

The Court of JM 1st Class, Ramgarh**Present: Mrs. Smriti Tripathi****Judicial Magistrate****14th December, 2022****District: Ramgarh****G.R. Case No. 447/2017****CNR No. JHRG030000382017****Gola PS Case No. 42/2017**

Informant	State (Through Ankit Kumar)
Represented By	Smt. Manju Kachchap, Id. APP
Accused	Umacharan Mandal @ Shankar s/o late Bisheshwar Mandal, male, aged about 40 years, r/o Mauza Gerebir, PS Sili, District Ranchi (A1)
Represented By	Sri Sitaram, Ld. Advocate

Date(s) of Offence	05.05.2017
Date of FIR	06.05.2017
Date of Chargesheet	31.05.2017
Date of framing of charge	11.08.2017
Date of Commencement of evidence	25.08.2017
Date when Judgment is reserved	03.12.2022
Date of Judgment	14.12.2022
Date of Sentencing Order, if any	14.12.2022

Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of detention undergone during trial for purpose of s. 428, CrPC
A1	Umacharan Mandal @Shankar	10.05.17	26.09.17	s. 406, 420, 120B of IPC	Convicted	u/s. 406: 1 year, SI; u/s. 420: 2 years, SI & ₹2000/- fine, 15 days in default of payment of fine, SI. Concurrent	4 months and 18 days [09.05.2017 to 26.09.2017]

J U D G M E N T

1. The aforementioned accused person (hereinafter referred to as "**A1**") is facing trial for charges framed u/s. 406, 420 and 120B of The Indian Penal Code, 1860 (Hereinafter referred to as the "**IPC**").
2. The compendious **case of the prosecution** as sourced from the written report of Anil Kumar Agarwal (hereinafter referred to as the "**informant**"), is that he is the owner of Yash Alloys Pvt. Ltd. and on 05.05.2017, while he was in Kolkata, his cashier Bittu Kumar Singh entrusted A1 with ₹20,80,000/- to deposit it in Axis Bank, Ramgarh branch. When till about 3:00 PM, the money was not deposited in the bank account, the staff tried to look for A1 but he could not be found. He has also written that he suspects that more people from his factory are involved in this criminal conspiracy with A1 as he should have been sent on a four-wheeler with proper security with such a huge amount of cash but he was sent on a two-wheeler with the said cash. Thereafter, the instant case bearing Gola P.S. Case No. 42/2017 was registered against A1 on 06.05.2017.
3. After Investigation, the Investigating Officer submitted **charge-sheet** bearing no. 45/2017 on 31.05.2017 against A1 for the offence u/s. 406, 420 and 120B of IPC and thereafter, **cognizance** was taken under the same sections by the predecessor court on 19.06.2017.
4. On 11.08.2017, **charges** were framed against A1 u/s. 406, 420 and 120B of IPC and read over to him in simple Hindi to which he pleaded not guilty and claimed to be tried and the record was advanced for prosecution evidence.
5. After closing the **prosecution evidence** on 03.12.2022, the **statement** of A1 was recorded u/s. 313 of CrPC on the same day in which he denied the material available against him and claimed to be innocent.
6. Thereafter, the defence was provided with an opportunity to adduce evidence on its behalf, if any but the Id. counsel for the defence submitted that he does not want to adduce any evidence. Upon his prayer, the **defence evidence** was closed and the matter was posted for arguments.
7. The prosecution submitted that the guilt of A1 is well established in this case who also confessed to his crime and upon his confession the said cash amount was recovered from him. Submitting that this fact has also been supported by the witnesses in their deposition, prayer was made to convict A1.
8. The defence on the other hand argued that a false case has been lodged and no offence as alleged is made out from the deposition of the witnesses. It was also submitted

that the prosecution has failed to prove the guilt of A1 beyond reasonable doubt, and he thus, deserves to be acquitted. It was specially urged by the Id. defence counsel that the prosecution witnesses, especially the informant have deposed that they have received the full amount and now they have no complaints from A1. Submitting that s. 406 and 420, IPC are compoundable in nature and the informant has received the full amount, prayer was made to acquit A1 of all charges.

9. Now, the Court will consider as to whether the prosecution has been able to substantiate the charges levelled against A1 beyond reasonable doubt or not. On the bedrock of the charges framed, the prosecution case will be examined on the following touchstones for the sake of a more structured analysis:

9.1 Whether A1 was entrusted with ₹20,80,000/- which he dishonestly misappropriated thereby committing criminal breach of trust as u/s. 406, IPC?

9.2 Whether A1 committed cheating thereby dishonestly inducing informant and his concerned staff to deliver ₹20,80,000/-, which is a valuable security, to him?

