N. RAGHAVENDER A

v.

STATE OF ANDHRA PRADESH, CBI

(Criminal Appeal No. 5 of 2010)

DECEMBER 13, 2021 B

[N. V. RAMANA, CJI, SURYA KANT AND HIMA KOHLI, JJ.]

Prevention of Corruption Act, 1988 – s.13(2) r/w s.13(1)(d) – Penal Code, 1860 – ss.409, 420, 477A – Criminal breach of trust by public servant or Banker – Strong suspicion short of conclusive proof – Case of prosecution that accused no.3-brother-in-law of appellant-Branch Manager opened an account of the Academy of which he was Treasurer – Allegedly, appellant and the other co-accused also working in the Bank conspired with accused no.3 by allowing withdrawal of amounts from the said account, despite insufficient funds – Appellant was further accused of pre-maturely encashing two FDRs belonging to a customer which amount was transferred to the aforesaid account – Co-accused acquitted by Trial Court – Appellant held guilty concurrently – On appeal, held: Material on record does not disclose conspiracy between the accused persons – Further, there were sufficient funds in the account for passing the three cheques in question – Mere issuance of the aforesaid loose cheques, not sufficient to conclude that the appellant acted unlawfully or committed criminal misconduct – There is also serious dispute on the factum of whether or not the customer had sought the premature withdrawal and subsequent transfer of the proceeds of FDRs to the account of Academy – He was the best person to throw light on the said fact, but he was not examined which is materially fatal to the prosecution's case – On facts, no financial loss was caused to the Bank/customer – Direct and relevant evidence being withheld, benefit of doubt extended to appellant – Prosecution failed to prove charges u/ss.409, 420 & 477A, IPC against the appellant beyond reasonable doubt – Conviction u/s.13(2) r/w s.13(1)(d), PC Act also cannot be sustained. C D E F G

Criminal Law – Mixed questions of law and facts – Concurrent view taken by Courts below – Scope of interference – Discussed. H

A *Penal Code, 1860 – ss.409, 420 and 477A – Charges under – Necessary ingredients to prove – Discussed.*

Criminal Law – Mens rea – *Held: Crucial word used in s.405, IPC is 'dishonestly' – It pre-supposes the existence of* mens rea – *Penal Code, 1860 – s.405.*

B *Penal Code, 1860 – s.405 – 'Entrustment of property' – Burden to prove – Initial burden; shifting of burden – Discussed.*

Banking/Banks – Conventional bank transactions – Relationship between the Bank and the Customer – Discussed.

C *Criminal Law – Standard of proof – Domestic enquiry vis-à-vis criminal charge – Discussed.*

Words & Phrases– 'intent to defraud' u/s.477-A – Elements of – Discussed – Penal Code, 1860 – s.477-A.

Disposing of the appeal, the Court

D **1. Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed** E **criminal breach of trust. The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a *sine qua non* for making an offence punishable under Section 409 IPC. The crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. The second significant expression is** F **'mis-appropriates' which means improperly setting apart for ones use and to the exclusion of the owner. Unless it is proved that the accused, a public servant or a banker etc. was 'entrusted' with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, Section** G **409 IPC may not be attracted. 'Entrustment of property' is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was 'entrusted' to the accused, it is not necessary to prove further, the actual mode of entrustment of the property or misappropriation thereof.**

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Where the 'entrustment' is admitted by the accused or has been established by the prosecution, the burden then shifts on the accused to prove that the obligation *vis-aÌ-vis* the entrusted property was carried out in a legally and contractually acceptable manner. [Paras 41-43, 45][81-D-F; 82-C-D, G-H; 83-A-B]

Sadupati Nageswara Rao v. State of Andhra Pradesh **(2012) 8 SCC 547 : [2012] (6) SCR 1143 – relied on.**

2. In order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* of the accused at the time of making the inducement. For the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made. The phrase 'dishonestly' emphasizes a deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. For the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable doubt, *mens rea* on his part. Unless the complaint showed that the accused had dishonest or fraudulent intention '*at the time the complainant parted with the monies*', it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract. [Paras 47, 48][83-D-H]

3. In an accusation under Section 477A IPC, the prosecution must prove- (a) that the accused destroyed, altered, mutilated or falsified the books, electronic records, papers, writing, valuable security or account in question; (b) the accused did so in his capacity as a clerk, officer or servant of the employer; (c) the books, papers, etc. belong to or are in possession of his employer or had been received by him for or on behalf of his employer; (d) the accused did it wilfully and with intent to defraud. [Para 50] [84-D-E]

