

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 653 of 2002

Md. Kalim son of Abdul Khalique, resident of Kanke Road,
Bhitha, P.S.- Kanke, District- Ranchi

... .. Petitioner

-Versus-

The State of Jharkhand

... .. Opp. Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. A.K. Sahani, Advocate

For Opp. Party-State : Mr. Tapas Roy, A.P.P.

24/24.01.2022 Heard Mr. A.K. Sahani, the learned counsel
appearing on behalf of the petitioner.

2. Heard Mr. Tapas Roy, the learned A.P.P. appearing on
behalf of the Opposite Party- State of Jharkhand.

3. The present criminal revision petition is directed against
the Judgment dated 08.08.2002 passed by the learned Sessions
Judge, Gumla in Criminal Appeal No.10/1999 whereby and
whereunder the appellate court confirmed the conviction and
sentence of the petitioner under Sections 406 and 420 of the
Indian Penal Code passed by the learned trial court and
dismissed the criminal appeal preferred by the petitioner.

4. The learned trial court, vide Judgment of conviction and
the order of sentence dated 08.02.1999 passed by the learned Sub-
Divisional Judicial Magistrate, Gumla in G.R. No.278/1990, T.R.
No.291/1999, had convicted the petitioner under Sections 406
and 420 of the Indian Penal Code and had sentenced him to
undergo Rigorous Imprisonment for 03 years and fine of
Rs.5,000/- for the offence under Section 420 of the Indian Penal
Code and in default of payment of fine, to undergo Rigorous
Imprisonment for 06 months and Rigorous Imprisonment for 03
years and fine of Rs.5,000/- for the offence under Section 406 of
the Indian Penal Code and in default of payment of fine, to

undergo Rigorous Imprisonment for 06 months and both the sentences were directed to run concurrently.

Arguments on behalf of the petitioner

5. Learned counsel for the petitioner submitted that the petitioner has been convicted for the offences under Sections 406 and 420 of the Indian Penal Code, although there is no element of entrustment proved from the records of this case. He submitted that the matter relates to payment of award to the awardees of land acquisition and it has been alleged that the petitioner was instrumental in taking the awardees to Ranchi for the purposes of payment. Admittedly, the cheques were issued in the names of the awardees and the cheque amounts were deposited in their accounts. However, it has been alleged that the withdrawn amount was taken by the accused-petitioner and thereafter, entire amount was not handed over to the awardees. The learned counsel submitted that even at the time of the alleged handing over of the cash to the awardees, admittedly, they did not count the money and when went back to Simdega, they got the money counted and found that the money was less than the actual award amount. He also submitted that there has been unexplained delay in filing the F.I.R.

6. The learned counsel further submitted that the court witness i.e. the Branch Manager of the Bank has been examined in the present case who has clearly deposed that the amount was paid in cash to the awardees after the amount was credited in their bank accounts on proper identification. The learned counsel submitted that the learned courts below have not considered the evidence of the court witness and have failed to consider that the court witness has clearly deposed that the mode of payment of the cash amount to the awardees was through the withdrawal forms duly signed by them. The learned counsel submitted that as there is no entrustment, there is no question of criminal breach

of trust for constituting the offence under Section 406 of the Indian Penal Code.

7. The learned counsel further submitted that as the amount was withdrawn by the awardees themselves under their signatures on the withdrawal forms, there is no occasion for any loss caused to the awardees and the basic ingredients for the offence under Section 420 of the Indian Penal Code are also missing in the present case.

Arguments on behalf of the Opposite Party-State

8. The learned counsel appearing on behalf of the Opposite Party-State, on the other hand, opposed the prayer and submitted that there are concurrent findings recorded by the learned courts below after scrutinizing the materials on record, which do not call for any interference. He submitted that the victims have fully supported the prosecution case. However, during the course of argument, he did not dispute the fact that the Branch Manager of the Bank has deposed before the learned court below as court witness and he has also proved the entire documents relating to opening of bank account, deposit of the cheques and the withdrawal of the amounts by the awardees on the basis of their withdrawal slips signed by them.