9.3 Whether A1 was a part of a criminal conspiracy to commit an offence punishable u/s. 406 and 420, IPC?

9.4 Is the present trial barred as informant has compromised with A1?

10. Before the court dwells to consider the points of determination as stated above, it would be apt to enlist the evidences brought in this case by all sides for the sake of brevity and proper reference, which are enlisted below:

List of Prosecution/Defence Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence
PW1	Bittu Kumar Singh	Eye Witness
PW2	Anil Kumar Srivastava	Hearsay Witness
PW3	Anil Kumar Agarwal	Interested Witness [Informant]
PW4	Sanaurrja Ansari @Sahil	Hearsay Witness
PW5	Md. Salimuddin	Official Witness [Investigating Officer]

B. Defence:

Rank	Name	Nature of Evidence
--- nil ---		

List of Prosecution/Defence/Material Exhibits

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Ext. 1	Written report
2.	Ext. 1/1	Case Registration
3.	Ext. 2	Seizure List
4.	Ext. 3	Formal FIR
5.	Ext. 4	Confessional Statement of A1

B. Defence:

Sr. No.	Exhibit Number	Description
		--- nil ---

FINDINGS

11. *Whether A1 was entrusted with ₹20,80,000/- which he dishonestly misappropriated thereby committing criminal breach of trust as u/s. 406, IPC?*

11.1 It is a *sine qua non* for an act to be an offence u/s. 406, IPC that there must first be entrustment of property with the accused person, which must later be misappropriated or converted to own use by him and such misappropriation, *et. alia* must be with a dishonest intention.

11.2 In the instant case, the allegations are that A1 was entrusted with ₹20,80,000/- with instruction to submit in Axis Bank, Ramgarh branch that day. To this, PW1, who was the cashier in-charge that day has deposed that on the instructions of the factory owner Sh. Anil Agarwal, he handed over ₹20,80,000/- to A1 in the presence of one Krishnanand and PW04, with the instruction to deposit the said amount in Axis Bank, Ramgarh branch. The same is corroborated by PW04 in his deposition. However, he claims that he is not an eye witness to the said handing over of cash even though he was present there with A1 and PW01 but he has to soon leave and go to his Accounts office. PW02 also claims to be a hearsay witness who was informed about the said transaction by PW01. PW03 is the owner of the said factory who is not an eye witness however, he has fully corroborated the prosecution case and deposition of PW01 and deposed that it was upon his instruction that the said cash was handed over to A1 with the instruction to deposit it in Axis Bank, Ramgarh branch. PW05 is the Investigating Officer of this case who has deposed that during his investigation, he apprehended A1 who confessed to him that he left the said factory with the said cash and which he hid in his home and he thereafter left and slept at Muri Station. Upon this, the investigation team recovered the said cash from A1's

house, just as he confessed. This confessional statement has been exhibited as **Ext. 4**. Although this whole statement is not admissible under law, the portion where A1 has stated that the cash is at his house is admissible u/s. 27, The Indian Evidence Act, 1872 (Hereinafter referred to as the "**IEA**") by virtue of its being found at the exact location that A1 disclosed, which is a place of hiding, as evidenced by **Ext. 2**.

11.3 Thus, the prosecution has successfully raised the presumption that A1 was entrusted with ₹20,80,000/- with clear instruction to deposit it in Axis Bank, Ramgarh Branch.

11.4 Now, the burden shifts to the defense side u/s. 102, IEA to rebut this presumption. However, neither the accused person in his statement u/s. 313, CrPC nor the defense during their defense evidence have been able to rebut this presumption. The Id. defense counsel submitted during the course of oral arguments that A1 took this money with an intention to submit it in the branch but went home as someone at his house was ill. Thus, he has also not rebutted the presumption that A1 was entrusted with the said cash amount.

11.5 Thus, by virtue of the portions of depositions of prosecution witnesses cited above, and the discovery made of the entrusted amount, this court comes to a conclusion that the prosecution has successfully established that cash amount of ₹20,80,000/- was entrusted to A1 with instruction to deposit it in Axis Bank, Ramgarh branch.

11.6 Now, what is left to be examined is whether the said cash amount was misappropriated by A1 and that too, with a dishonest intention. Regarding this, firstly, **Ext. 2** shows that the full cash amount was recovered from A1's house. As we have discussed above, the PWs have all corroborated the prosecution case that the instruction to A1 was to deposit the said amount of cash in Axis Bank, Ramgarh Branch. Logic also dictates that there is no questioning this part of prosecution case that he was instructed to deposit the said amount in bank instead of taking it home. Thus, prosecution has successfully raised the presumption that the said cash amount was taken home instead of bank by A1 which implies that it was misappropriated. As to the intention of A1 while committing the said act, the Id. defense counsel has submitted that A1 did not spend a single penny from this amount which implies that he never intended to misappropriate the said amount. He submitted that A1 went home as someone was ill. The Id. Assistant Public Prosecutor on the other hand submitted that if that was the case, why did he not inform someone about this over the phone. It is also the case, as made out by **Ext. 2** r/w **Ext. 3** that the alleged

incident is of 05.05.2017 and the said cash was recovered from A1 on 09.05.2017 only after he was apprehended and disclosed the location of this cash.