A **4. 1 The High Court held that the actions of the Appellant were not to his benefit, but to the advantage of his brother-in-law, i.e., Accused No. 3. The Brother-in-law of the Appellant was, however, acquitted by the Trial Court and no appeal was preferred by the State against his acquittal. The findings in respect to his innocence have attained finality. There is no doubt that amongst the three accused persons, the Appellant being the Branch Manager, had the sole authority to issue and pass the three loose cheques. Since no explicit prohibition on issuing of loose cheques has been proved, the mere fact that the Appellant issued those loose cheques, is not sufficient to conclude that he acted unlawfully or committed a 'criminal misconduct'. The case of the Prosecution rested heavily on the premise that the three cheques in question, i.e., Ex. P25 to P27, were passed even though there weren't adequate funds in account No. 282. On perusal of the Current Account Ledger for account No. 282 (Ex P23) it appears that there were sufficient funds in account No. 282 for passing all the three cheques in question. So far as this part of the transaction is concerned, the Bank did not suffer any loss. In order to substantiate the charge under Section 477-A IPC, the primary contention of the Prosecution is that despite passing the three cheques, the Appellant did not make the relevant entries into the Current Account Ledger (Ex P23) of account No. 282. This was allegedly done to conceal the withdrawals as there were insufficient funds in the account of the Academy. The expression 'intent to defraud' as given under Section of 477-A, contains two elements, deceit and injury. So far as the second element is concerned, as already noted no financial injury was caused to the Bank. With respect to the question of 'deceit', the depositions of PW-2 (the Auditor) and PW-6 (an Accountant at the Branch) unveil that though the relevant entries were missing in the Current Account Ledger, they do find a mention in the other ledger sheets maintained by the Bank, namely, the Officer's Cash Scroll and the Cashier Payment Register. PW-6 has further deposed that the entry relating to Ex P25, has been mentioned in the Current Account Ledger. The ledger- Ex P23 does reveal that there is some truth in the deposition of PW-6. There is an entry made with a pencil for an amount of Rs. 2.5 lakhs and the relevant**

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cheque number of Ex P25 has also been recorded. Two other entries marked as Ex D3 and Ex D4, pertaining to the other amounts of Rs. 4 Lakhs and Rs. 3.5 Lakhs have also been inserted, but here the relevant cheque numbers have not been recorded. When this is viewed in the light of the deposition of PW-2, non-production of the other relevant ledgers cannot be overlooked. Since the direct and relevant evidence has been withheld, the benefit of doubt for such failure ought to be accorded to the Appellant. [Paras 38, 55-59][81-A-B; 85-G, H; 86-A, B-H; 87-A-E]

4.2 To prove the charge under Section 409 IPC, the prosecution need not prove the exact manner of misappropriation. Once the 'entrustment' is admitted or proved, as has been done in the present case, the onus lies on the Accused to prove that the entrusted property was dealt by him in an acceptable manner. Thus, misappropriation with this dishonest intention is one of the most important ingredients of proof of 'criminal breach of trust'. There is a serious dispute on the factum of whether or not the customer had sought the premature withdrawal and the subsequent transfer of the proceeds of FDRs to the account of Academy. The best person to clear the air would have been the customer himself, but neither was he associated during the course of inquiry/audit or the investigation nor was he examined as a prosecution witness in the trial. Further, there is also no written or oral complaint made by the customer against the Appellant or other officials of the Bank accusing them of misusing his FDRs or causing any financial loss to him. On the contrary, the Appellant has produced on record two letters (ExP6 and ExP7) purportedly written by the customer for premature encashment of his FDRs and to deposit the amount in the account of the Academy. These written requests have gone unrebutted. The prosecution has surely proved payment of interest on those FDRs to the customer even after pre-mature closure thereof, but that payment was made by the Appellant from his personal account and no public fund has been divested for such payment. There is indeed no quarrel that no financial loss was caused to the customer. [Paras 62, 64 and 65][88-D-E; 89-D-F; G-H; 90-C-D]

4.3 The non-examination of the customer has been materially fatal to the case of the prosecution. Some of the proven facts, like deposit of interest amount from the account of the appellant to that of the customer, do create a strong suspicion against the Appellant, but suspicion cannot take the place of proof, howsoever, strong. The best and the only person who could throw light on whether or not he had voluntarily agreed to transfer his FDR amount in the account of the Academy or there was an element of inducement, cheating or a false promise, was the customer himself who has chosen not to enter the witness box. Though there is a strong suspicion of criminal breach of trust, cheating and/or fabrication of the Bank records against the Appellant, but such suspicion falls short of a conclusive proof to hold him guilty of the criminal charges. The best evidence having been withheld by the prosecution, the benefit of doubt must be extended to the Appellant. Non-production of the records of the Bank also adversely comments on the fairness and independence of the investigation conducted in the instant case. [Paras 66, 67 and 70][90-F-G; 91-A-B; 92-C-D]

