

(2003) 07 JH CK 0051**Jharkhand High Court****Case No:** Criminal Appeal No. 20 of 1997 (R)

Uma Shankar Pandey

APPELLANT

Vs

The C.B.I.

RESPONDENT

Date of Decision: July 21, 2003**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120B, 420, 467, 471
- Prevention of Corruption Act, 1988 - Section 5

Citation: (2004) 52 BLJR 16**Hon'ble Judges:** Amareshwar Sahay, J**Bench:** Single Bench**Advocate:** M.M. Banerjee and R. Mukhopadhyaya, for the Appellant; Rajesh Kumar, for the Respondent**Judgement**

Amareshwar Sahay, J.

The appellant has filed the present appeal against the Judgment dated 13-1-1997 passed by the Special Judge (C.B.I.) Dhanbad in R.C. case No. 10 of 1982 whereby the learned trial Court convicted the appellant u/s 120B read with Sections 420/467 and 471 of the Indian Penal Code and also Section 5(i)(d) of the Prevention and Corruption Act and has sentenced to undergo Rigorous Imprisonment for six months under Sections 120B read with Section 420/467 of the Indian Penal Code and further two years for Rigorous Imprisonment u/s 471 read with Section 465 of the Indian Penal Code. He has further sentenced to undergo Rigorous Imprisonment for two years u/s 5(ii) read with Section 5(i)(d) of the Prevention and Corruption Act. All the sentences were ordered to run concurrently.

2. The prosecution case in brief is that one Kardhu Dusadh was under ground loader in Sendra Bansjora Colliery and he retired from his service on 31-5-1981. He submitted requisition form for refund and remittance of his P.F. dues. In that application he mentioned the address for remittance for the P.F. money at his

quarter No. 398 B Block Bhuli Nagar, Dhanbad and he gave his L.T.I, on the refund application. In the said application for refund of P.F. dues another colliery address was mentioned. The application was processed in the office of C.M.P.F. Dhanbad and crossed account payee cheque No. OB/14-090021 dated 9-7-1982 for Rs. 21,275.45 paisa was issued in the name of Kardhu Susadh and was sent under registered post No. R. 5850 dated 16-2-1982 at the colliery address i.e. Sendra Bansjora. The said registered cover was received on 17-7-1982 by Arjun Nath Sharma, post man, Sendra Bansjora colliery on identification of Ram Briksha Bhuiyan. It is stated that S.B. A/c No. 237254 dated 17-7-1982 was opened in the name of Bardhu Dusadh by depositing Rs. 5 only. In the account opening form the L.T.I. of Kardhu Dusadh was identified by one Ram Briksha Bhuiyan signed as Arjun Nath Sharma as identifier. On that date crossed A/c payee cheque No. OB/14-090021 dated 9-7-1982 for Rs. 21,275.24 was tendered in the said S.B. Account by Ram Briksha Bhuiyan for crediting and thereafter the entire amount of Rs. 21,275.45 paisa was withdrawn on 21-7-1982 through withdrawal slip containing finger impression. The appellant, Uma Shankar Pandey, accepted the identification on the account opening slip and on the withdrawal slip which was written in his presence and thumb impression was given by only Ram Briksha Bhuiyan as Kardhu Dusadh and the said Ram Briksha Bhuiyan signed as Arjun Nath Sharma, post man, Sendra Bansjora post office. Both thumb impression and writings and signatures as identifier was found to have been made by Ram Briksha Bhuiyan in presence of Uma Shankar Pandey, appellant. It is also said that M.D. Khalil Ansari (now dead), Assistant Post Master, S.B. Post office, Dhanbad was to verify at the time of the opening of the account and before passing order for the payment on the withdrawal slip personally from the identifier as well as A/c holder which he failed to do and accepted the forged identification made by Ram Briksha Bhuiyan as Arjun Nath Sharma to whom he knew very well and thus became party to facilitate the commission of the crime and thereby both Uma Shankar Pandey, appellant and Md. Khalil misused their official position as public Servant which resulted in pecuniary advantage and release of the amount to accused Ram Briksha Bhuiyan.

3. During the investigation, C.B.I. seized form 2 (Ext. 1), four ledger cards (Ext. 2 series), cheque bearing No. B/214-090021 of S.B.I. Dhanbad, entry in dispatch register dated 14-7-1982 (Ext. 5), signature on the dairy register SI. No. 166 dated 14-7-1982, P.F. application (Ext. 8), delivery slip (Ext. 9), application dated 9-8-1982 (Ext. 10), forwarding letters Ext. 11 to 11/3. The specimen signature and thumb impression were examined by the experts. Their report was marked as Ext. 15.

4. Md. Khalil died during the trial while Ram Briksha Bhuiyan confessed his guilt and accordingly he was convicted and sentenced to undergo Rigorous Imprisonment for four years u/s 420/468 of the Indian Penal Code.

5. The defence is that the appellant being counter clerk signed Ext. 6/1 in pay in slip application form as per the provision of the Saving Bank Account Manual and that

he was falsely implicated in this case.

7. Altogether 15 witnesses were examined by the prosecution in order to prove the charge.

8. P.W. 1, I.N. Prasad, who is an employee of C.M.P.F. office, stated that the amount was settled at Rs. 21,275.24 paise and he proved Exts. 1, 2, 2/3 and 3.

P.W. 2, A. Mondal, who was P.A. to D.P.S. South Chhotanagpur, Ranchi, has proved the sanctioned order.

Kardhu Dusadh, complainant, was examined as P.W. 3.

Inder Ram was examined as P.W. 4 who was the son of Kardhu Dusadh.