Findings of this Court

9. The prosecution case is based on the written report of the Informant, namely, Dular Toppo lodged on 09.09.1990 before the Simdega police alleging *inter-alia* that the land of his father and uncle were acquired by the Government for Ram Rekha Jalsay Pariyojna, Simdega and the compensation for the land was to be paid at the Dam Panchayat Bhawan and some cheques were distributed in presence of the Mukhiya, namely, Laxmi Kant Prasad on 13.08.1990. When the Informant demanded the cheque, he was told that the record of Sheet Nos. 4 and 5 was not brought and he was asked to come to Ranchi for taking the

rupees, otherwise the money will be deposited in the treasury. When the cousin of the Informant met the petitioner, he asked them to come on 25.08.1990. It was further alleged that due to fear, the Informant alongwith his father namely, Junas Toppo, uncle namely, Amrujus Toppo, cousin namely, Ilias Toppo and other co-villagers went to Ranchi on 25.08.1990 in the office of the Land Acquisition Department where they met the petitioner who took them in his house situated at Kanke Road and he arranged food and lodging of the Informant and his companions. Thereafter, on 28.08.1990, the Special Land Acquisition Officer namely, Anirudh Prasad Shrivastava came to the house of the petitioner in the night at about 08.00 P.M. and issued cheques to all the awardees and left after taking meal. On the next day, on 29.08.1990, the petitioner demanded and took back the cheques of all the awardees and brought them to Bank of India, Doranda Branch where he got the signatures of the awardees obtained on the cheques and withdrawal forms and deposited the same in the bank. After sometime, he informed the awardees that payment is not likely to be made and took all of them again to his house where all of them stayed in the night after taking meal. On the next day i.e. on 30.09.1990, the petitioner went to the Bank of India alone and at about 02.00 P.M., he came back with the money in a cement bag. He went upstairs to his house and after half of an hour, he got down and gave the bundles of the money wrapped in chadar or in gamchha one by one and he brought them in his car to bus stand and got them boarded on Mehta Bus. It was alleged when all of them reached Simdega at about 09.00 P.M. in the night, they went to the house of Irius Toppo and counted their money, they found shortage and as per the F.I.R., a sum of Rs.1,24,551.86 as short to Amrujus Toppo and Junas Toppo, a sum of Rs.36,347.17 was short to Junas Toppo, a sum of Rs.83,054.97 was short to Jowakim Kiro and Alkaria Kiro, a sum of Rs.14,634.25 was short to Samuel Kharia, a sum of Rs.28,939.19

was short to Hirmina Kerketta, a sum of Rs.4,325.87 was short to Lajrus Kharia, a sum of Rs.3,112.93 was short to Amrjus Toppo and a sum of Rs.7,423.50 was short to Albis Kharia. In this way, a total amount of Rs.3,02,389.74 was short.

10. On the basis of the written report, Kamdara P.S. Case No.73/1990 was registered and after completion of investigation, charge-sheet was submitted against the petitioner showing him absconder and also against Anirudh Prasad Shrivastava.

11. After hearing on the point of charge, the learned A.C.J.M., Simdega vide order dated 13.01.1994, discharged Anirudh Prasad Shrivastava and took cognizance of the offence under Sections 406 and 420 of the Indian Penal Code against the petitioner, but the order of discharge was set aside by this Court vide order dated 10.07.1996 passed in Cr. Misc. No.3257/1994(R) and Anirudh Prasad Shrivastava was directed to face the trial. The petitioner surrendered on 01.08.1996.

12. On 27.08.1996, charges under Sections 409, 420 and 120(B) of the Indian Penal Code were framed against Anirudh Prasad Shrivastava and the petitioner which were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

13. In course of trial, the prosecution examined altogether 13 witnesses to prove its case. P.W.-1 is Junas Toppo, P.W.-2 is Jowakim Kindo @ Kharia, P.W.-3 is Samuel Kharia, P.W.-4 is Alkesia Kharia, P.W.-5 is Amrjus Toppo, P.W.-7 is Lajrus Kharia, P.W.-8 is Albis Kharia and P.W.-9 is Hirmina Kerketta who were the different awardees and the victims of the case. P.W.-10 is Dular Toppo who is the Informant of the case and the son of Junas Toppo. P.W.-11 is Junas Kerketta who is the Sarpanch and he has identified the awardees at the time of giving of the cheques. P.W.-6 is Laxmi Kant Prasad who is the Mukhiya. P.W.-12 is Irius Toppo and P.W.-13 is A.C. Das who is the Investigating Officer of the case.