4.4 The record does not indicate that any pecuniary loss was caused to 'BSR'-the customer or to any other customer of the Bank. The material does not disclose any conspiracy between the accused persons. In the absence of any reliable evidence that could unfold a prior meeting of minds, the High Court erred in holding that Appellant and other accused orchestrated the transactions in question to extend an undue benefit to Accused No.3. The prosecution has failed to prove the charges under Sections 409, 420 and 477A IPC against the Appellant beyond reasonable doubt. As a necessary corollary, his conviction under Section 13(2) read with Section 13(1)(d) of the PC Act can also not be sustained. The Appellant is guilty of gross departmental misconduct, for which the punishment of dismissal from service was adequately awarded. [Paras 71, 72][92-E-G; 93-A-C]

Prabhat & Ors v. State of Maharashtra **(2013) 10 SCC 391;** *Mahak Chand & Ors v. State of U.P.* **(2019) SCC OnLine All 4044;** *Hari Sao & Anr v. State of Bihar* **(1969) 3 SCC 107 : [1970] 2 SCR 823;** *Mohd. Ibrahim*

& Ors v. State of Bihar & Anr **(2009) 8 SCC 751 : [2009] 13 SCR 1254;** *Samsul Haque v. State of Assam* **(2019) 18 SCC 161;** *N.V. Subbarao v. State* **(2013) 2 SCC 162 : [2012] 12 SCR 701;** *Vinayak Narayan Deosthali v. Central Bureau of Investigation* **(2015) 2 SCC 553 : [2014] 12 SCR 308;** *Neera Yadav v. Central Bureau of Investigation* **(2017) 8 SCC 757 : [2017] 8 SCR 498 – referred to.**

Case Law Reference

[1970] 2 SCR 823	**referred to**	**Para 23**
[2009] 13 SCR 1254	**referred to**	**Para 23**
2012] 12 SCR 701	**referred to**	**Para 33**
[2014] 12 SCR 308	**referred to**	**Para 34**
2017] 8 SCR 498	**referred to**	**Para 34**
[2012] 6 SCR 1143	**relied on**	**Para 34**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.5 of 2010.

From the Judgment and Order dated 18.06.2009 of the High Court of Andhra Pradesh at Hyderabad in Crl. A. No.337 of 2002.

Sidharth Luthra, Sr. Adv., Somiran Sharma, Ms. Shubhangi Jain, Pankaj Singhal, Advs. for the Appellant.

Jayant K. Sud, ASG, Ms. Sonia Mathur, Sr. Adv., Ms. Priyanka Das, Anmol Chandan, Ms. Snidha Mehra, Arvind Kumar Sharma, Randeep Sachdeva, Harish Nadda, Mukesh Kumar Maroria, Advs. for the Respondent.

The Judgment of the Court was delivered by

SURYA KANT, J.

1. Appellant is aggrieved by the judgment dated 18th June, 2009 passed by Andhra Pradesh High Court, dismissing his criminal appeal against the judgment and order dated 28th March, 2002 of the Special Judge, CBI Cases, Hyderabad whereby he was held guilty of the offences under Sections 409, 420, and 477A of the Indian Penal Code (for short, "IPC") and Section 13(2) read with Section 13(1)(d) of the

A Prevention of Corruption Act, 1988 (for short, "PC Act") and sentenced to a total of five years of rigorous imprisonment with various fines for each offence. Accused Nos. 2 and 3 who were also tried along with the appellant, were, however, acquitted of all the charges.

Facts:

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2. The brief facts germane to the appeal are as follows:

The Appellant- N. Raghavender worked as a Branch Manager in Sri Rama Grameena Bank, Nizamabad Branch from May, 1990 to September, 1995. A. Sandhya Rani, Accused No. 2 worked as a Clerk-cum-Cashier in the same Bank from 1991-1996 and she also attended
C day-to-day transactions in current and savings accounts relating to preparation of credit and debit vouchers. C. Vinay Kumar, Accused No. 3 was the Treasurer of the Nishita Educational Academy (for short, "the Academy") and is the brother-in-law of Appellant (Accused no. 1). Accused No. 3 opened Current Account No. 282 in the afore-said Bank
D in his capacity as an authorized signatory of the Academy. The account was opened with an initial deposit of Rs. 5,00,000/-. The prosecution case is that the Appellant and Accused No. 2 abused their respective position in the Bank and conspired with Accused no. 3 by allowing withdrawal of amounts up to Rs. 10,00,000/- from the account of the Academy, notwithstanding the fact that the account did not have the
E requisite funds for such withdrawal.

