

1966.

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Received on 30.7.66

District

Cuttack

# PART I

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### Revision under Section 475, Code of Criminal Procedure

No. 603

Motion made on behalf of

Adwait Prasad Nayak

PETITIONER

Through Mr. ....

versus

State.

OPPOSITE-PARTY

SUBJECT

Praying that the order of the

Sessions Judge

Magistrate of

Cuttack

dated the

30/9 -

day of

1966.

To Magistrate—No.

Gr.

Intimates that the of 196, has

Dated

196

been fixed the hearing when the Court will

To Sessions Judge—No.

Do.

Cr. A.

consider any cause which may be shown by

Dated

Do.

196

why the Conviction and sentence should not be

To Advocate-General—No.

Do.

Cr. B.

and requests him to forward the record on or before

Dated

Do.

196

the 196.

From Sessions Judge—No.

COPY for information, with the request that he

Dated

196

will forward the record on or before the 196.

From Magistrate—No.

COPY for information

Dated

196

lay before the Criminal Bench  
the Hon'ble Mr. Justice

Date of decision of High Court

18.7-

1969

Deputy Registrar

# IN THE HIGH COURT OF ORISSA

## CRIMINAL JURISDICTION

### TABLE OF CONTENTS

Criminal ..... *Rev.* ..... No. *603* ..... of 196*6*

*Adwait Prasad Nayak*

Appellant  
Petitioner

*Versus*

*State*

Respondent  
Opposite Party

Serial No. of paper	Description	Pages
1.	Order sheet	1-2.
2.	Judgment of the High Court	3-14.
3.	Letter of Reference <u>Petition of appeal</u> Application	15-24
4.	Lower Court Judgment	25-72.
5.	Explanation	X
6.	Paper books	the

*[Signature]*  
Signature of Officer of Court

Compared and found correct

*[Signature]*  
Record-keeper *20.7.69*

Date *26/7/68*

M/s. A. K Das and  
H. K Jena  
Mr. B. Mohapatra (H.S.)

In the High Court of Orissa Standing Counsel.

ORDER-SHEET

Appeal No. 603 of 1966  
Appellant - Adwaita Prasad Naik  
Respondent - State  
S.S. vs. State

Serial No. of Order	Date of Order	Order with signature	Office note as to action (if any) taken on Order
1.	2.11.66	Presented in court 10 10	For stamp report please 9/11/66 Stamp report made, effects 2. 2. to be removed
2.	9.11.66	Admit. Issue notice. The petitioner be released on bail of Rs 5000/- (Rupees five thousand only) with two sureties of like amount each to the satisfaction of the A. D. M. (Judicial) Cuttack. Realisation of fine be stayed till the disposal of the above petition. <i>[Signature]</i>	9/11/66 Effect no. 1 only removed 9/11/66 Effect no. 3 also removed 9/11/66 Def no 2 removed For admission with bail and stay. 9/11/66 Order no. 2 communicated 9/11/66 A copy of new pet. to be filed 9/11/66

Serial No. of Order	Date of Order	Order with signature	Office note to action (if any) taken on Order
3	16 <sup>11</sup> / <sub>66</sub>	<p>Three days' time is allowed to file a copy of this Rev. Petn., failing which place before the Bench for favour of order</p> <p style="text-align: center;">N <u>Regr.</u></p>	<p>A copy of new petn. not filed for orders.</p> <p>9/10/66 15/11</p> <p style="text-align: right;"><u>Regr.</u></p>
4	25 <sup>6</sup> / <sub>69</sub>	<p>heard in part by Hon'ble A. Misra J.</p> <p style="text-align: right;">B.O. <u>TBS</u></p>	<p>notice issued on 12-1-67</p> <p>9/10/67 21/12</p> <p style="text-align: right;">K.G. 21.12.67</p>
5	26 <sup>6</sup> / <sub>69</sub>	<p>heard in part</p> <p style="text-align: right;">B.O. <u>TBS</u></p>	<p>Commitment records received and found correct</p> <p>9/10/67 18/1</p>
6	27 <sup>6</sup> / <sub>69</sub>	<p>hearing resumed and concluded. Judgment reserved.</p> <p style="text-align: right;">B.O. <u>TBS</u></p>	<p>Sw. records received, checked and found correct.</p> <p>9/10/67 27/1</p> <p>S.T. records wanted.</p>
7	18-7-69	<p>Judgment delivered. The Rev. is allowed in part vide judgment in separate sheets.</p> <p style="text-align: right;">B.O. <u>TBS</u></p>	<p>S.T. record received checked and found correct</p> <p>9/10/69</p> <p>Standing Counsel supplied with a copy of brief. The case made ready and shown in H.L. dt 23.X-67.</p> <p>9/10/69 6/11</p>

