

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

CRA 523 Of 2015

Bharat Chandra Mete

-Versus-

The State of West Bengal

For the Appellant : **Mr. Tapas Kumar Ghosh,
Mr. Tanmay Chowdhury.**

For the State : **Ms. Zareen N. Khan,
Ms. Nandini Chatterjee.**

Hearing concluded on : **14.07.2025**

Delivered on : **27.0.2025**

Prasenjit Biswas, J:-

1. The present appeal is directed against the impugned judgment and order of conviction dated 31.07.2015 passed by the learned Additional Dist. & Sessions Judge, 2nd Court, Hooghly in connection with Special Case No. 3 of 2009 corresponding to CIS no. 64/14.

2. By passing the impugned judgment this appellant was found guilty for commission of offence punishable under Section 409 of the Indian Penal Code and was sentenced to suffer simple imprisonment for a term of six months along with a fine of Rs. 5,000/-, in default of payment of fine to undergo further simple imprisonment for one month.

3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction, the present appeal is filed at the behest of the appellant convict.

4. In short campus, the story of the prosecution is delineated hereunder-

“The accused Sri Bharat Chandra Mete was the Sub-Post Master in Saidpur Post Office since 14.01.2000. The defacto complainant Sri Ashit Kumar Mukherjee, Sub-Divisional Inspector (Postal), Chinsurah West Sub Division, Chinsurah, Hooghly received a telephonic information from the superintendent of Post Office, North Hooghly Division Chinsurah, Hooghly in the evening of 31.08.2004 to the effect for verification of cash and stamp balances of Saidpur Sub-Post Office. Accordingly, he rushed to the Saidpur Sub-Post Office in the morning of 01.09.2004 and the accused was directed to produce office cash and stamp balances for verification before starting of work of office. The accused produced the cash and stamp balances of the Sub-Post Office for verification. As per office account of Saidpur Sub-Post Office, the opening cash and stamp balances was on 01.09.2004 to the tune of Rs. 4,48,2666.65/- but on physical verification the

total cash and stamp balances of the Sub-Post Office was found for Rs. 61,167.50/-. So, there is a sum of Rs. 3,87,099.15/- was found short in the cash and stamp balances as per physical verification. It is said in written complaint that on asking the accused, he failed to explain the reason of the shortage. Over the incident a written complaint was lodged by the defacto complainant. It is said in the written complaint that the accused defalcated the government cash and stamp of Rs. 3,87,099.15/- for his personal purpose. Over the complaint a case being Pursura P.S. Case No. 79/04 dated 08.09.2004 under Section 409 IPC was started.”

5. After completion of investigation charge sheet was submitted by the prosecuting agency against this accused person under Section 409 of IPC.

6. The charge was framed by the Trial Court against the accused under Section 409 of the Indian Penal Code. In this case 8 witnesses were examined by the side of the prosecution and documents were marked as exhibited on his behalf. On the other hand one witness was adduced from the side of the defence as DW1 and the documents were marked as Exhibit A series on behalf of the accused person.

7. Mr. Tapas Kumar Ghosh, learned Advocate appearing for the appellant has said that this appellant had already returned the defalcated amount on different dates and as such this accused may be absolved from the liability under Section 409 of IPC. In support of his contention the learned Advocate placed reliance upon an decision rendered by the Single bench of the Hon’ble

High Court at Madhya Pradesh in case of **State of Madhya Pradesh vs. Prempal**¹. It is further contented by the learned Advocate that instead this appellant is convicted of the offence and sentenced to imprisonment he may be directed to stand in the court room till rising of the Court.

8. Ms. Zareen N. Khan learned Advocate appearing for the State said that the return of entire amount by the accused person would not acquit the accused from the offence alleged. It is assailed by the learned Advocate that it would appear from the materials on record that the accused person misappropriated the public money. No plausible explanation was given by the side of the defence regarding defalcation of government money. It is said by the learned Advocate that the guilt of the appellant was proved and all the witnesses cited by the prosecution have supported the contentions made in the written complaint. So, it is said that there is nothing material in the record for which the impugned judgment and order of conviction may be interfered with.