3. The alleged *modus operandi* of the accused persons was that the Appellant, in his capacity as a Branch Manager, issued loose-leaf cheques on 23.04.1994 and thereafter, for a sum of Rs. 2,50,000/-, and despite withdrawal of the said amount, the debit was deliberately not
F entered into the ledger book. After that, another such transaction took place on 30.06.1994 for a sum of Rs. 4,00,000/-, and once again, the debit was not entered into the ledger sheet of the Bank. This was followed by the Appellant issuing another cheque on 30.07.1994, of a closed account for withdrawal of Rs. 3,50,000/-. The endorsement on the third
G cheque issued by the Appellant showed the payment in favour of Accused No.3; however, the signature on the cheque did not tally with that of Accused No.3. The Appellant was further accused of pre-maturely closing two FDRs on 24.02.1995 and 25.02.1995, which were for a sum of Rs. 10,00,000/- and 4,00,000/- respectively, and stood in the name of one B. Satyajit Reddy. As per the vouchers issued by the Bank, a total
H of Rs. 14,00,000/- were credited to account No. 282 but only Rs. 4,00,000/

- were shown in the ledger. The remaining Rs. 10,00,000/- were allegedly adjusted towards the secret withdrawal from account No. 282 during the year 1994. It is the prosecution's case that the Appellant, Accused No.2 and Accused No.3, worked in tandem to engineer these transactions, which resulted in a wrongful loss to the Bank and its Depositors.

4. Eventually, the Auditor (PW-2) began to notice the irregularities. The Appellant was thereafter shifted from the above-stated Branch to the Head Office, and an internal inquiry was ordered. The said inquiry prompted the Chairman of the Bank (PW-1) to make a written complaint dated 27.11.1995 (Ex P1) to the Superintendent of Police, Central Bureau of Investigation at Hyderabad (for short, "CBI"), the relevant extracts whereof being highly relevant, reads as under:

> *"Our Grameena Bank is established in February 1985 under the Regional Rural Bank Act of Parliament, and sponsored by State Bank of Hyderabad. The Bank is a scheduled bank and its area of operation is restricted to the district of Nizamabad with its headquarters at Nizamabad town. We have, as of now, 26 branches operating in the district. The branch at Nizamabad is one of the 26 branches.*
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> *2. The branch during the period 1990 to 1995 was headed by one Shri N. Raghavender as the Branch Manager.*
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> *3. During the course of audit of the branch certain transactions of seriously irregular in nature, put through by the Branch Manager with the connivance and co-operation of certain members of staff and customers have come to surface. Some of the transactions are considered to be very serious and were put through by the Branch Manager, bypassing the laid down instructions and norms for conducting such transactions, with an intent to pass on undue monitory benefit to certain customers who are his near relatives including his wife. The transactions of the above nature are large in number. However, one such transaction is detailed hereunder for your considering an investigation.*
>
> *UNAUTHORISED ENCASHMENT OF TERM DEPOSITS NO. 0257120 AND 0257121 FOR RS.10.00 LACS AND RS.400 LACS RESPECTIVELY.*

A *The laid down procedure for such transactions warrant that if and when the depositor desires premature withdrawal he should present to the branch, the term deposit in question duly discharged along with written request for premature withdrawal of deposits. Thereupon, the Branch Manager, after duly verifying the genuineness of the signature of the depositor and the deposit receipts may permit premature payment. In respect of fixed deposits where interest is paid periodically will be worked out and adjusted from the interest payable on such deposits and net amount of interest payable and the principle will be released to the depositor. As per the Income Tax rules any such amount exceeding Rs.20,000/- is to be paid either by crediting to the depositor's account with the branch or paid by way of Banker's Cheque in the name of depositor "crossed account payee".*

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Unauthorised payment of deposit came to light on 12.9.1995 when the depositor called on the branch for drawing interest. From the scrutiny of records it is found that even though the deposits are terminated in February 1995, periodical interest continued to be credited to the depositor's Savings Bank A/c No.5520 by remitting cash and also transfer from the joint account of Branch Manager and his wife bearing SB A/c No.5555, apparently to make the depositor believe that the deposit is intact.