14. P.W.-1, Junas Toppo stated that on 28.08.1990, he got the cheque which remained with him for the whole night and in the morning, Irius Toppo collected all the cheques and handed over to the petitioner who brought all of them in his car to Bank of India, Doranda Branch. He also stated that the petitioner asked him to sign upon the cheque and withdrawal form and thereafter, he signed upon the cheque and the withdrawal form. The petitioner said that money is not available in the bank and thereafter, he brought all of them to his house. On 30.08.1990, the petitioner alone went to the bank and brought the money in a cement bag. He went upstairs to his house and after half an hour, he came and distributed the encashed and withdrawn cheque money in Gamchha and Lungi. He brought them to bus stand and boarded them in Mehta Bus. They came to Simdega at 09.00 P.M. and stayed in the residence of Irius Toppo and counted the money. He found that out of Rs.1,71,000/-, he was given only Rs.60,000/-. He deposited the entire amount in the bank. During cross-examination, he stated that on 25.08.1990, he had gone to the Land Acquisition Office at 10.00 A.M. and remained seated outside the office and Irius Toppo was doing everything for him in the office. He also stated that Irius Toppo had identified them at the time of opening the account.

15. Likewise, P.W.-2, Jowakim Kindo @ Kharia also stated that the petitioner had not allowed him to count the money and had given him cash amount after wrapping it in his Gamchha and when he came to Simdega, he counted the money and found that there was shortage. During cross-examination, he stated that he had signed upon the c.c. voucher and Sarpanch had identified him. He stated that on counting, he found Rs.50,000/- only which had deposited in the bank. He stated that he was given cheque of Rs.1,05,734/-. He admitted that he had no account in Doranda Bank and his account was opened there and cheque was account payee one.

16. P.W.-3, Samuel Kharia deposed that he was to be paid a sum of Rs.23,800/-, but he was given Rs.10,800/- only by the petitioner and his cheque was taken by the petitioner. During cross-examination, he stated that on 25.08.1990, he met the Land Acquisition Officer and, on that date, the cheques were prepared and the officer concerned had enquired about the identifier, Sarpanch and had identified his L.T.I. on the counter-foil of the cheque book and thereafter, the cheque was given to him.

17. P.W.-4, Alkesia Kharia deposed that she had gone to Ranchi with Irius Toppo and stayed for taking compensation amount and she remained there for six days in the house of the petitioner. Though she had to get, a sum of Rs.1,00,000/- for the cheque amount, but the petitioner had given her Rs.50,000/- only. She further deposed that out of Rs.30,000/-, she was given Rs.15,000/- only. During cross-examination, she stated that whatever compensation amount was payable to her, cheque was issued to her on the identification of Sarpanch.

18. P.W.-5, Amrujus Toppo deposed that his land was acquired for which a sum of Rs.1,71,112 was to be given as compensation, but only cheque for Rs.43,000/- was given at Karbera Panchayat and for the remaining amount, Irius had told him that the same will be paid at Ranchi. At Ranchi, he was given cheque of Rs.1,71,000/- and on 30th, the money was paid by the petitioner in a bag, but he did not allow him to count the money. When he came to Simdega, he counted the money at the house of Irius Toppo and found that it was Rs.60,000/- only. During cross-examination, he stated that the cheque was given in his hand and he had signed upon c.c. voucher. The officer who had made the cheque had not said him to deposit the cheque in the bank, nor he had given any instruction and he had himself deposited the cheque in his account.

19. P.W.-6, Laxmikant Prasad is the Mukhiya of the Kerbera Panchayat and he deposed that first payment in respect of the

acquired lands for Ram Rekha Dam was made on 13.08.1990 and on that day, payment was not made for the lands acquired from Sheet Nos.4 and 5 for want of record. On account of this, the awardees had gone to Ranchi, but he had not gone to Ranchi. He stated that Dular Toppo informed him about the mischief done by the petitioner.