9. I have considered the rival submissions advanced by both the parties.

10. PW1, Ashit Kumar Mukherjee/ defacto complainant has deposed in supporting the contention made in the written complaint. It is said by this witness that the entries made in the account book dated 30.08.2004 and 31.08.2004 are in the hand writing of the accused. This witness said that he lodged FIR for misappropriation of Government money and stamp valued to the tune of Rs. 3,87,099.15/- by the appellant during the time of discharging his official duties. This witness prepared notes showing the balance of cash and

¹ **1991 CRI L J 2878**

stamp in the post office and short fall was mentioned in the note sheet. It is said that the appellant admitted the contents of the note sheet as correct.

11. PW2 Chandan Kumar Dhar who is clerk in the office of the Superintendent of Post Office, Hooghly North Division proved his signature on the carbon copy of the seizure list. This witness stated that the accused was posted as Sub-Post Master of Saidpur Post Office.

12. PW3 Amal Kanti Das who was the Deputy Director at G.P.O., Calcutta also deposed in this case relating to the fraud made by this appellant in the Saidpur Sub Post-Office and proved his signature on the seizure list which are collectively marked as Exhibit 6/1 in this case..

13. PW4 who was the postal peon at Saidpur Sub-Post Office proved his signature on the carbon copy of the note sheet – the inventory which are collectively marked as exhibit 2/2 in this case. It is said by this witness that he put his signature on the document which is relating to some discrepancies and short fall of money in the postal accounts of the post master.

14. PW6 Subhas Chandra Maity, a Group 'D' staff at Gourhati Sub-Post Office under Arambag Head Office has stated in his evidence that in course of inspection, PW1 found that about Rs. 3,00,000/- and some odd were short credited in the postal account during the term of the accused. This witness is the signatory on the inventory which is marked as exhibit 2/4 in this case.

15. PW7 is the investigating officer who after completion of investigation submitted charge sheet against the accused person.

16. After appreciation of the entire evidences brought on record it appears that on the relevant date and time this appellant accused was the Sub-Post Master of Saidpur Sub-Post Office. It is admitted position that on physical verification on 01.09.2004, the cash and postage etc were found for Rs. 61,167.50/- and the amount of Rs. 3,87,099.15/- was found short. DW1, Harimohan Debnath has stated in his evidence that the appellant deposited the entire defalcated amount on different dates and entire amount i.e. Rs. 3,87,099.15/- had already been deposited by the appellant convict. In support of his contention some certified xerox copies of the cash deposit were submitted before this Court which were marked as Exhibit A series in this case. It is not denied by the side of the prosecution that the accused did not return the entire defalcation amount but it is the contention of the learned Advocate that mere deposit of defalcated amount would not absolve the accused from the liability under Section 409 IPC.

17. It is a settled principle of criminal jurisprudence that subsequent conduct of an accused may provide strong corroboration of his involvement in the crime. In the instant case, it has been brought on record that the accused had deposited the defalcated amount after the matter came to light. Such an act of restitution or refund by the accused is not an innocent gesture but a clear pointer towards his culpability.

18. If the accused had not committed the misappropriation, there would have been no occasion or necessity for him to deposit the exact defalcated sum. The voluntary act of repaying the amount establishes a tacit admission of guilt

and furnishes strong circumstantial evidence of the fact that the accused had misappropriated the funds in the first place. Deposit of the misappropriated amount after detection is not a mitigating circumstances to erase the offence but, on commission of criminal breach of trust or defalcation.

19. Therefore, the accused cannot claim exoneration merely because he has deposited the embezzled sum. His subsequent act of repayment does not absolve him from the liability of criminal breach of trust but rather strengthens the prosecution case that he was the person responsible for the defalcation. The principle that “restitution after detection equals admission” clearly applies here.

20. When the prosecution establishes that there was a defalcation of money during the period when the accused was entrusted with the custody and management of such funds, and thereafter the accused himself comes forward to deposit the exact defalcated sum, the irresistible inference is that he was the person who had misappropriated it. If there was no misappropriation by him, there was no reason or occasion for him to make good the loss. His subsequent conduct, therefore, is a clear pointer towards his guilt.

