

Tripura High Court

Sri Tanay Das vs The State Of Tripura on 2 May, 2022

THE HIGH COURT OF TRIPURA

AGARTALA

CRL A (J) 53 OF 2018

Sri Tanay Das,  
S/o Sri Tapan Das of Lake Chowmuhani,  
Agartala, PS-West Agartala,  
Dist. West Tripura.

.... Appellant

--Vs--

The State of Tripura

....Respondent

BEFORE

HON'BLE MR. JUSTICE ARINDAM LODH

For the appellant : Mr. S. Sarkar, Sr. Advocate.  
Ms. P. Chakraborty, Advocate.

For the respondent : Mr. S. Debnath, Addl. P.P.

Date of hearing : 17.12.2021

Date of delivery of  
Judgment & Order : 02.05.2022

Whether fit for reporting : Yes

Judgment & Order

This is an appeal filed by the convict-appellant against the judgment and order of conviction and sentence dated 22.11.2018, passed by the learned Special Judge, Gomati Judicial District, Udaipur in connection with Case No. Special 05 (TPID) of 2015 whereby and whereunder the

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appellant was convicted and sentenced to suffer RI for 4(four) years and also to pay fine of Rs.50,000/- only with default stipulation for commission of offence under Section 3 of the Tripura Protection of Interest of Depositors (Financial Establishment) Act,2000, [here-in-after referred to as TPID Act,

2000] and further sentenced to suffer R.I for 1(one) year for commission of offence under Section 406 of the Indian Penal Code.

## 2. Brief Facts

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2.1. R.K. Pur PS Case No. 487/2011, dated 14.11.2011 was registered by the Officer-in-Charge of R.K.Pur PS under Sections 420 and 406 of the Indian Penal Code against the accused persons, namely, Amar Dey, Tanay Das, and Dibakar Das based on a written complaint lodged by one Goutam Dey. In the said complaint, the complainant stated that there was an office of Rubi Star Marketing Pvt. Ltd./Real Estate in Udaipur. In June, 2010 the State Government started an investigation against various chit fund organizations by way of bringing allegations of cheating and fraudulent collection of money from the public and launched a crackdown on the chit fund companies and sealed the head office of the companies at Agartala. The process was followed by the closure of branch offices of the companies across the State. However, the State Government permitted companies to reopen their offices from 10.08.2010, but, Rubi Star Marketing Ltd. did not Page 3 reopen its offices, nor did make payment of maturity of the customers instead wound up all its offices. It is alleged that the local Branch-in-charge of Udaipur, namely, Sri Amar Dey of Chhanban, the Managing Director, namely, Sri Tanay Das, and the Chief Managing Director of the said Company, namely, Sri Dibakar Das of Bongaon, 24 Pargana, West Bengal allured the public and collected money from the public. Moreover, the entire discourse was the mutual effort of the Branch-in-charge and the Managing Director, namely, Sri Amar Dey and Sri Tanay Das who, with the agents and staff of the company, turned up a network to issue false certificates of investments and thereby cheated the investors. However, the investors tried to communicate with the Branch-in-charge, i.e. Sri Amar Dey, but, it was found that he went on underground. Thus, the complainant prayed to get the return of their deposits and take legal action against the accused persons. 2.2. The case was endorsed to S.I, Surya Kanta Jamatia for investigation. Subsequently, the case was transferred to the CID and the same was endorsed to Sri Benulal Kar, Officer of CID to investigate the case. Taking up the investigation, the investigating officer recorded statements of the witnesses and seized some documents. Thereafter, the officer submitted charge-sheet on 30.01.2013 against the accused persons, namely, Dibakar Page 4 Das, Amar Dey, Tanay Das, and Manoranjan Debnath under Sections 406,420 and 109 of the IPC read with Section 3 of the TPID Act, 2000. 2.3. After taking cognizance, the learned Chief Judicial Magistrate, Udaipur, transferred the matter to the court of learned Judicial Magistrate 1st Class, Udaipur for trial. The learned Judicial Magistrate 1st Class after perusal of records, split up the case vide order dated 08.07.2014 in respect of the accused persons, namely, Amar Dey and Dibakar Das on account of their absconsion and vide order dated 09.01.2015 committed the case before the learned Special Judge, Gomati Judicial District, Udaipur being numbered as Special 05(TPID) of 2015 in respect of the accused persons, namely, Tanay Das and Manoranjan Debnath for trial in accordance with the law. 2.4. At the commencement of trial, the learned trial Court had framed charges against the accused person, namely, Tanoy Das under Sections 406 and 420 of IPC, read with Section 3 of TPID Act, 2000 to which the accused pleaded not guilty and claimed to be tried. Whereas, the learned trial court vide order dated