Cr. Rev. 603/66

*(Handwritten mark)*

[O.H.C.-98]

Serial  
No. of  
Order

Date of  
Order

ORDER WITH SIGNATURE

Office note as to action (if any)  
taken on Order

One copy of J.C. judgment  
along with L.C.R. are sent  
to the Sessions judge,  
Cutback.

ld  
21.7.69  
21/7/69

*(Handwritten initials)*  
DR

Received the submitted  
documents (bulky documents)

*(Handwritten signature)*  
Add signature  
1/8/69

1181  
18769  
RR  
26/4/79  
23/8/79  
R.R.  
29/5/82  
6/5/82  
3

Criminal Revision No.603 of 1966.

From an order dated 30.9.66 passed by Shri B.Misra, Additional Sessions Judge, Cuttack confirming an order dated 2.9.64 passed by Shri K.M.Misra, Assistant Sessions Judge, Cuttack in S.T.no. 17/C of 1963.

Adwait Prasad Naik. .... Petitioner

Versus

S t a t e e. .... Opp. Party.

For Petitioner: Mr. B.Mohapatra.

For Opp. Party: Standing Counsel.

Present:

The Honourable Mr. Justice A.Misra.

A.Misra, J.

The petitioner has been convicted u/s 409 I.P.C. and sentenced to rigorous imprisonment for three and half years and a fine of Rs.5,000/- and in default to undergo further R.I. for nine months. He has also been convicted u/s 477 A I.P.C. and sentenced to rigorous imprisonment for six months. The substantive sentences are to run concurrently.

2. According to the prosecution, petitioner was working as Naib Tahsildar of Circle no.6 known as Rambag Circle within the Jajpur Tahsil from 1954 onwards. His duties included collection of rent and other Govt. dues from tenants by granting printed rent receipts, maintenance of relevant records of collection and depositing the collections in the Treasury or in the Sadar Tahsil office. During audit, defalcation of huge amounts and irregular maintenance of accounts were detected and on an information lodged by the Anchal Officer at the P.S. on 6.1.59, police started investigation and found misappropriation of collections having been committed by the petitioner during the years 1956, 1957 and 1958. Three separate chargesheets were



4

filed against the petitioner in respect of amounts alleged to have been misappropriated during/~~such~~<sup>different</sup> calendar years. The present case relates to the alleged defalcation of Rs.12,294.04 during the year 1957.

3. According to the prosecution, petitioner collected the aforesaid amount during the period from 14.1.57 to 11.11.57 from various tenants, did not deposit the same in the Sub-Treasury or the Tahsil office and misappropriated the same. In addition, he has also been charged for committing falsification of the accounts in respect of Rs.14-4-3 and Rs.23-14-6 realised under the counterfoil receipt nos.757677 and from 758509 to Binode Behari Jena and 758521 from/Krushna Jena on 30.3.57.

4. Petitioner, while admitting that he was working as Naib Tahsildar during the relevant period and had made/<sup>a</sup>few collections from some tenants by granting receipts,<sup>states that</sup> the major part of the amounts had been collected by his muharrirs. In accordance with the prevailing practice, he was handing over volumes of receipt books containing blank receipts with his signature to the muharrir to go to moffasils, make collections and issue receipts by filling the appropriate columns and putting the date. The Tahsildar (P.W.94) and the Revenue Supervisor while visiting villages during the collection season used to take charge of the amounts collected and send receipts and challans from the Head office on which entries were being made in the appropriate collection register and cash book. He further pleads that all Govt. dues collected by him or which otherwise came into his possession have been paid to the superior officers or deposited in the Treasury and in that context alleges that he had made payments to P.W.94 and the Revenue Supervisor from whom he obtained receipts. Lastly, he says that when he went on leave





from 12.12.58, he made over the total cash remaining with him amounting to Rs.4,000/- to the Revenue Supervisor.