11.7 The burden has now shifted upon the defense side to rebut this presumption that the said cash was not misappropriated with dishonest intention; more specifically to explain the inference drawn by reading **Ext. 2** and **Ext. 3** together and explain the circumstances between 05.05.2017 to 09.05.2017 in order to rebut the presumption raised. To this, no explanation was offered by A1 during his statement u/s. 313, CrPC or during defense evidence or defense argument stage that why A1 took the said cash to his home instead of the bank, kept everyone uninformed about it, could not be found/contacted after efforts by the informant and his staff, and this state continued till the time he was apprehended. If there was any specific reason for this, then u/s. 106, IEA, the onus is on the defense to prove it. As they have not done so, this unexplained behavior of A1 has thus, not rebutted the presumption raised by the prosecution.

11.8 As far as the submission of the Id. counsel for defense that as A1 did not spend a single penny, there was no misappropriation is concerned, it can be gathered from the circumstances surrounding the alleged incident that A1 did take the money home contrary to the clear instructions given to him. Just because he was apprehended and money was recovered from him, instead of A1 himself returning the money does proves that he did misappropriate the cash amount, and that too in violation of the instructions given to him. It has been held by a 3-judge's bench of the Hon'ble Supreme Court in **Ram Narayan Popli v. CBI, (2003) 3 SCC 641** that:

"As noted by this Court in Jaikrishnadas Manohardas Desai v. State of Bombay [AIR 1960 SC 889 : 1960 Cri LJ 1250] to establish the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted if proved, may, in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion."

In the instant case as well, there was failure on part of A1 to account for the property entrusted to him, which the prosecution has proved through its evidences.

11.9 As to his *mens rea*, at the time he was entrusted with the money which he took home, he did have an intention of some kind of wrongful gain to him even though in the future, which would have eventually resulted in a wrongful loss to the

informant.

11.8 Thus, by virtue of the discussion made above, this court has come to a conclusion that the said amount was dishonestly misappropriated by A1 and with a dishonest intention. Accordingly, this court is of the considered opinion that **the prosecution has successfully proved the charge u/s. 406, IPC against A1.**

12. *Whether A1 committed cheating thereby dishonestly inducing informant and his concerned staff to deliver ₹20,80,000/-, which is a valuable security, to him?*

12.1 The prime ingredients that the prosecution has to prove in order to prove an offence u/s. 420, IPC are that A1 dishonestly induced the concerned staff of the informant to deliver ₹20,80,000/- to him and that this dishonest intention was existing at the time of the inducement made.

12.2 It has been deposed by PW01 that he gave the said cash to A1 instructing him to deposit it in Axis Bank, Ramgarh branch, to which he then complied. PW02 is a hearsay witness who has reiterated this deposition but has deposed that he was informed about the same and has not witnessed it. It is not possible to go into the mind of the accused person to gather as to when exactly *mens rea* formed in his mind. It is thus, gathered from his conduct. PW04 has deposed that he saw that A1 and PW01 were both sitting in the cashier's office when he left. PW01 and others have deposed that PW01 gave the said cash to A1. A conjoint reading of all this raises the presumption that as and when cash was handed over to A1, he developed the *mens rea* to cheat, and induced PW01 into handing him over the said cash by making them believe that he will submit the said cash in bank but rather, took it home and could be found only later after the instant case was lodged. Thus, the prosecution has been able to raise a presumption of an offence u/s. 420, IPC as its evidences have formed a solid net, leaving no room for suspicion. PWs 01, 03, 04 and 05 have all identified A1 who was present in court in front of them. Only PW02 was declared hostile on the point of identification of A1. Thus, there is no doubt regarding the identity of the person who committed the alleged crime. The same is also evidenced by virtue of **Exts. 2 and 3.**

12.3 On the other hand, the Id. defense side during their evidence and argument stage or A1 during his statement u/s. 313, CrPC could not rebut this presumption.