01.04.2015 discharged the other accused person namely, Manoranjan Debnath due to lack of prima facie evidence.

3. Altogether, 24 (twenty four) nos. of witnesses were examined and some documents were exhibited[Exbt. MO-1 to Exbt. MO-39/2].

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4. At the closure of recording evidence, the accused, namely, Tanay Das, was examined under Section 313 CrPC. The accused had denied all the allegations and other incriminating materials surfaced against him in course of trial by the prosecution witnesses, but, refused to adduce any evidence on his behalf. However, on examination under Section 313 of Cr PC, the accused stated that he himself was an investor in the said company and went to the office at Math Chowmuni, Agartala, on one/two occasions to make his own deposit together with his mother. Thereafter, when the aforesaid company had stopped making payment, he complained against the company. The company had also issued a cheque to the accused which was dishonored by the bank. After that, convict-appellant filed a cheque bounce case vide Case No. C.R. 56/2011 under N.I. Act and also filed a money suit against the company in the Court of learned Civil Judge (Senior Division), Court No.1, Agartala. The learned trial court passed an order for auction of the properties of the company.

5. Having heard the arguments advanced by the learned counsels appearing for the parties, the learned trial court after considering the evidences and materials brought on record convicted and sentenced the accused as aforestated.

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6. Feeling aggrieved and dis-satisfied with the impugned judgment and order of conviction and sentence, the appellant has preferred the instant appeal before this Court.

7. I have heard Mr. S. Sarkar, learned senior counsel appearing on behalf of the appellant and Mr. Sumit Debnath, learned Addl. P.P. appearing for the State-respondent.

8. Mr. Sarkar, learned senior counsel for the appellant at the very outset, made the following submissions in support of the appeal:-

(i) that, the main object of enactment behind TPID Act, 2000 was to protect the interests of depositors of the financial establishments and also to regulate the business of the financial establishments as defined in the Act;

(ii) that there was no evidence at all to demonstrate that the appellant was the Managing Director of the said company.

No memorandum of association was brought on record to identify the Managing Director or Directors of the company. As such, the claim of the prosecution witnesses

that the appellant was the Managing Director of the said company would have no force in the eye of law;

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(iii) that, the appellant himself deposited some amount in the said company, i.e. Rubi Star Marketing Pvt. Ltd. with an expectation of getting a higher rate of return. Afterwards, the appellant also lodged a written complaint against the said company and some of its agents, namely, Dibakar Das, Kamini Kumar Singha, Kishan Lal Saha, Sunil Chandra Debnath, Satyaranjan Banik, Ashis Nandi, Nirod Das, Dhritiman Dey;

(iv) that, on perusal of the depositions of Prosecution witnesses, it has come forward that the prosecution failed to prove that there was no repayment or failure of fulfillment of promise because of a fraudulent act as required under Section 3 of the TPID Act. It was a normal business loss and the appellant was not responsible for the management or conduct of the business affairs. The prosecution further failed to show that there was criminal intent on the part of the persons responsible for management or conduct of the business;

(v) that, there was no evidence which would have suggested that there was any entrustment of money upon the Page 8 convict-appellant and the prosecution miserably failed to prove that the said amount of money was misappropriated by the convict-appellant for his personal gain or that he did not deposit any sum of money of the depositors to the said company. Hence, the question of entrustment of money by the convict-appellant did not arise;

(vi) that, in the absence of proof of entrustment and misappropriation thereof, offence punishable under Section 406 of IPC should not be said to be proved, as mentioned in the cases of, (i) Satishchandra Ratanlal Shah v. State of Gujarat, (2019) 9 SCC 148 (ii) VeljiRaghavji Patel v. State of Maharashtra, (1965) 2 SCR 429;

(vii) that, the signature or name of Tanay Das was not transpired in the documents seized by the I.O., P.W. 24. The investigating officer [PW-24], in his cross-

examination clearly stated that he could not collect any evidence to ascertain whether Tanay Das was either the Director or the Managing Director of the said company.