After unearthing of these transactions Shri Raghavender, who was relieved of the branch charge, managed with the depositor and produced predated letter and relative deposit receipts with the apparent intent to regularize the transaction. The relative term deposit receipts are clean and without any endorsements or stamps on the face of the receipts. Thereby even though the Bank did not incur any minority loss under this transaction, the Branch Manager misusing his official position and passing on benefit to the tune of Rs.14.00 lacs to the firms having substantial interest of his near relatives is considered an act calling for investigation.

Further investigation into the transactions at the branch is in progress and report when received will indicate further the fraudulent transactions if any put through by the then Branch Manager Shri N. Raghavender.

The Branch Manager wields considerable influence with local leaders, officials and other VIPs. The departmental enquiry by the Bank may not be very effective in safeguarding the interests of the Bank in its totality, since investigation into the transactions warrants contacting various outside parties to whom access of the Bank is not likely to be possible.

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5. CBI registered case No. RC7(A)/96-CBI/Hyderabad under Sections 409, 477(A), and 120B IPC, and Section 13(2) read with 13(1)(c) & (d) of the PC Act. Investigation was held; charge-sheet was filed and the learned Special Judge, CBI, framed the following charges against the Appellant and his co-accused:

*"**CHARGE NO.1**:*

That, all of you i.e., A.1 to A.3 during the years 1994-95, while A.1 and A.2 were under employment of M/s. Sri Rama Grameena Bank, Nizamabad, and A3 as Treasurer, Nishita Educational Academy, agreed to do or caused to be done an illegal act to wit to cheat Sri Rama Grameena Bank, Nizamabad in the matter of allowing withdrawals of amounts to the tune of Rs.10.00 lakhs in current A/c No.282 of Nishita Educational Academy, Nizamabad without having sufficient funds, in pursuance of the agreement and thereby committed an offence punishable U/Sec. 120-B I.P.C. and within my cognizance.

***CHARGE NO.2**:*

That all of you i.e., A.1 to A.3 as stated above, cheated by dishonestly and fraudulently inducing the said bank to deliver Rs.10 lakhs to you and which was the property of the said Bank and that you thereby committed an offence punishable U/Sec.420 IPC and within my cognizance.

A ***CHARGE NO.3***:

That all of you as stated above (Charge No.1) and being in such capacity entrusted with certain property committed criminal breach of trust in respect of that property, and thereby you committed an offence punishable U/Sec.409 IPC and B *within my cognizance.*

CHARGE NO.4:

That all of you during the same course of transaction as stated in Charge No.1 being in such capacity wilfully and with intent to defraud, fabricated certain papers, writings and accounts C *of Srirama Grameena Bank, Nizamabad and Nishitha Educational Academy, and you thereby committed an offence punishable U/Sec.477-A IPC and within my cognizance.*

CHARGE NO.5:

D *That A.1 and A.2 of you being public servants employed as formerly Manager, Sri Rama Grameena Bank, Nizamabad (A.1) and formerly Clerk-cum-Cashier, Sri Rama Grameena Bank, Nizamabad (A2) respectively during the year 1994-95 by corrupt or illegal means or by otherwise obtained for yourself a pecuniary advantage of Rs.10 lakhs from Sri Rama* E *Grameena Bank, Nizamabad and thereby committed an offence punishable U/Sec.13(2) r/w 13(1)(c) & (d) of P.C. Act, 1988 and within my cognizance."*

6. In the aftermath trial, a total of eleven witnesses, PW-1 to PW-11, were examined by the Prosecution and documentary evidence F comprising Exhibits P-1 to P-68 were also put forth. The Accused on their part, were examined under Section 313 of Code of Criminal Procedure (in short, 'Cr.P.C'), but no other defence witness was brought forward. The Accused did produce documentary evidence Exhibits D-1 to D-6 in their defense.

G 7. To substantiate the charges against the present Appellant, the case of the prosecution rested heavily upon circumstantial and documentary evidence. Bhaskar Reddy (PW-1), Chairman of the Bank, deposed that in November, 1994, Badam Swamy (PW-2) conducted an audit of the Nizamabad Branch and some irregularities were found to have been committed by the Branch Manager N. Raghavender. H