20. P.W.-7, Lajrus Kharia stated that out of Rs.8,000/-, the petitioner paid him Rs.3,000/- only and the money was paid to his brother who is already dead and he had not counted the money.

21. P.W.-8, Albis Kharia deposed that she was paid a sum of Rs.6,000/-.

22. P.W.-9, Hirmina Kerketta stated that out of Rs.49,939/-, a sum of Rs.21,000/- only was given to her by the petitioner and on the previous occasion, she was paid a sum of Rs.28,000/- at Kerbera Panchayat. During cross-examination, she stated that she was given cheque of Rs.49,939.19 and she had signed upon the counter-foil of the cheque and her signature was identified by the Sarpanch. She had gone to the bank and had deposited the cheque in the bank. She had not counted the money, nor her husband had counted the money.

23. P.W.-10, Dular Toppo is the informant of the case and he deposed that his lands were acquired for the Ram Rekha Dam and for 05 acres of land, the compensation was to be paid at Kerbera, but no payment was made on 13.08.1990. The Land Acquisition Officer informed that the record of Sheet No.4 and 5 was not there and so the payment will be made at Ranchi. For this reason, he alongwith others had been to Ranchi on 25.08.1990. They stayed at the house of the petitioner and the cheques were given on 28.08.1990 and thereafter, account was opened. Irius had identified the photographs of all the awardees and the petitioner filled up the required forms of the bank for depositing the cheques. He has fully supported the prosecution

case as narrated in the FIR and also stated that he had compared the payable amount and the paid amount and had noted the same on a paper and had handed over the same to the Mukhiya. During cross-examination, he admitted that after delivery of cheque, he never met Anirudh Prasad Shrivastava and after finding shortage of money, he never met Kalim Mian. He has supported the entrustment of cheques to the petitioner and less payment made by the petitioner.

24. P.W.-11, Junas Kerketta is the Sarpanch. He deposed that he had gone to Ranchi on Monday with Irius and had identified the different awardees there and had come back to Simdega and the entire cost was borne by the petitioner. He further deposed that when the awardees came to Simdega, they informed him that lesser amounts have been paid to them. In cross-examination, he admitted that he had not signed upon any counter-foil of the cheque.

25. P.W.-12, Irius Toppo who deposed about cheating of Rs.9,000/- by the petitioner for which no case was filed.

26. P.W.-13, A.C. Das is the Investigating Officer of the case who had handed over to the investigation to another police officer, upon his transfer.

27. S.P. Sarkar has been examined as a court witness who was the Branch Manager of Bank of India posted in Shyamali Branch during the relevant period. He deposed about deposit of the cheques issued by the Land Acquisition Officer in respect of the different awardees.

28. The prosecution exhibited certain documents. Exhibit-1 the application dated 07.09.1990 submitted by the Informant to the Mukhiya, Kairbera Gram Panchayat, P.S.- Simdega; Exhibit-1/1 is the endorsement on the application dated 07.09.1990 in support of the allegation; Exhibit-1/2 is endorsement of Jonas Kerketta on the application dated 07.09.1990, Sarpanch of Kerbera Panchayat; Exhibit-2 is the written report; Exhibit-2/1 is

the endorsement of the Officer-in-charge, Simdega on the written report; Exhibit-3 is the formal F.I.R. and Exhibit-4-series are the statements of the awardees and witnesses recorded under Section 164 of Cr.P.C..

29. After closure of prosecution evidence, the statements of the petitioner and co-accused were recorded under Section 313 of Cr.P.C. wherein the petitioner denied the incriminating evidences put to him and claimed to be innocent.

30. The defence examined one witness namely, Onkar Nath Shrivastava as D.W.-1 who was the Cashier, Special Land Acquisition Officer. He deposed about the manner in which compensation amount was paid to the awardees of the Land Acquisition Case No. 1/87-88 and 2/87-88 for the lands acquired under Ram Rekha Jalasya Pariyojna. He stated that they appeared after getting notice and the cheques were paid after obtaining their signatures and L.T.I. with identification on C.C. voucher and thereafter, the cheques were prepared by him and the officer concerned Anirudh Prasad Shrivastava signed upon the cheques. All the awardees had signed upon the counter-foil of the cheques and Sarpanch Jonas Kerketta had identified their signatures on 25.08.1990 and every awardee was given cheque in their hands.