Page 9 He could not collect any documents to show that Tanay Das attended any meeting of the Board of Directors;

(viii) that, the appointment letter of Uttam Das (Exbt. M.O.9) was issued by Dibakar Das. In the appointment letter of P.W.7 (Exbt. M.O.8), above the seal of Director (issuing authority), one initial signature was there and beneath the impression of rubber stamp of the Director the name of one B.Paul appeared to be written;

(ix) that PWs 3,4,5 and 6 are not relevant so far as the present appellant is concerned since the said PWs have mainly deposed against the other accused persons, namely, Amar Dey and Dibakar Das.

9. On the other hand, Mr. Sumit Debnath, learned Addl. P.P. strongly bent upon the point that the convict-appellant introduced himself as the Managing Director of the said company, namely, Rubi Star Marketing Pvt. Ltd. and he induced the public to deposit money in the said company with a promise to get a higher rate of interest. Further, the convict-appellant directly received and collected money from the depositors of Udaipur in the name of the aforesaid company. Hence, the learned Addl. P.P. prayed before the Court to dismiss the present appeal.

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10. I have considered the rival submissions advanced by the learned counsels appearing for the parties. Before I advert into the merits of the case, it would be apposite to peruse the evidence and materials on record.

11. What has been transpired from the submissions of learned counsels appearing on behalf of the parties that both of them emphasized upon the evidence of PW-1, PW-2, PW-7, PW-10, PW-16 and PW-24. For convenience, I may first scrutinize the evidence of PWs-1 and 2.

12. PW-1, Lalit Chandra Das in his examination-in-chief deposed that he was a retired Group-D employee and having heard that the company, namely, Rubi Star, was giving high rate of interest to the investors, he went to the office of the said company at Udaipur when he was told by the staff present in the office that Tanay Das was the officer of that local office. Accordingly, he met Tanay Das who told that if he could deposit Rs.50,000/- at a time, the company would give Rs.5000/- per month for next 18 months. On the following day, PW-1 deposited Rs.53,500/- which he handed over directly to Tanay Das, but, he got Rs.5000/- for one month only and nothing more. Against the deposit, one certificate was issued to him from the counter of the said office where one lady was sitting. He made repeated query with the local office of the company, but, ultimately received no payment. After 3/4 months, one day, he found said office was closed and was under lock and Page 11 key and never reopened. Thereafter, he never found Tanay Das in the office area. He identified the accused Tanay Das in the dock. He deposed that during investigation, his original certificate was seized by the CID officer by preparing seizure list. He identified the certificate which was issued by Rubi Star Marketting Private Limited in his favour and was seized by CID. The said certificate was marked as Exbt. MO-1.

12.1 In his cross-examination, when the attention of PW-1 was drawn to his previous statement recorded under Section 161 CrPC by the investigating officer, where he stated that he paid Rs.53,500/- to Tanay Das was not found. Further, the statement he made in his examination-in-chief that Tanay Das himself told him that if he could deposit said amount he would be given Rs.5000/- per month for 18 months was also not found when his attention was drawn to his previous statement recorded under Section 161 of CrPC. PW-1 admitted the absence of such statement. 12.2 PW-2, Nepal Sarkar deposed that in the year 2010, one day he visited the office of company, namely, Rubi Star Private Ltd. at Udaipur. On 16.03.2010 he talked with the In-charge,