Thereafter, he ordered a detailed audit. During the course of the audit, PW-1 called upon the Appellant and questioned him about the said irregularities. PW-1 further deposed that when he asked the Appellant as to how he had allowed the premature closing of the two FDRs bypassing the prescribed procedure, the Appellant produced two letters (marked as Ex P6 & Ex P7), purportedly written by B. Satyajit Reddy to the Bank Manager. Vide the aforesaid letters, B. Satyajit Reddy had authorized premature withdrawal of FDRs with a request to the Bank Manager to transfer the amounts into the account of Nishita Educational Academy. PW-1 stated that the standard procedure for prematurely closing an FDR required the FDR holder/depositor to present the receipt of the FDR along with a written request seeking premature payment. He explained that in the present case, the FDRs remained with the depositor and no specific request was received. He further explained that the alleged premature payment was permitted by the Branch Manager by using general debit vouchers instead of term deposit receipts. PW-1 in his cross-examination, while admitting that he never received any complaint from Mr. Reddy regarding the premature closure, disputed the genuineness of Ex P6 & P7. So far as the allegation regarding the unlawful withdrawal of Rs. 10 Lakhs from account No. 282 is concerned, PW-1 deposed, "***The account holder is required to utilize the cheques issued to him only. In cases of certain contingencies he may request the Branch in writing to issue a loose cheque leaf for operating the account. Such a request in writing is to be approved by the Branch Manager when he may issue a loose leaf making appropriate endorsement on the cheque form itself and on application***". PW-1 additionally clarified that, "***There is no prohibition for re-using cheque books of loan A/cs if they are sufficient in number to be used as loose leaves provided they are recorded as such in the cheque book issue register***." Lastly, PW-1 acknowledged that during the period the Appellant was the Branch Manager, the business of the Bank had grown and the Bank was recategorized from Scale-I to Scale-II.

8. The deposition of Badam Swamy (PW-2), Auditor, is crucial to the Prosecution's case. He deposed that under instructions of PW-1, he had conducted a special audit of the Nizamabad branch in the year 1995. PW-2 in his deposition explained that he scrutinized two sets of transactions, the first being the premature closing of the two FDRs in the name of B. Satyajit Reddy, and the second being the transactions relating to withdrawal of Rs. 10 Lakh from account No. 282. So far as

A the first set of transaction is concerned, PW-2 deposed that B. Satyajit Reddy had purchased two FDRs for 4 Lakhs (Ex P4) and Rs. 10 lakhs (Ex P5) respectively, and in addition to these, Mr. Reddy had also opened S.B. Account No. 5520 (marked as Ex P11). The FDRs, Ex. P4 and Ex. P5, were purchased in January, 1995 for a period of 12 months. PW-2 explained that in the present transaction, the Branch, as per the instructions of the party/depositor, had to credit a monthly interest in S.B. Account No. 5520. PW-2 alleged that the Appellant, without the knowledge of the party and without any authorization, withdrew the FDR amounts from the Bank by raising two debit vouchers (marked Ex P29 and Ex P30). These vouchers were prepared by Accused No.2 and were passed by the Appellant. The withdrawn amount was thereafter credited to a third-party account, i.e., account no. 282 of the Nishitha Educational Academy. PW-2 alleged that there was nothing in the records to show that either Mr. Reddy had surrendered the FDRs or that he had moved any application for payment of the FDRs. PW-2 further deposed that even after the FDRs were withdrawn, the monthly interest of Rs. 11,570/- payable to Mr. Reddy continued to be credited into his S.B. Account No. 5520. It was alleged that in order to transfer Rs. 11,570/-, debit vouchers bearing S.B. Account No. 5555 were raised. The said S.B. Account No. 5555 stood in the name of the Appellant and his wife.

9. With respect to the second set of transactions, PW-2 deposed that in the year 1994, an amount of Rs. 10,00,000/- was 'fraudulently' withdrawn from account No. 282 by passing three cheques (Ex P25, Ex P26 & Ex P27) which were signed by Accused No.3. However, neither did the signature on the three cheques tally with that of Accused No.3 nor were these transactions reflected in the concerned ledger sheet (Ex P23). PW-2 alleged that the ledger sheet- Ex P23 was intentionally ill-maintained to suppress these transactions. PW-2 further alleged that while there was balance in account no. 282 when Ex P25 was presented, there were insufficient funds when the other two cheques were passed. Thus, according to PW-2, the Appellant had allowed withdrawal of Rs. 10,00,000/- from account No. 282, even though there were insufficient funds in the said account. It was also pointed out that the Appellant had also permitted overdrawing of another Rs. 4 lakhs from account No. 282. PW-2 alleged that in order to cover up these withdrawals and to adjust the amounts, the Appellant withdrew the amount of Rs. 14 Lakhs pertaining to the FDRs of B. Satyajit Reddy.

