.PC wherein he had admitted he was an employee of the firm and that he had collected orders for the firm but denied the collection of money and further asserted that he was falsely implicated in the case.

15. The Trial Court after consideration of the said evidence on record had held that the informant on suspicion collected the original receipt from the parties and compared the same with carbon copy receipt which were in their hands and it was found out that the accused had entered less amount in the carbon copy receipt than that of the original receipt and in view of the statements/depositions made by PW-1 and 2, the learned Court held that the petitioner had committed the offence of misappropriation by writing less amount in the carbon copy and found him guilty under Section 408 of the IPC and upon finding guilty, the Trial Court imposed the sentence as mentioned above.

16. Against the Judgment & Order dated 26.10.2009, the petitioner had filed an appeal before the learned Court of Additional Sessions Judge (FTC) No. 1, Tinsukia being Criminal Appeal No. 33(4) of 2009 and the Appellate Court on perusal of the fact and the law had upheld the decision of the Trial Court with the modification that the fine amount imposed on appellant was reduced from Rs. 3000/- to Rs. 1000/- without however, interfering with the substantive sentence of one (1) year incarceration under Section 408 of the IPC. Against the said Judgment and Order, the appellant has filed the instant Criminal Revision

Petition.

ARGUMENTS

17. Ms. M Nirola, learned counsel for the petitioner argues that in the instant case, the FIR has been lodged with much delay inasmuch as the incident had occurred on 25.12.2006, the date on which the petitioner is stated to have left the firm and had not returned the receipt books to the informant and whereas the FIR was lodged on 04.09.2007, causing a delay of more than a month. She further submits that there is no explanation of delay in the said FIR. As such, that had caused prejudice to the petitioner and delay not been explained has the effect of nullifying the prosecution case.

18. The learned counsel has also raised the ground that the ingredients of Section 408 of the IPC is not attracted in the case and to substantiate the submission, the learned counsel placed Section 405 of the IPC, wherein it is clearly stated that any person has to be entrusted with the property before charging him under the said Section. She submits that in the instant case, the only task of the petitioner was to collect money by giving receipts to the buyers and deposit the money to the informant or the owner of the firm. She as such submits that there was no entrustment of the property to the petitioner to bring the case within the definition of criminal breach of trust. Accordingly, she submits that Section 408 of the IPC is not made out.

19. The other submission raised by the learned counsel is that the petitioner was not examined properly under Section 313 Cr.PC, inasmuch as all incriminating circumstances were not put to him as required under the law. She submits that the discrepancy that is alleged to have cropped up in the carbon copy of the receipt book and the original copy that were given to the customers was not asked to the petitioner.

20. To substantiate her arguments, she relied on the Judgment of:-

(1) *MNG Bharateesh Reddy Vs. Ramesh Ranganathan & Anr.*, reported in *2022 LiveLaw (SC) 701*, by which the Hon'ble Apex Court had interpreted the term entrustment as provided under Section 405 of the IPC.

(2) *Nababuddin Alias Mallu Alias Abhimanyu Vs. State of Haryana*, reported in *AIR OnLine 2023 SC 941*, by which the Hon'ble Apex Court had elaborated on the circumstances to be put to the accused person during his examination under Section 313 of the Cr.PC.

21. Ms. M. Nirola, learned counsel for the petitioner also submits that the petitioner is not the owner of the firm. It is his wife who is actually the owner and it is stated by the petitioner that he has the power of attorney given to him by the owner of the firm and that neither the wife of the petitioner that is the owner was examined, nor the power of attorney was exhibited.

22. Per contra, Mr. Sharma, learned Addl. Public Prosecutor appearing for the state submits that the FIR that is lodged on 04.02.2007, although does not contained the reasons for delay in so many words, but the contents itself shows that there is no delay in lodging the same. He submits that it was specifically written that from 25.12.2006, the petitioner stopped coming to the firm and neither he submitted the receipt book and since he is an employee of the said firm, the informant waited for him to return and when he did not return for long, he out of suspicion compared the receipt books and called for the original receipt from the customers which took some time and on finding out the discrepancy, the instant FIR was lodged. So, according to the learned counsel, sustantial time was taken for the said exercise and the FIR was lodged and as such, there is no intentional delay on his part. As far as the second contention of the learned counsel for the petitioner is concerned, Mr. Sharma submits that ingredients of Section 405 of IPC which defines criminal breach of trust is well attracted in the instant case. He submits that giving of the receipt book to the petitioner for issuing receipts and collecting money from the customers is itself an entrustment of property of the informant to the accused. On the third submissions made by the learned counsel for the petitioner that all incriminating circumstances are not put to the accused person under Section 313 of the Cr.PC. He submits that the main incriminating circumstances that is the discrepancy between the receipt and the carbon foil has been put to the petitioner which was answered in negative by him and as such, no prejudice is caused to the petitioner.