Amar Dey and on the next day he deposited Rs.2,14,000/- to said Amar Dey. On that day i.e. 17.03.2010 he also found Tanay Das in that office who told him that he was the Chief Managing Director of the company and other staff also told the same. Against Page 12 his payment, Amar Dey gave him two certificates of Rs.1,07,000/- each. For the next two months, he received Rs.20,000/- per month and thereafter the payment was stopped. PW-2 further deposed that the CID officer examined him and recorded his statement and seized his two certificates by preparing a seizure list. He identified said two certificates marked as Exbt.MO-2 series. PW-2 identified his two signatures on the back of the said two certificates [Exbt.MO-2/1 series]. PW-2 further deposed that Tanay Das also told him that if he would deposit money in that company he would be in the safe side. 12.3 Being confronted with cross-examination, his attention was drawn to his previous statement recorded by I.O. to which he admitted that there was no such statement that Tanay Das introduced himself as Managing Director of Rubi Star company and that accused Tanay Das told him that if he could deposit the money in the company he would be in the safe side.

13. Before I advert the merits of the case, it would be useful to reproduce the provisions as laid down under Section 3 of the TPID Act, Sections 406 and 420 of IPC.

14. Section 3 of TPID Act provides as under:-

"Conviction for Fraudulent default-

3. Any Financial Establishment which (i) fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of Page 13 interest, bonus, profit or in any other form as promised; or (ii) fraudulently fails to render service as promoter, partner, director, manager or any other person or conduct of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lakh of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lakh of rupees:

Provided that in the absence of special and adequate reasons recorded in the judgment of the court, the imprisonment shall not be for less than three years and the fine shall not be less than one lakh of rupees .

Explanation :- For the purpose of this section, a Financial Establishment, which-

(1) commits defaults in repayment of such deposit with such benefits in the form of interest, bonus ,profit or in any other form as promised or fails to render any specified service promised against such deposit ; or (2) fails to render any service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person : or (3) commits such defaults due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same

when needed, shall be deemed to have committed a default fraudulently or Failed to render specific service fraudulently.

15. Section 406 of IPC prescribes the period of punishment for committing the offence of criminal breach of trust.

Page 14 15.1 Section 405 of IPC deals with the ingredients of a criminal breach of trust. Section 405 of IPC may be reproduced herein for convenience:-

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 willfully suffers any other person so to do, commits "criminal breach of trust".

15.2 While dealing with the ingredients of Section 405 of IPC, the Hon'ble Supreme Court in Case No. Crl. Appeal No.238/2019 arising out of Special Leave Petition [(CRL) No.1434 of 2018] titled as Professor R.K. Vijayasarithi & Anr. Vrs. Sudha Seetharam & Anr. held thus:-

"A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:

- i) A person should have been entrusted with property, or entrusted with dominion over property;
- ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and
- iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

Page 15 Entrustment is an essential ingredient of the offence. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code."

16. Again, to constitute an offence under Section 420 of IPC, following ingredients are to be fulfilled as observed by the Hon'ble Supreme Court in Vijayasarithy (supra):-

The ingredients to constitute an offence under Section 420 are as follows:

i) A person must commit the offence of cheating under Section 415; and

ii) The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

16.1 Cheating is defined under Section 415 of IPC which reads as under:-

415. Cheating.--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Page 16 16.2 In Vijayasarithi (supra), the Hon'ble Supreme Court discussed the ingredients to constitute an offence of cheating which are as under:-

"i) there should be fraudulent or dishonest inducement of a person by deceiving him;

ii)(a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

iii) in cases covered by (ii) (b) above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating."

17. In a recent decision in CrI. Appl. No.463 of 2022 [arising out of SLP (CrI) No.10951 of 2019] titled as Vijay Kumar Ghai & Ors. Vrs. The State of West Bengal & Ors.[2022 LiveLaw(SC) 305], a two Judge Bench of the Hon'ble Supreme Court had discussed regarding the ingredients of Sections 405 and 420 of IPC, wherein, it was observed that:-



"The essential ingredients of the offence of criminal breach of trust are:-

(1) The accused must be entrusted with the property or with dominion over it, Page 17 (2) The person so entrusted must use that property, or;

(3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation.

(a) of any direction of law prescribing the mode in which such trust is to be discharged, or;

(b) of any legal contract made touching the discharge of such trust."

18. While discussing the essential ingredients of the definition of cheating as contemplated under Section 415 of IPC, the Hon'ble Supreme Court in the case of Vijay Kr. Ghai (supra) had observed thus:-

"The essential ingredients of the offense of cheating are:

1. Deception of any person.

2. (a) Fraudulently or dishonestly inducing that person-

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property;or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property."