10. During his cross-examination, PW-2 deposed that he had never personally enquired from B. Satyajit Reddy about the premature closure of his FDRs, instead, he claimed that PW-1 had spoken to Mr. Reddy. PW-2 further admitted that despite knowing that the signature on the three cheques did not match with that of Accused No.3, he never enquired about the transactions from Accused No.3 directly. PW-2 shed light on the fact that beyond the account ledger sheet (Ex P23), the Bank also maintained three other ledgers, i.e., the Officer's Cash Scroll, Transit Voucher Register and the Cashier Payment Register. PW-2 deposed that he had examined these three ledgers, but these were not filed before the Court. PW-2, however, admitted that the three cheques in question were reflected in the Officer's Cash Scroll. He further admitted that entries relating to cheques Ex P25 and Ex P26 were duly mentioned in the Bank Payment Register maintained for the period from 23.04.1994 to 21.07.1994.

11. The Manager of the Bank, Mr. D. Ram Mohan Rao, appeared as PW-3. While he mainly deposed about the various standard operating procedures at the Bank, it is relevant to note that he too testified about the uncommon but acceptable practice of issuing loose cheque leaves upon the request of a customer. He further deposed that "***Sometimes the important customers sit in the cabin of the manager and their cheques are sent to the counter for encashment, and at times cash is delivered to the customer in the manager cabin."***

12. B. Chandrasekhar (PW-4), Cashier, deposed that Accused No.3 was an important customer of the Bank. He stated that the three cheques in question were taken by the Appellant personally and handed over to Accused No. 3, and then the Appellant had passed those cheques. He further stated that the amounts relating to the cheques, Ex P25 to P27 were handed over by him to the appellant, and then the appellant handed it over to Accused No.3. He too deposed that entries relating to Ex P26 and Ex P27 were not found in the concerned ledger sheet- Ex P23. In his cross-examination, he stated, ***"It is true that Ex P25 contains the signature of N. Lalitha on its reverse side. The signature of the person who receive the amount will be obtained on the reverse of cheque in token of receipt of the said amount. The signature on the reverse of Ex P-26 is not that of A1. It is also true that the signature of A1 is also not there on the reverse of Ex. P27"***.

A 13. The evidence of Mallikarjun Sanne, PW-5, is of no consequence as he was not personally aware of any of the facts relating to the case. Next comes the deposition of B. Ganagaram (PW-6), who worked as an Accountant at the Nizamabad Branch. He testified that loose cheque leaves could be issued by the Bank, provided that the record of the same was maintained. He went on to depose that, "***It is true that there was sufficient amount in a/c No. 282 to meet the cheque amount of Rs. 2.50 Lakhs.There was a balance of Rs. 4,78,480/- was the balance in the A/c of 282 as on 30.06.1994 and I have authenticated the said balance on the same day. It is true that there was sufficient amount to meet the cheque of Rs. 4 lakhs on 30.06.1994. The balance amount available in the said A/c No. 282 on 28.07.1994 was Rs. 12,12,830/-. It is true that an entry with pencil was made between the lines debiting a sum of Rs. 3.50 Lakhs to A/c No. 282. The said entry is now marked as Ex D3***" *(sic)*. He lastly stated, "***There is a possibility of missing certain entries in posting the same in the ledger entry due to rush of work. But they will be rectified at the time of balancing the amount. See Ex P8, it is balancing register. It was maintained by A2***."

14. J. Madhusudhan (PW-7), Second Officer of the Nizamabad Branch, deposed that B. Satyajit Reddy had approached him in the first week of September 1995 with a request to credit the interest accrued in the two FDRs into his S.B. A/c 5520. He stated that when he inspected the FDR register, he found that the two FDRs had been prematurely closed. He then brought this to the notice of Mr. G. Nagesh Reddy, the then Manager. He testified that the Appellant had signed the entries relating to those closures as is evident from the Term Deposit Register (Ex P9). He further stated that he had not seen any letters written by B. Satyajit Reddy for closing of the FDRs or for transferring the said amount to account no. 282. He, however, could not testify as to at whose instance the two FDRs were prematurely closed. G. Nagesh Reddy (PW-8), was appointed the Branch Manager after the Appellant was shifted to the Head Office. PW-8 also deposed that he did not find any letter by B. Satyajit Reddy requesting the Branch to transfer the amounts from his FDR into account No. 282. PW-8 further stated that, **"*Our bank has not suffered any loss due to the transaction involved in the present case*"**. B. Satyanarayana, PW-9, was a formal witness who accorded the sanction for prosecution of the Appellant and Accused No. 2.