5. On the evidence, the courts below arrived at the following findings: (1) Though the prosecution alleged collection and misappropriation of Rs.12,294.04 during the charge period, ~~gross~~ collection and misappropriation of Rs.8,435.18 only has been proved; (2) petitioner has made collection of rent and other Govt. dues directly from some tenants and granted them receipts; (3) practice prevailed under which petitioner was entrusting volumes of receipt books containing blank receipts with his signature to the muharrir to collect rent and other Govt. dues from tenants and grant receipts by filling the appropriate columns; (4) ~~gross~~ collections made during the charge period have not been entered in the collection register or the cash book; (5) petitioner failed to prove that he made any payment to P.W.94; (6) he failed to prove that whatever he collected, he deposited in the Treasury or sent it to the Head office and (7) he committed falsification of accounts, as alleged. On the aforesaid findings, the trial court convicted and sentenced the petitioner u/ss 409 and 477 A I.P.C., as stated above. The appellate court confirmed the convictions and sentences.

6. Prosecution has sought to prove the alleged collection of Govt. dues during the charge period on the basis of a large number of tenant's copies of rent receipts and a large number of counterfoils or landlord's copies found in the volumes of rent receipt books, besides examining a number of tenants. Before me, the following facts are not disputed: (1) The petitioner was a public servant and working as Naib Tahsil-dar during the charge period and his duties included collection



of rent and other Govt. dues from tenants; (2) the volumes of rent receipt books marked Exs.30 to 30/12 were received by petitioner from the Head office; (3) the ~~gross~~ collections found on the basis of rent receipts, etc. have not been entered in the collection register or cash book and (4) the signature on the rent receipts proved in this case is that of the petitioner.

7. Learned counsel for petitioner assails the convictions mainly on the following grounds: It is contended by him that (1) the defence plea of the petitioner having paid the collections as well as the amounts/<sup>which</sup> otherwise came into his possession to P.W.94 and the Supervisor should have been accepted by the courts below; (2) the conviction of petitioner u/s 409 I.P.C. cannot be sustained unless prosecution establishes by satisfactory evidence that the amounts alleged to have been misappropriated had actually been entrusted to the petitioner or that he otherwise obtained dominion over the same and (3) the prosecution has failed to substantiate the charge u/s 477 A I.P.C..

8. The first contention of learned counsel for petitioner, in my opinion, has no merit. According to the petitioner, P.W.94 and the Revenue Supervisor during their visits to villages were taking charge of the collections ~~which admittedly~~ contrary to the normal procedure. Petitioner has sought to rely on certain receipts (Exs.J to J/4) alleged to have been granted by P.W.94 and Ex.H by the Revenue Supervisor. Out of Ex.J series, only the receipts (Exs.J and J/2) relate to the charge period. P.W.94 has categorically denied to have granted these receipts, ~~as~~ his handwriting and signature thereon. D.Ws.2 and 7 were examined to prove that Exs.J to J/4 are in the handwriting and bear the signature of P.W.94. For very

7

cogent and convincing reasons given in paragraph 17 of the trial court judgment and paragraph 10 of the appellate court judgment, the testimony of these D.Ws. has been disbelieved and the genuineness of Ex.J series ~~rejected~~. If really such payments had been made and receipts obtained, no ostensible reason has been furnished why they were <sup>not</sup> entered in the appropriate registers of petitioner's office. Ex.H does not relate to the charge period. Considering these circumstances and agreeing with the ~~stated~~ reasons given by the courts below, I find no merit in this plea of the petitioner that he has made substantial payments of collections made by him either to P.W.94 or the Revenue Supervisor.