19. It was further observed in Vijay Kumar Ghai (supra) that - "A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating."

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20. Again, while discussing the essential ingredients as defined under Section 420 of IPC, the Hon'ble Supreme Court in the case of Vijay Kr. Ghai (supra) had observed thus:-

"To establish the offence of Cheating in inducing the delivery of property, the following ingredients need to be proved:-

1. The representation made by the person was false

2. The accused had prior knowledge that the representation he made was false.
3. The accused made false representation with dishonest intention in order to deceive the person to whom it was made.
4. The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed."

21. Another settled principle which is to be kept in mind while dealing with the disputes raised in the present nature of cases that-- every breach of contract would not give rise to offence of cheating and only in those cases of breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.

22. In the case of Vijay Kumar Ghai (supra), the Hon'ble Supreme Court while dealing with this issue placing reliance upon its previous decision of Hridaya Ranjan Prasad Verma and Ors. Vrs. The State of Bihar & Anr., (2000) 4 SCC 168 observed that--there is no doubt that mere breach of Page 19 contract is not in itself a criminal offence and gives rise to the civil liability of damages. The distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to a criminal offence, fraudulent or dishonest intention is the basis of the offence of cheating."

23. Having gone through the complaint, charge-sheet and more importantly the evidences let in by the prosecution witnesses, it is clear like crystal that the entire genesis of the disputes emanates from the investments made by some of the prosecution witnesses as discussed here-in-above with the company namely Rubi Star Marketing Private Ltd.

24. Section 3 of TPID Act postulates that any essential establishment which firstly; fraudulently defaults any repayment of deposit of maturity doing with any benefit in the form of interests, bonus, profits or any other form as promised; secondly, fraudulently fails to render service as promoter, partner, director, manager or any other person or an employee responsible for management or conduct of the business or affairs of such financial establishment, shall on conviction, be punished with imprisonment for a term which may extend to 10 years, and with fine etc. as stated here-in-above. So, from the above, it is evidently clear that any financial establishment or the persons responsible for the management or conduct of the business or affairs Page 20 of such financial establishment act fraudulently failing to refund the amount as promised would be punishable as envisaged under Section 3 TPID Act. Here, the word fraudulent used by the maker of this Act carries enough significance. The TPID Act has not defined the word fraudulent, however, we find the definition of fraudulently in Section 25 of IPC which reads as under:-

25. "Fraudulently"--a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

25. So, to attract Section 3 of the TPID Act, one has to act fraudulently. Bearing in mind the aforesaid legal positions, I shall now proceed to examine as to whether the appellant has caused any fraudulent act with the investors and whether the prosecution has been able to meet the ingredients of Sections 406 and 420 of IPC.

26. From the evidence of PW-1 and PW-2 it appears that they themselves went to the office of the Rubi Star company at its Udaipur Branch Office. The statements which was made by PW-1 that he paid Rs.53,500/- to the appellant and the appellant Tanay Das told him that if he could deposit the said amount, he would be given Rs. 5000/- per month for 18 months were found to be his improved versions, which he admitted in his cross- examination. Similarly, PW-2 admitted that he did not make any such Page 21 statement during his examination under Section 161 CrPC that the appellant styled himself as the Chief Managing Director of the company who told him that if he would deposit the money in the company he would be in the safe side.

27. From the evidence of PW-7, it appears that he stated that his appointment letter was issued by the Managing Director of the company, namely Sri Tanay Das. He further stated that the Chief Managing Director of the office of the company was one namely Dibakar Das residing at Kolkata. He further deposed--that whenever any money was deposited at Udaipur Branch, the same used to be sent to Agartala Branch and they never kept any deposit in their Udaipur Branch. Exbt.MO-8 is his appointment letter where he deposed that it was the signature of Tanay Das as Managing Director of the company.