31. Certain documents were also brought on record by the defence. Exhibit-A is advice slip dated 27.09.1990; Exhibit-A/1 is signature of Manager on the advice slip; Exhibit-B-series are initial signatures of the accountant of the bank on the pay-in-slip; Exhibit-C-series are different account payee cheques, 16 in number; Exhibit-D-series are bearer withdrawal forms; Exhibit-E is statement of account, Exhibit-F is the balance-sheet of the Special Land Acquisition Officer, Khunti, Account No.70 and Exhibit-G is cheque book. Letter of the Manager, Shyamali Branch, Bank of India sent to the Investigating Officer of the case has been marked as 'X' for identification, carbon copy of advice

slip issued from the Special Land Acquisition Officer has been marked as 'X/1' for identification, duplicate copies of the land acquisition vouchers have been marked as 'Y' for identification, signatures of the awardees on C.C. Vouchers have been marked as 'Y/1' for identification, writings on cheques dated 25.08.1990 have been marked as 'Y/2' for identification, signature of Jonus Kerketta has been marked as 'Y/4' for identification, advice dated 27.08.1990 has been marked as 'Y/5' for identification and details of the cheques and its amounts have been marked as 'Y/6' for identification.

32. The learned trial court considered the evidence on record and with respect to the offence under Section 409 of the Indian Penal Code, recorded its findings in Para-6 that the accused Anirudh Prasad Shrivastava in the capacity of Land Acquisition Officer was duly authorized to disburse the amount of compensation to the respective awardees. Oral and documentary evidences conspicuously convey that account payee cheques were handed over to the awardees on proper identification. This aspect has not been disputed that the awardees were given cheques for their complete compensation amount. It has also come in the prosecution and defence evidence that the cheques of the awardees were deposited in the bank through pay-in-slips where the awardees had opened their accounts and account payee cheques have been proved on record as Exhibits-C to C/15. Pay-in-slips showing deposit of all those account payee cheques in the bank have been proved on record as Exhibits- B to B/9. In this way, the amounts covered under the relevant cheques handed over to the awardees had been transferred from Government account to the individual account of the awardees. As such, transaction in between public servant entrusted with compensation money and the awardees came to an end when the compensation amount was credited in their respective accounts of individual awardees. Thereafter, the awardees are not entitled

to claim for payment in respect of the compensation amount which had already been paid to them by account payee cheques. The learned trial court observed that it is not a case of cash payment. The awardees were given account payee cheques. It is admitted in the first part of transaction that on 25.08.1990, all the awardees had gone to Land Acquisition Office at Ranchi. They received cheques relating to their compensation amount on 28.08.1990. The learned trial court recorded that after receipt of cheques of compensation amount, the second part began when on 29.08.1990, Kalim Mian (petitioner) took back the cheques and deposited their cheques and withdrawal forms in Bank of India, Doranda Branch. Almost all the awardee witnesses have supported this aspect of the prosecution case. They have further stated that from 29.08.1990 to 30.08.1990, they remained with the petitioner and acted as per his direction. They signed or put their L.T.I. upon the pay-in-slips and deposited their cheques in their respective accounts. They also signed or put their L.T.I. on the bearer withdrawal forms. None of the awardees have stated that either they had not signed upon the bearer withdrawal forms or put their L.T.I. upon the same. It is consistent prosecution case that the petitioner brought money from the bank and distributed among the awardees without allowing them to count the same. So, whatever mischief has been done, that has been done on 29.08.1990 and 30.08.1990 and not before that. Exhibit - F is the statement of Account No.70 standing in the name of Special Land Acquisition Officer, Khunti. It shows that all the sixteen cheques issued in the name of the awardees have been debited from the account of the Special Land Acquisition Officer, Khunti (Ram Rekha Pariyojna). As per oral evidence as well as documentary proof, it has come on record that the cheques were credited in the individual awardees account on 29.08.1990 and withdrawal was made on 30.08.1990. In view of the aforesaid proof of record, the learned trial court held that the facts

of the case do not constitute the offence of criminal breach of trust by a public servant. Here it may be mentioned that Amin of the Land Acquisition Officer Md. Kalim was not in any manner entrusted with the compensation money by the Government. Entrustment of the cheques and its withdrawal by the awardees through Md. Kalim may be an offence punishable U/s. 406 I.P.C., but it is not an offence U/s. 409 of the I.P.C.. So, it is found that in the facts and circumstances of this case, Section 409 I.P.C. is not made out against either of the accused persons.