9. The next contention on behalf of petitioner which has been seriously pressed before me is that the prosecution evidence falls far short of proof that the amount in question was actually entrusted to the petitioner or otherwise he obtained dominion over the same. As already stated, the prosecution has sought to establish the total collections alleged to have been made during this period by producing a number of tenant's copies of rent receipts as well as counterfoils found in the receipt books, besides examining a number of tenants. In this context, it has been argued that there is ample evidence on record and the <sup>appellate</sup> court ~~has~~ also come to the conclusion that the prevailing practice at that time was for the petitioner to hand over volumes of receipt books containing blank receipts with his signature to the muharrirs to visit different villages, make collections and issue the receipts containing petitioner's signature after making entries in the appropriate columns. This being the practice, it is argued that it cannot be said that all these amounts had been collected by the petitioner or otherwise came into his possession or he obtained dominion over

the same. In some of the volumes of rent receipt books, such as, volume nos. 1663, 3408, 3663 and 3670, it is found that still some receipts remained unused and unissued, but they contain the signature of the petitioner. It was contended before the trial court that this fact lends support to the defence version of his putting signature on the blank receipts and making them over to the muharrirs for making collections in moffasil. The trial court did not accept this contention and observed that petitioner might have put his signature on the blank receipts to enable him to save time when tenants came and paid rent. The lower appellate court, however, disagreed with this reasoning and observed:

"I am accordingly to endorse the contention from the appellant's side that the volumes of rent receipt books referred to above and bearing some unused rent receipts containing signatures of the appellant only go to support the validity of the defence plea that the appellant used to sign blank receipt forms and make over rent receipts to his muharrirs so that the latter could recover rent from the tenants by using such rent receipts."

It has also observed: ~~that~~ "there was, however, such a practice prevailing according to which the muharrirs placed under Naib Tahsildars were realising rent from the tenants may ~~be~~ reasonably ~~be~~ taken as <sup>a</sup> settled state of fact". Thus, the finding of the lower appellate court is in favour of the defence plea that petitioner-Naib Tahsildar according to the prevailing practice, whether it was right or wrong, authorised or otherwise, was making over volumes of rent receipt books containing blank forms with his signature to muharrirs and they were also making collections of rent by utilising the same. Relying on this finding, learned counsel for petitioner contends that the court below erred in holding that the total amount of Rs. 8,435.18 which according to the receipts ~~were~~ was found to have been collected during the charge period was actually collected by the petition-



er or that he got dominion over the same, in the absence of some positive proof that the amounts collected by the muharrirs by using such receipts had also been actually handed over to the petitioner. The lower appellate court has found that petitioner must be deemed to have been entrusted with the entire amount represented by these receipts and got dominion over the same irrespective of any portion of it having been collected by himself or the muharrirs. This view has been taken by the lower appellate court on the ground that it having been conceded on behalf of the accused-petitioner during argument that the overall responsibility for the collection of rent made by the muharrirs having rested with the petitioner and he never having shirked such responsibility by protest or otherwise, it can make no real difference whether the collections might have been made by the appellant himself or by his muharrirs. In other words, the view taken by the lower appellate court is that it being the duty of the petitioner to make collections of rent and other Govt. dues, and there being no evidence that the authorities entrusted such collections to muharrirs or authorised petitioner to make collections through muharrirs, the petitioner alone will be responsible. The fact that muharrirs were appointed under Naib Tahsildar is not disputed. It is also not denied that they were Govt. servants. There is no positive evidence regarding the nature of duties attached to the posts of muharrir. The designation itself may suggest that their duty mainly consisted of attending to scriptory work. Even then, as has been argued by learned counsel for petitioner, if petitioner adopted the practice of getting collections made through muharrirs, it may amount to negligence or dereliction of duty on his part which may ~~subject him to~~ <sup>subject him to</sup> ~~make him liable for~~ civil liability in respect of the loss, if any, sustained by the State. To attach