27.1 During his cross-examination, he admitted that the initial signature [Exbt.MO-8/1] of Tanay Das where the name is mentioned is not properly legible due to rubber stamp marking of Director, Rubi Star Marketing Ltd. It comes to light that the first name of the said person starts with B and the surname starts with P. On perusal of Exbt.MO-8/1, the learned trial court observed that the signature appeared to be of one B. Pal or so. So, from the observation of the court, it is clear that whether it is the Page 22 signature of Tanay Das or B. Paul has not been proved beyond reasonable doubt.

27.2 Another significant feature as surfaced from the deposition of PW-7 is that the money which had been invested by the investors were always used to be deposited in the branch office at Udaipur and those deposits were used to be deposited to the Agartala Branch, the head of the company in the State. What is garnered from the above statements that none of the persons including the appellant had not used the invested money of the complainant or other investors for their own benefits. PW-7 was himself an employee of the Ruby Star Marketing Private Ltd.

28. PW-8 was a Cashier of the said company and his appointment letter [Exbt. MO-9] was issued by one Dibakar Das of Kolkata as Chief Managing Director of the said company. He deposed that Tanay Das introduced himself as Managing Director of the said company. From his evidence, one important fact comes to fore that neither the appellant had received any deposits from the customers nor he issued acknowledgment receipt to the respective customers in respect of payment of installments.

29. PW-9 has stated that having seen the sign board of the company, he visited the office and talked with some employees. One day, one Amar Page 23 Dey, the Manager of the Branch Office visited the house of PW-9 where PW- 9 was appraised of different schemes of the company. PW-9 had invested money and against such investment, he received payments for two months and thereafter no payment was made.

29.1 In his cross-examination, he admitted that in his ejahar or the statements recorded by I.O. he did not make any such statements that one day Tanay Das went to his house and explained about different schemes. So, the statements which he made before the court in his examination-in-chief that Tanay Das visited his house and explained about different schemes is seemed to be an improved versions.

30. From the evidence of PW-10, it reveals that he attended a programme organized by the company where it was appealed by both Dibakar and Tanay Das that if the money is invested in the said company, then, they would be given higher rate of interest. PW-10 invested Rs. 2,00,000/- and out of this Rs.45,000/- was returned by them. However, in his cross-examination PW-10 admitted that he did not state before the I.O., the above statements he made in his examination-in-chief which were confirmed by the I.O. i.e. PW- 23 (Surjya Kanta Jamatia).

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31. PWs-11, 12 and 13 did not depose anything against the present appellant.

32. PW-14 deposed that he met with Tanay Das who told him to wait for some period and assured that the invested money would be paid to them. Since in his cross-examination he admitted that he did not make such statement before the I.O, the versions of PW-14 also seems to be improved versions and has no evidentiary value.

33. PW-15 deposed that he invested Rs.1,90,000/- in the said company in a fixed deposit scheme on the pretext that it would be double on maturity. He further deposed that he found Tanay Das in the office. However, in his cross-examination it appears that he did not state the aforesaid facts before the I.O. during his examination under Section 161 of CrPC.

34. PW-16 deposed that he invested Rs.4,00,000/- step by step in a scheme and also he met one Tanay Das who was the in-charge of the said company and the company re-paid Rs.2.5 lakhs as per scheme under which he invested his money. But, since the said office was found to be closed, he met with Amar Dey and Tanay Das who assured him that the remaining amount of money would be returned to him within a short while.

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35. PW-17 deposed that he visited the Udaipur office of the company along with one of his previous acquaintances and was introduced with one Amar Dey, the Branch Manager and Tanay Das, as Managing Director of the said company. During his cross-examination, he admitted that he did not

make any such statement that he met with Tanay Das, and one Rakesh Majumder introduced him with Amar Dey and Tanay Das of Udaipur office. All his statements appeared to be improved versions.

36. From the evidence of PW-18, it transpires that one Ranjit Das requested him to deposit money with the company saying that the interest rate would be higher. Thereafter, he attended several meetings in different places at Udaipur along with said Ranjit Das and Ranjit Das told him that Tanay Das was the Branch Manager of the company. Thereafter, he invested Rs.8000/-, but, the company was closed. However, in his cross-examination, he admitted that he did not state specifically to the I.O. that from Ranjit Das he came to learn that Tanay Das was the Branch Manager of Udaipur office.