33. The learned trial court considered the second part of the prosecution case relating to the happenings on 29.08.1990 and onwards and the evidence of the prosecution witnesses in this regard in Paras-7, 8, 9, 10 and 11 and summarized its findings in Para-12 that having been entrusted the cheques by the awardees, Kalim Mian (petitioner) played trickery by adopting foul means. He filled up the pay-in-slips and bearer withdrawal forms and later on, drew the amount, but misappropriated a big amount of their money. In the dealings of opening of account, depositing of cheques and withdrawal of the cheques amounts, Anirudh Prasad Shrivastava was not a party. Almost all the awardee witnesses have stated that after disbursing the cheques to them, Anirudh Prasad Shrivastava never met them. So, it is quite obvious that factum of entrustment of the cheques to Kalim Mian and its encashment by Kalim Mian is duly proved. The witnesses have stated that lesser amount as discussed above were paid to them by Kalim Mian in a hurried manner. The learned trial court found that that criminal breach of trust as defined U/s. 405 I.P.C. and cheating has been proved in this case. The learned trial court further recorded in Para-13 that the awardees could have well deposited their account payee cheques at Simdega, but due to inducement played upon by Kalim Mian, they desired to take payment at Ranchi itself.

34. The learned trial court also considered the evidence of the court witness in Para-13 and recorded that the version of the court witness, Branch Manager of Bank of India, Doranda clearly indicates that the payment was made through account payee cheques and the cheque amount was credited to the account of the individual awardees.

35. The learned trial court also considered the evidence of the defence witness, D.W.-1 who deposed about the manner in which compensation amount was paid to the awardees of the Land Acquisition Case No. 1/87-88 and 2/87-88 for the lands acquired under Ram Rekha Jalasya Pariyojna.

36. The learned trial court in Para-15 found that there is sufficient evidence of entrustment of cheque, taking the signatures of the cheque bearers on pay-in-slips and on the bearer withdrawal slips by the petitioner and there is also sufficient evidence to indicate that the cheque holders were given lesser amount than the cheques entrusted to them and in this way, the petitioner misappropriated a big amount and cheated the cheque holders.

37. The learned trial court convicted the petitioner under Sections 406 and 420 of the Indian Penal Code and sentenced him as stated above. However, the learned trial court acquitted the co-accused, namely, Anirudh Prasad Shrivastava from all the charges.

38. The learned appellate court also considered the materials on record and recorded in Para-10 that 10 persons namely, Junas Toppo (P.W.-1), Dular Toppo (P.W.-10), Amrujus Toppo (P.W.-5), Jowakim Kindo @ Kharia (P.W.-2), Alkesia Kharia (P.W.-4), Samuel Kharia (P.W.-3), Laxmi Kant Prasad (P.W.-6), Irius Toppo (P.W.-12), Hirmina Kerketta (P.W.-9) and Albis Kharia (P.W.-8) were examined under Section 164 of Cr.P.C. during investigation and their statements have been marked as Exhibits-4 to 4/9-series and all the 10 persons have been examined during