P.W. 5, Ram Sundar Prasad, who was the Upper Division Clerk of Provident Fund Office, Dhanbad, and in the year 1982 he was maintaining despatch register and proved entry No. 894 dated 14-7-1982 which was marked as Ext. 5. He stated that he received cheque on 14-7-1982 from the cash Section and made entry of receiving at SI. No. 616 which was marked as Ext. 4.

Raj Kumar Pandey, P.W. 6 the Assistant Post master who was examined as P.W. 6, he was a ledger clerk in the Head post Office, Dhanbad. He has stated that in the year 1982 Uma Shankar Pandey, appellant was counter clerk. He has further stated that on 21-7-1982 Rs. 21275.45 Paisa was withdrawn through withdrawn form from Saving Bank Account and in the capacity of ledger clerk he has made endorsement and thereafter Khalil Ansari, in the capacity of assistant Post Master has put his signature along with the endorsement which was marked as Ext. 7. He has further proved the signature of the appellant in pay in slip which was marked as Ext. 6/1.

P.W. 7, Indulal, Personal Manager of Koiridih colliery proved that Kardhu Dusadh was employee as minor loader at Basjora colliery and retired from there.

P.W. 8, Hari Das Goswami, who was P.F. Clerk in the Bansjora Colliery in the year 1980-81, proved the application form which was marked as Ext. 8.

P.W. 9, Ranji Ram, who was registration clerk, proved the delivery slip dated 17-7-1982 which was entrusted to Aarjun Nath Sharma. He has also proved an application of Arjun Nath Sharma which was marked as Ext. 10.

P.W. 10 is the Deputy Government Examiner of Questioned documents at Calcutta. He has proved his report which was marked as Ext. 15.

P.W. 11, Dadan Tiwary, who is an account officer in the C.M.P.F. office, Dhanbad has stated about the procedure being adopted in settling the P.F. claims. He further stated that the claim of Kardhu Dusadh has passed through him which was approved by K.N. Mishra and cheque was issued by the signature of K. Nath, Cash officer and their signatures have been proved by him which were marked Exts. 6/4 and 6/5.

P.W. 12, Raghunandan Paswan stated that Kardhu Dusadh after retirement was residing in his quarter No. B/398.

P.W. 13, Arjun Nath Sharma, stated that the thumb impression on the back of cheque (Ext. 3) was not his thumb impression.

P.W. 14, Brij Bhushan Dubey, is Finger Print Expert who examined specimen thumb impression along with disputed writings. He has proved the report of Mr. S.N. Banerjee.

P.W. 15, Lakhi Prasad, is the Investigation Officer.

9. Besides the oral evidence several other documentary evidences were also adduced in evidence by the prosecution.

10. The first part of the occurrence that Ram Briksha Bhuiyan executed all the writings and thumb impression and he withdrew the amount which was fully proved by the prosecution and said Ram Briksha also admitted his guilt. So far as the point regarding involvement of the appellant in conspiring with Ram Briksha Bhuiyan and in pursuance to that conspiracy he allowed opening of the account, deposit of the cheque and withdrawal of the amount by Ram Briksha Bhuiyan in concerned, the same has fully been proved by P.W. 6, Raj Kumar Pandey. There is no denial of fact that the appellant was counter clerk in the Head Office at the relevant time and date Cheque was deposited and amount was withdrawn on the same date i.e. 21-7-1982 has also been established by the prosecution.

11. The learned trial Court scrutinized the defence of the appellant in great detail after considering the relevant provisions of the Post Office Manual wherein after considering the entire materials on record and in the facts and circumstances of the case, had come to the conclusion that the appellant ignoring his duty accepted the account opening form, withdrawn form and the cheque duly purported to be attested in the name of Arjun Nath Sharma made by Ram Briksha Bhuiyan to establish the fact that he in collusion with Ram Briksha Bhuiyan accepted all those papers in collusion with Ram Briksha Bhuiyan which should not have been accepted by him and therefore, all the materials evidence established that Uma Shankar Pandey, appellant, accepted the identification on the account opening slip, account payee cheque and the withdrawal slip which were written in his presence and thumb impression was given by the accused Ram Briksha Bhuiyan as Kardhu Dusadh and thereby the prosecution is established that the appellant accepted the forged account opening form, withdrawal slips, cheque in which Ram Briksha Bhuiyan impersonating Kardhu Dusadh appended his thumb impression and also identified the thumb impression purporting to be Kardhu Dusadh in the name of Arjun Nath Sharma which clearly proved that accused ignored the provisions of attestation which shows that he in conspiracy with the accused Ram Briksha Bhuiyan and fraudulently and dishonestly used the forged documents as genuine knowing to be forged documents and allowed to withdraw the amount.

12. From close scrutinize of the evidence on record I fully endorse the finding of the trial Court and I am of the view that the learned trial Court has rightly convicted the appellant for the charge levelled against him.

13. M.M. Banerjee, the learned counsel appearing for the appellant much stress on the question of sentence and has argued that since the occurrence is of 1982 i.e., more than 20 years back and since the appellant has been convicted for the negligence, laches and dereliction in duty and not followed the procedure of the Post Office Manual, therefore, in the said circumstances a lenient view may be taken and sentenced may be reduced which is excessive.

14. Considering the entire materials and the arguments made on behalf of the appellant, the conviction of the appellant for the offence committed under Sections 420/467 and 471 of the Indian Penal Code read with Section 465 of the I.P.C. and also u/s 5 (2) read with Section 5(i)(d) of the Prevention and Corruption Act is hereby confirmed but the sentence awarded by the trial Court is reduced to the period already undergone and the appellant shall also pay a fine of Rs. 25000 (twenty five thousand), in default he shall undergo Rigorous Imprisonment for one year. If the fine is realized the same shall be paid to the complainant, Kardhu Dusadh.

15. In the result this appeal is dismissed with the modification in sentence as aforesaid.