37. PW-19 deposed that he worked as an agent of the said company. In the first part of 2010, Amar Dey and the appellant went to his house and introduced themselves as the Branch Managers of the said company and he was made aware of different schemes of the said company.

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38. PW-20 deposed that he deposited Rs.20,000/- and one of his co- villagers, namely, Nikhil Majumder brought him to the said office of the company and only for one occasion he received Rs.1600/- and thereafter, the said branch office of Udaipur became closed.

39. PW-21 deposed that he invested Rs.10,700/- with the company on condition that it would repay Rs.1500/- per month for the next 12 months and thereafter, he would receive the principal amount of Rs.10,700/-. He further deposed that he received the repayment for 5/6 months and thereafter, the payment was stopped. He further deposed that on 28.05.2010 he further invested Rs. 5000/- in a fixed deposit at the request of the appellant.

40. PW-22 deposed that he was working with the company as a computer operator at its Agartala Branch office. The appellant Tanay Das was known to him as one of the successful agent of the said company. He was declared hostile as he deposed that he did not state to the CID officer that the appellant was the Managing Director of the said company.

41. Now, this court is concerned with the question whether the evidences let in by the prosecution witnesses, particularly, the investors at their face value made out the ingredients of Penal offence as charged against the accused-appellant or not.

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42. I have closely scrutinized the evidence and materials on record. On cumulative discussion of the above evidences of the prosecution witnesses, it comes to light that the prosecution has failed to prove any scrap of paper that the appellant was acting as Managing Director of the said company. None of the witnesses has stated that the appellant has induced them and defrauded them. There is no evidence that the money received from the investors was not deposited to the company, rather, it

has been proved that the invested amounts of the depositors were deposited in the company and due slips were issued under the signature of the authorized employee of the company. From the evidence of witnesses, who invested money in the said company, it also comes to light that the company was paying the due amount to the investors what they were entitled to out of their investments, but, suddenly repayment was stopped due to closure of the company. There is no evidence that the appellant obtained cash amount from any of the prosecution witnesses or received money in cash from the witnesses/investors dishonestly, and did not deposit such money to the company. There is no evidence that the money received from the complainant or other investors was not invested in consonance with the desires of the investors. There is no evidence that the accused defrauded the money collected from the complainant or any of the investors for his personal gain without depositing the same to the company. It Page 28 is apparent from the evidence of the witnesses that the appellant had never fraudulently or dishonestly induced the complainant or any of the investors to invest knowingly well that their investments would not be deposited in the account of the company and it would not be refunded to the investors in accordance with the terms of the schemes. Furthermore, no allegation is made directly against the appellant attributing negligence of the appellant with a criminal intent and the invested money had been used by the appellant himself for his wrongful gain.

43. As I said earlier, that, one of the important features emanated from the definition of Section 3 of TPID Act is that any financial establishment has to commit fraud. From the definition of Section 3 of TPID Act, it is clear that the said provision will be exercised and enforced in case any financial establishment fraudulently defaults to make repayment or fraudulently fails to render service. The evidences being gathered from the prosecution witnesses, it is apparent that none of the prosecution witnesses has stated that during the continuation of the company i.e. Rubi Star Marketing Pvt. Ltd., it defaulted in making repayment or it fraudulently failed to render service. Even if, it is considered that the appellant had styled himself as Managing Director, then also, it is the burden upon the prosecution to establish that he made false representation with dishonest intention in order to Page 29 deceive the investors to whom it was allegedly made. The prosecution witnesses who made investments with the company have stated that they visited the office of the company and thereafter, invested their money. If their statements that Tanay Das styled himself as Managing Director; or somebody introduced Tanay Das as Managing Director of the company; or that Tanay Das i.e. the appellant had represented before them as regards various schemes of the company, even then, the ingredients of section 3 of TPID Act read with sections 405/406/415 and 420 of IPC would not be attracted since there is no evidence that the appellant dishonestly has misappropriated the invested money entrusted to him. More so, there was no entrustment at all upon the appellant since the money was found to be actually invested with the company. In such a case, considering the settled law that every breach of contract would not give rise to offence of cheating or attracts criminal offence, the nature of complaint/disputes in the present case, in my opinion, does not disclose any criminal offence at all and much less any offence under Sections 406/420 of IPC and Section 3 of the TPID Act and the present case is a case of purely civil dispute between the parties for which remedy lies before a Civil Court by filing a properly constituted suit.