trial as prosecution witnesses and their statements are consistent and they have fully supported the prosecution case. They have clearly stated that the awardees were given cheque by the Land Acquisition Officer on 28.08.1990 in the house of Kalim Mian, the petitioner and thereafter, he left the place and he never came in picture and it was the petitioner who took back the cheques from all the awardees on 29.08.1990 and brought them to Bank of India, Shyamali Branch, Doranda, Ranchi. The prosecution witnesses have also stated that the petitioner obtained the signatures of the awardees on the cheques and withdrawal forms and deposited the same in the bank and after sometime, he informed the awardees that payment is not likely to be made that day and he took all of them back to his house where they stayed in the night. The witnesses have further stated that on the next day, on 30.08.1990, the petitioner went to the bank alone and returned at 02.00 P.M. with money in cement bag and he went upstairs to his house and got down after half an hour and gave the bundles of rupees wrapped in chadar (wrapper) or gamchha (towel) and the witnesses have also stated that the petitioner did not allow them (awardees) to count the rupees handed over to them and the petitioner carried them in a car upto the bus stand and asked them to board on Mehta Bus to go to Simdega. All the witnesses have clearly stated that when they counted the money in their village, the shortage was found and the F.I.R. was lodged. The learned appellate court further found that it is apparent from the depositions of the above referred prosecution witnesses that the petitioner obtained the signature on the withdrawal forms, as also on the cheques and deposited in the bank and on the same day, the payment was not made and the payment was received by the petitioner on 30.08.1990. As on 30.08.1990, the petitioner alone went to the bank to receive the rupees from the bank as the withdrawal forms signed by all the awardees were already deposited in the bank. So, it is apparent that the petitioner

received the amount of compensation on the basis of the withdrawal forms signed by the awardees and the petitioner brought the entire rupees to his house and without distributing the same to the awardees, he went upstairs and got down after half an hour. In the meantime, when he was in his upstairs, he committed the fraud and misappropriated the amount of compensation and after half an hour, he distributed the less amount to all the awardees and he did not allow them to count which shows the guilty mind of the petitioner. The learned appellate court confirmed the conviction and sentence of the petitioner under Sections 406 and 420 of the Indian Penal Code passed by the learned trial court and dismissed the criminal appeal preferred by the petitioner.

39. This Court finds that the learned courts below have considered all the relevant materials on record and have returned concurrent findings holding the petitioner guilty of offence under section 406 and 420 of IPC by well-reasoned judgements. The basic ingredients of offence under section 406 and 420 have been found to be proved by the prosecution beyond shadow of all reasonable doubts.

40. The Hon'ble Apex Court has explained the power of revisional court in the case of *Jagannath Choudhary and others reported in (2002) 5 SCC 659* at para. 9 as under: -

"Incidentally the object of the revisional jurisdiction as envisaged u/s 401 was to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some underserved hardship to individuals. (See in this context the decision of this Court in Janata Dal Vs. H.S. Chowdhary) . The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the application would be entitled to demand an adjudication upon all questions of fact or law

which he wishes to raise, but in revision the only question is whether the court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction."

41. The revisional power is further explained in the case of **Ramesh Kumar Bajaj reported in (2009) 1 JCR 684 (Jhar)** at para. 13 as follows:

"It is well settled that revisional interference may be justified where:

- (i) the decision is grossly erroneous.*
- (ii) there is no compliance with the provisions of law.*
- (iii) the finding of fact affecting the decision is not based on evidence.*
- (iv) material evidence of the parties is not considered and*
- (v) judicial discretion is exercised arbitrarily or perversely."*

42. There is no scope for reappreciating the evidences on record and coming to a different finding while exercising revisional jurisdiction in absence of any perversity, illegality or material irregularity in the impugned judgements giving concurrent findings upon appreciating the materials on record. This Court has gone through the materials on record for the purpose of satisfying itself and found that there is sufficient evidence in support of the finding of fact reached by the two subordinate courts and is of the view that the finding of fact is presentable and do not suffer from any perversity, illegality or material irregularity calling for any interference in revisional jurisdiction of this court.

43. This court is of the considered view that considering the nature and the manner in which the offence has been committed by the petitioner, the learned appellate court rightly upheld the sentence of the petitioner.

44. As a cumulative effect of the aforesaid findings, this criminal revision petition is hereby **dismissed**.
45. Bail bond furnished by the petitioner is hereby cancelled.
46. Interim order, if any, stands vacated.
47. Pending interlocutory application, if any, is also dismissed as not pressed.
48. Let the lower court records be immediately sent back to the learned court below.
49. Let a copy of this order be communicated to the learned court below through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Mukul