12.4 thus, this court is of the considered opinion that the **prosecution has successfully proved that A1 committed an offence u/s. 420, IPC.**

13. *Whether A1 was a part of a criminal conspiracy to commit an offence punishable u/s. 406 and 420, IPC?*

13.1 The charges have been framed u/s. 120B, IPC as the informant's written report on which informant's case has been sourced states that he suspects that more people from his factory are involved in this criminal conspiracy with A1 as he should have been sent on a four-wheeler with proper security with such a huge amount of cash but he was sent on a two-wheeler with the said cash. To this, during his investigation, PW05 did not investigate on this as no mention is found about a criminal conspiracy in his deposition. The other PWs have also deposed regarding the involvement of only A1. PW01 has stated in his cross examination that it is not the case that he was involved in a criminal conspiracy for the alleged offence because of which he lost his job. Nothing of this sort has been stated by the informant as well in his examination as PW03.

13.2 Thus, due to lack of investigation and thus, any material before this court which would indicate that A1 was not operating solely but was rather a part of a criminal conspiracy as a result of which the alleged crime was committed, this court is of the considered opinion that the prosecution case is shorn of a single piece of evidence which would raise the presumption of an offence having been committed u/s. 120B, IPC.

13.3 **Prosecution has thus, failed to prove the charge u/s. 120B, IPC.**

14. *Is the present trial barred as informant has compromised with A1?*

14.1 It was repeatedly submitted by the Id. counsel for A1 that as informant has received his money back, he has deposed in para no. 15 and 16 of his examination as PW03 that he has compounded the said case with A1 of his own free will. However, a perusal of the case record reveals that even if that may be the case, no order has been passed by this court or any of its predecessor officers u/s. 320, CrPC. Even if parties have compounded a case which is compoundable in nature, for it to end, it is necessary that the parties appear before the court and submit that they have compounded the case out of their own free will, and then if the court is satisfied, it can put an end to that case there and then. Contrary to this, the present case, which ran its course and was not put to an end u/s. 320, CrPC will now be judged on the basis of the evidences before the court. An offence in a case registered on the basis of an FIR is not a private case but is rather a crime against the society as a whole. The prosecution side represents the interests of the society we all live in, and in

furtherance of that, they have brought evidences considering which the court is pronouncing this judgment. Thus, this court finds no force in arguments of the Id. counsel that since the informant has received his money, and wants to put an end to this case, the court should not go into the merits of the evidences and completely ignoring those, should acquit A1.

15. Thus, in the light of discussion made above and considering the entire facts and circumstances of the case and materials available on record, the court finds and holds that the prosecution has successfully proved the charges u/s. 406 and 420, IPC beyond reasonable doubt against A1. The prosecution has however, failed to prove the charge u/s. 120B, IPC against A1. Hence, the A1 is held guilty for the offence u/s. 406 and 420, IPC. Accordingly, the bail of A1 is hereby cancelled and he is taken into custody. Put up for hearing on the point of sentence.

Pronounced by me in open court.

(Dictated and corrected)

Sd/-

Sd/-

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 14th December, 2022

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 14th December, 2022

**Later on,
14.12.2022**

HEARING ON THE POINT OF SENTENCE

16. Learned counsel of the convict person submitted that he is a first-time offender and there is no evidence brought on record from the side of prosecution about the fact that the convict person was previously convicted and also there is no evidence about any criminal antecedent of the convict and thus, prayed that to release the convict on due admonition instead of passing of sentence. Prayer was also made to consider the fact that he did not spend any money from the amount handed over to him and the full amount was recovered from his house. Prayer was also made to consider the fact that the informant now has no problem with the convict.

17. Learned Id. Assistant Public Prosecutor submitted that after due discussion, this Court has rightly come to a firm conclusion that the convict person had committed the offence **u/s. 406 and 420, IPC** and he must be convicted accordingly. It was urged that had the police not apprehended the convict, he would have fled away with the cash amount recovered from him which indicates this guilty mind and thus, prayed to award maximum punishment to the convict.

18. After hearing both the sides, perusing the case record and considering the nature of the offence, I am of view that in this case convict person is not entitled to get benefit according to the provision of Probation of Offenders Act. No probation report is available on record. The guilt of the convict is quite clear in the crime he is convicted for. Hence, convict person namely **A1 Umacharan Mandal @ Shankar** is hereby sentenced as under:

Rank Of the Convict	Name of the Convict	Sections under which convicted	Sentence of imprisonment	Fine	Sentence in default of fine
A1	Umacharan Mandal @ Shankar	u/s. 406 of IPC	1 year SI	none	none
		u/s. 420 of IPC	2 years SI	₹2000/-	15 days SI

19. The Court is of the opinion that the aforesaid punishment is sufficient for the ends of justice and punishment given under both the sections shall run **concurrently**.

20. The period of detention in the custody, if any, during trial, be adjusted towards the substantive sentence as per provisions of section 428 of The Code of Criminal Procedure, 1973.

21. Let the copy of the judgment be provided to the accused person free of cost.

Pronounced by me in open court.

(Dictated and corrected)

Sd/-

Sd/-

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 14th December, 2022

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 14th December, 2022