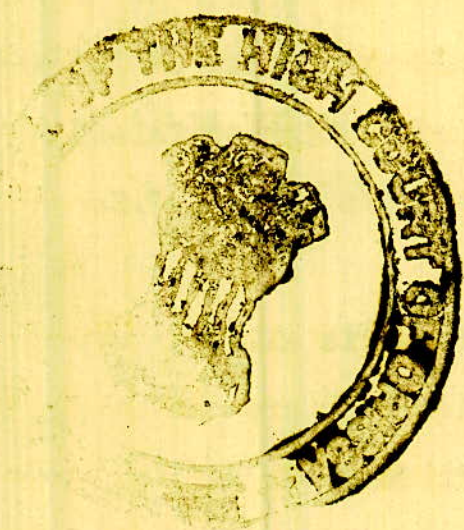
criminal liability, it is contended that prosecution must offer positive proof that the amounts in question were actually entrusted to or otherwise came into possession of the petitioner. Learned Standing counsel for the State does not seriously dispute this contention, but argues that in this case, a number of tenants who have proved their rent receipts have been examined as P.Ws. and they have deposed to have paid rent directly to the petitioner. Of course, there are some rent receipts which could not be proved by the tenants out of illiteracy and those have been proved by the evidence of witness like P.W.119. On this basis, learned Standing counsel contends, ~~that~~ there is no reason to doubt the testimony of these witnesses who claim to have themselves paid rent to the petitioner under the rent receipts exhibited. In view of the conclusion that accused-petitioner used to make over blank receipt forms to the muharrirs with his signature and the latter were making collections by filling the appropriate columns, it will not be safe to accept the existence of signature of accused-petitioner in the rent receipts as prima facie proof of the collections having been made by him personally. So far as the evidence of the tenant-P.Ws. is concerned, obviously they are coming and deposing after lapse of some years and it will be equally unsafe to rely on their memory as to whether that particular payment was made to the petitioner directly or to one of his muharrirs without further corroboration. One curious feature in most of the rent receipts is that the column in the body of receipts requiring an entry under the heading "By whom paid" has been left blank. It is argued by learned counsel for petitioner that in case of such receipts, the evidence of the tenant-P.Ws. that they had actually gone and made ~~the~~ payments and that too, to the petitioner will not be safe to be relied upon. Had it been so, it is argued, there is no reason why their names would not

have been mentioned in the body of the receipts under the heading "By whom paid". On the other hand, there are a large number of receipts granted to P.Ws. 2, 11, 63 and 109 wherein in the body of receipts, the column against the heading "By whom paid" has been filled in. In Exs. 1/22 to 1/33, the name of P.W. 2 has been mentioned as the person who paid the rent; in Exs. 1/81 to 1/140, the name of P.W. 11 has been mentioned as the person who paid the rent; in Ex. 1/675, the name of P.W. 63 has been mentioned as the person who paid the rent and in Exs. 1/1061 to 1/1071, the name of P.W. 109 has been mentioned as the person who paid the rent. Though the evidence of the other tenant-P.Ws. whose rent receipts have also been exhibited does not find corroboration from any recital in their respective rent receipts that on that occasion they had personally gone and paid rent, so far as the above four P.Ws. are concerned, the entries in the rent receipts referred to above clearly show that payment of rent on those occasions was made by them personally. Thus, their oral evidence that they made the said payments directly to the petitioner who granted those receipts to them finds corroboration from the recitals in the rent receipts, the genuineness of which is not disputed.

10. Learned Standing counsel contends that irrespective of dependability of the evidence of other P.Ws. when they depose from memory about having made payments direct to the petitioner under receipts where the column "By whom paid" is left blank, there is absolutely no reason to doubt the testimony of P.Ws. 2, 11, 63 and 109 who have pledged their oath in support of their statements to have paid rent personally to the petitioner under Exs. 1/22 to 1/33, 1/81 to 1/140, 1/675 and 1/1061 to 1/1071 as their evidence finds full corroboration from the recitals in those receipts that they personally paid rent.