FINDING

23. The conviction of the petitioner was under Section 408 of the IPC which is the charging section and Section 405 of the IPC is the provision where the phrase "criminal breach of trust" has been defined and it is defined in the following manner:-

> *405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any*

legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

[1] [[2] [Explanation 1].—A person, being an employer 3 [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

[4] [Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to

have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of

rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, thought Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

24. The above provision makes it clear that any person who is entrusted with the property or who had some dominion over that property but who dishonestly misappropriates or converts to his own use or disposses the same violating the mode in which the trust is to be discharged is stated to have committed criminal breach of trust. The provision also entails that if someone entrusted with the property or with the dominion over property misappropriates converts, uses, disposses the said property in violation of any legal contract, express or implied which he has made touching the discharge of such trust is said to have committed criminal breach of trust.

25. In the instant case, it is seen more so from the evidence of PW-1, who is the husband of the proprietor of the firm, that the petitioner was employed as an employer from May, 2006, and he was working for more than 6 (six) months in the said firm at a monthly salary which shows that the employer has put her trust on him. The trust can also be seen from the duty that was assigned to the petitioner, who was supposed to collect orders from the customers and receive payment by issuing original receipt by keeping the counter foil and by depositing the same i.e., the receipt book and the counter foil as well as the collected money to the owner of the firm. The said duty that was assigned to the petitioner was also stated by other witnesses i.e., PW-2 as well as PW-3. So the duty of the petitioner was to collect orders, collect the money and give the original receipts to the customers.

26. As per the definition of Section 405 of the IPC, it is provided that if someone is entrusted with the property and was given the trust and he misuses the same, touching the discharge of such trust, the said person is said to have committed criminal breach of trust. Here in the instant case, the petitioner was given the trust of collecting the money and issuing the original receipt and that he violated the same in the instant case.

27. Further as far as delay in lodging the FIR is concerned, it is seen that since the petitioner has been working more than six (6) months in the firm of the wife of PW-1, the informant after finding out that the petitioner did not come to the office for long, out of suspicion compared the receipt copies and found the discrepancy which took some time and as such, the FIR was lodged with some delay.

28. The learned counsel for the petitioner raises another ground of not putting the question to the petitioner about his signature in the receipt books. However, the same would not be relevant in the instant case neither the same would cause prejudice because the said receipt book was given to the petitioner for discharging his duty. Furthermore, remanding the case to the Trial Court after 20 years of the offence would not serve any purpose, neither the case can be set aside on that ground.

29. Be that as it may, under Section 360 of the Cr.PC, it is specifically provided that any person who is not under 21 years of age is convicted for an offence punishable with fine only or with imprisonment for a term of 7 years and if it appears to the Court before which he is convicted with regard to the age, character or antecedents of an offender and to the circumstances in which the offence was committed, the Court can direct the offender to be released on probation of good conduct on his entering into a bond and to keep peace and be on good behaviour.

30. In the case at hand, it is seen that the Trial Court had declined to give benefit under Section 360 of Cr.PC and by considering the social liability of the petitioner he was imposed with a minimum sentence of one year with a fine of Rs. 3,000/- which was again reduced by the Appellate Court to Rs., 1,000/-. However, it is seen that the Trial Court had not considered the aspect of giving him benefit under the Provision of Offenders Act or under Section 360 of Cr.PC to that extent which is required under the law.

31. It is noticed that the petitioner has to look after his parents and was found that at the time of occurrence he was 22 years of age. As such, by taking a lenient view, the petitioner is released on probation and instead of sentencing him, the petitioner be released on entering into a bond with one (1) surety and to maintain peace and good behaviour.

32. The Trial Court i.e., Chief Judicial Magistrate, Tinsukia would do the needful.

33. Send back the LCR.

34. The petition is disposed of.

JUDGE

Comparing Assistant