21. In the present case, it is not in dispute that the accused, after detection of the defalcation, deposited the defalcated amount with the concerned authority. The mere fact of such deposit, far from being a mitigating or exculpatory circumstance, in reality operates as a strong incriminating circumstance against him. The reasoning is simple: an honest person, who has not misappropriated or embezzled any money, is under no obligation to deposit

or refund any amount. Such voluntary deposit can only be explained on the basis that the accused had, in fact, committed the defalcation and, upon its detection, he attempted to cover up his guilt by making good the loss. It is true that refund or repayment may mitigate civil liability, but criminal liability in cases of breach of trust or embezzlement is not wiped out merely by restitution. Making good the defalcated amount does not efface the offence but acts as corroborative evidence of misappropriation. The principle is that an accused cannot claim immunity from criminal liability merely by returning the stolen or misappropriated property after detection. On the contrary, the very act of repayment supplies a missing link in the chain of evidence, thereby proving beyond reasonable doubt that the accused was the perpetrator of the offence. So, the very act of repayment lends strong corroboration to the prosecution story that the accused had committed the offence. I find that restitution after detection is not a ground for exoneration, but an incriminating circumstance showing acknowledgment of guilt.

22. Accordingly, the deposit of the defalcated sum by the accused cannot be accepted as a defence plea but must be treated as a clear incriminating circumstance. It conclusively shows his guilty knowledge and dishonest intention, and it further corroborates the prosecution's case that he had in fact committed the crime in question. Hence, the act of repayment stands as an unequivocal pointer to his culpability, proving the charge beyond reasonable doubt.

23. Having regard to the facts and circumstances of the present case, the Court is now required to determine the appropriate sentence to be imposed upon the accused. It is not in dispute that the occurrence in question took place more than two decades ago and the trial itself remained pending for an unduly long period of time. The accused has undergone the rigours of criminal proceedings for all these years, facing the anxiety, stigma and uncertainty of trial.

24. In such a background, this Court is of the considered opinion that the ends of justice would not be served by directing the accused to suffer a substantive sentence of imprisonment at this distant point of time. The long pendency of the case and the protracted trial proceedings themselves amount to a form of punishment. The sword of a pending criminal case hanging over the head of an accused for decades is itself a mitigating circumstance which deserves due weight while imposing sentence.

25. It is also pertinent to note that the offence in question does not involve any element of physical violence, nor does it disclose a threat to public safety or order. In such circumstances, the primary object of punishment can be sufficiently achieved by imposing a monetary penalty rather than sending the accused to jail after such a long interval of time.

26. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair and just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or

just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial and by speedy trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. It is trite law that Art. 21 and the right to speedy public trial is not merely a twinkling star in the high heavens to be worshipped and rendered vociferous lip-service only but in deed is an actually meaningful protective provision, then a fortiori expeditious hearing of substantive appeals against convictions is fairly and squarely within the mandate of the said Article.

27. Accordingly, while upholding the conviction of the accused for the offence proved against him, this Court is of the view that the substantive sentence of imprisonment deserves to be modified and converted into a sentence of fine only. Imposition of fine will adequately meet the ends of justice, balance the rights of the victim and the society, and at the same time, avoid unnecessary hardship to the accused who has already faced the ordeal of litigation for a prolonged period.

28. In this case the incident was happened in the year 2004 and the case is pending since then. This appellant /accused found guilty of an offence after a protracted trial process and as such he is entitled to a lenient sentence on the ground of delay.

29. In view of the aforesaid reason the jail sentence imposed on the appellant is to be reduced to what has already undergone by the appellant. The appellant is, therefore, not required to undergo any more jail sentence but he has to deposit the fine amount which is assessed by the Court as Rs. 5,000/-. If the

said fine amount is not paid by the appellant within one month from this date, he will have to undergo simple imprisonment for a period of one month.

30. In view of facts and discussion made above, the present appeal is **partly allowed** and is modified to that extent.

31. Let a copy of this order along with TCR be sent down to the learned Trial Court immediately.

32. Urgent Photostat certified copy of this order, if applied for be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)