12 ✓

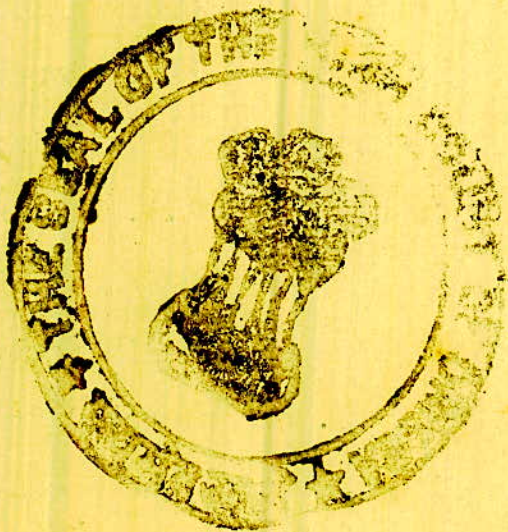
Learned counsel for petitioner, on the other hand, contends that these particular rent receipts have not been put to the accused-petitioner during his examination u/s 342 Cr.P.C. and even otherwise their memory after lapse of such a long time cannot be safely relied upon. I do not find any merit in the contention of learned counsel for petitioner, so far as the evidence of P.Ws.2,11,63 and 109 is concerned. Petitioner was defended and each of the aforementioned witnesses deposed to with reference to the receipts in question. Nothing has been elicited to doubt or discredit their testimony. The recital in the receipts that they personally paid rent affords full support to their evidence when they say that they made payments personally and mention the petitioner as the person who received rent from them. Thus, the prosecution has proved beyond reasonable doubt that petitioner personally received the amount of Rs.103-12-6 for which he granted the receipts (Exs.1/22 to 1/33, 1/81 to 1/140, 1/675 and 1/1061 to 1/1071) from P.Ws.2,11,63 and 109 and to this extent, the entrustment is fully established. So far as the amount covered by the remaining rent receipts is concerned, as proof of entrustment of the same to the petitioner rests entirely on the uncorroborated testimony of a large number of P.Ws. and such alleged entrustments do not find support from the entries in those receipts, whatever the civil liability of the petitioner may be, he is entitled to benefit of doubt as it cannot be positively found that those collections were actually entrusted to him and had not been collected by the muharrirs. The entrustment of the aforementioned amount of Rs.103-12-6 having been proved, the next point for consideration is whether the same has been misappropriated. It is not disputed that these collections have not been entered in the Siha or the cash book.



It is not proved that this amount was deposited in the Treasury or in the Sadar Tahsil office or actually paid to any of the official superiors. Petitioner has failed to otherwise account for the said amount. Therefore, so far as this amount of Rs.103-12-6 is concerned, there can be no doubt that he has misappropriated the same, and as such, he is guilty u/s 409 I.P.C. and his conviction for the said offence must be maintained.

11. The charge u/s 477 A I.P.C. is confined to two items of collections from Binode Behari Jena and Krushna Charan Jena evidenced by the counterfoil rent receipts nos.757677 and from 758509 to 758521. The allegation is that by not entering these items in the Siha or the cash book, falsification of accounts has been committed. To sustain a charge u/s 477 A I.P.C. the prosecution must prove that the accused with intent to defraud destroyed, altered, mutilated or falsified any book or paper, etc.. Mere omission to make an entry by itself cannot amount to altering, mutilating or falsifying any book or paper, etc.. The expression "falsify" connotes doing something purporting to contain some information. The omission to make an entry cannot necessarily be doing a thing for the purpose of falsifying the accounts. In the absence of any proof that petitioner committed any overt act in altering, mutilating or falsifying any book or paper, etc., the conviction u/s 477 A I.P.C. cannot be sustained.

12. In the result, the revision is allowed in part, the conviction and sentence u/s 477 A I.P.C. are set aside and the conviction u/s 409 I.P.C. is confirmed, but as the amount proved to have been entrusted to the petitioner and misappropriated by him is much less than that found by the courts below,



14

the sentence is reduced to two years rigorous imprisonment and a fine of Rs.100/- and in default to undergo further rigorous imprisonment for a period of two months.

*Boon*

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18.7.69

Orissa High Court,  
Cuttack.  
The 18<sup>th</sup> July, 1969.

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Roul.