Page 30 Added to it, prosecution has failed to come up with a case that the accused-appellant in the affairs of the business of the company was at any point of time was entrusted with the deposits of

the investors.

44. Hon'ble Supreme Court in National Small Industries Corporation Ltd. Vrs. Harmeet Singh Paintal & Anr. [(2010) 3 SCC 330] at Para 38, observed that -

38. But if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in-charge of the business of the company" or by stating that "he was in-charge of the day-to-day management of the company" or by stating that "he was in-charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act."

45. From the aforesaid citation of the Hon'ble Apex Court, it is evident that if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in charge of the business of the company is not enough. For fastening the criminal liability, there is no presumption that every Director knows about the Page 31 transaction. Criminal liability can be fastened only on those who, at the time of the commission of the offence, were in-charge of and were responsible for the conduct of the business of the company. Vicarious liability on the part of a person must be pleaded and proved and not inferred.

46. Again, in Vijay Kumar Vrs. State of Rajasthan [(2014) 3 SCC 412], the Apex Court in Para 14 held that:-

"This witness, PW 10 Jaswant Singh was admittedly examined by Investigation Officer during investigation and in that statement he has not stated the facts which he now for the first time stated before the Trial Court. This raises a serious doubt as to the veracity of the said facts [See Khalil Khan vs. State of M.P. (2003) 11 SCC 19]. In other words this witness has made material improvement while deposing in the Court and such evidence cannot be safe to rely upon....."

47. In the instant case, on perusal of the evidences of PWs 1,2,8,,9,10,14,15,16,17,18,19,21 and 22 it is crystal clear that most of the incriminating statements against the appellant are made for the first time before the court which raises serious doubt as to the veracity of the statements they made on facts, and thus, the same ought to be discarded as an afterthought.

48. In my ultimate analysis, the prosecution has failed to establish the charges framed against the appellant under Sections 406/420 of IPC and Section 3 of TPID Act, 2000. Hence, from the entire

materials available on Page 32 record, there is nothing as such to prove that there was misappropriation of money by the present appellant or that the appellant was in-charge or was responsible for the conduct of the business of the financial establishment and further that there was any dishonest intention to obtain money from the investors or he adopted any fraudulent and dishonest means to receive money from the investors even he is stamped as a person or comes within the purview of the meaning of the words, any person as embodied under Section 3 of the TPID Act. In my opinion, the words, any person under Section 3 of TPID Act must have a live link with his fraudulent and dishonest acts as defined in the said provisions.

49. To bring home the charge under Section 3 of TPID Act, 2000 and to justify the conviction, the prosecution must establish that the persons concerned like the appellant herein has been involved and responsible for the transactions of the business of the company and the conduct of such persons must have relevance and attracts the ingredients of the definition of fraudulently as contemplated under Section 25 of the Indian Penal Code.

50. In the opinion of Court, the legislature by way of incorporating the words, any person" has intended to mean and include those persons looking after the affairs of the company with the intention to defraud, induced the investors to invest in the company and diverted the invested money of the Page 33 depositors dishonestly for his/their wrongful gains, and that the appellant had definite knowledge as regards the financial transactions of the company, which are missing in this case. The Court should keep in mind, as discussed in the preceding paragraphs that every breach of contract would not attract criminal offence, but, it may be a case of civil dispute for which remedy lies before the Civil Court.

51. In view of above discussions on legal and factual aspects, the judgment and order of conviction and sentence passed by learned Special Judge, Gomati Judicial District, Udaipur, in case No. Special 05 (TPID) of 2015 stand set aside and quashed. The appellant, Tanay Das is acquitted of the charges levelled against him and he is set at liberty. He is discharged from the bail bond. Surety is also discharged from his liabilities.

The appeal, is accordingly, allowed and disposed of. Send down the LCRs forthwith.

JUDGE sanjay