15. Amar Singh (PW-10), was the handwriting expert who examined the various cheques, vouchers and other relevant documents in the present case. According to PW-10, the questioned signatures were freely written in normal hand. He stated that one of the signatures on Ex P27 matched the specimen signature of the Appellant, but the purported signatures of Accused No.3 on the three cheques did not tally with his specimen signature. He further opined that the disputed signatures on the two letters (Ex P6 and Ex P7) were tallying with the specimen signatures of B. Satyajit Reddy. S. Vadyanathan (PW-11), is the Investigating Officer in the present case. PW-11 collected various documents from the Bank and Nishita Educational Academy. He also collected the sanction order from PW-9 for prosecution of the Appellant and Accused No.2. We may also note that PW-11 stated that the specimen signature of the Appellant was not taken before any Judicial Authority though it was obtained before independent witnesses.

16. The Appellant, in his statement recorded under Section 313 Cr.P.C., denied the prosecution case. When confronted with the allegations levelled by PW-1 regarding the unauthorized premature closure of the two FDRs, the Appellant stated that he had done so, "***With the request in writing, of depositor only premature payment was permitted. As depositor requested that he had misplaced FDRs and could not trace them out. As he is V.I.P. customer, I obliged***." The Appellant (Accused No.1) categorically denied the allegation that premature withdrawal had been done without the consent or knowledge of B. Satyajit Reddy. He further stated that it was on the request of B. Satyajit Reddy that Rs. 4 Lakhs were transferred to the account of the Academy, i.e., account No. 282. When asked about the withdrawal of Rs. 10,00,000/- from account No. 282 in the year 1994, he disputed the version put forth by the prosecution, and stated, "***As there was balance, I passed the cheque and paid the amount to A3***." Lastly, the Appellant claimed that he had been falsely implicated due to the rivalries between the two Bank Unions.

17. We may, at the outset, clarify that the learned Special Judge in paragraph 50 of his judgment dated 28.03.2020 has unequivocally acquitted all the accused of offences under Section 120B IPC and under Section 13(2) read with Section 13(1)(c) of the PC Act. Accused No.2 and Accused No. 3 were further acquitted of all the other charges as well. The Appellant, however, was held guilty of offences punishable under Sections 420, 409 and 477A IPC as also under Section 13(2) read

with Section 13(1)(d) of the PC Act. It is useful to reproduce paragraph 50 of the judgment of the Special Judge which reads as follows:

> *"50. The same thing can also be stated about A.3. Though A.3 credited amount to A/c No. 342 of Nishita Builders instead of A/c No. 282 of Nishita Educational Academy but it has by no way resulted in having benefit to A.3 either directly or indirectly. It is A.1 who has deposited interest in his account though the F.D.Rs. were prematuredly encashed that too without proper authority of Satyajit Reddy. As started earlier Satyajit Reddy has not given evidence in favour of A.1 as he was not aware about premature payment of F.D.Rs. by A.1.*
>
> *There are no specific overact of A.3 to say that he conspired with A.1 to cheat the bank or caused wrongful loss to bank and corresponding wrongful gain to himself. A.3 has acted in normal course of his duties. No intention can be attributed to A.3. on the basis of available evidence it also does not suggest that A.3 has done any specific crime...." (sic)*

18. As for the Appellant, the Trial Court held that the prosecution had adequately proved its case against him. Despite taking note of some of the discrepancies in the prosecution case, and the ineffective cross-examination concerning the allegations of passing of the three cheques (Ex. P25 to P27) and the illegal withdrawal of Rs. 10 lakhs from account No. 282, the Court opined that, "***However, the subject matter of enquiry is the premature withdrawal of the two FDRs in February 1995 without any authority or with knowledge to FDR holder…***" *(sic).*

19. With respect to the premature encashment of the two FDRs which stood in the name of B. Satyajit Reddy, the Trial Court was not convinced with the explanation of the Appellant. The two letters (Ex P6 and Ex P7) given by the Appellant to PW-1 were disbelieved and instead, the Court laid emphasis on the fact that despite premature closure of the two FDRs, the Appellant continued to deposit the monthly interest in the account of B. Satyajit Reddy. The Court also noted that the subsequent interest payments were not made by the Bank, but the amount was instead transferred from account No. 5555, which stood in the name of the Appellant and his wife. Since no explanation was given in regard to these interest payments made to B. Satyajit Reddy, the Court drew an adverse inference, and propounded that the interests were credited to

create the illusion that the FDRs were still alive. The Court, therefore, summarily concluded that these circumstances clearly revealed that the Appellant had, without any authorization or consent, encashed the two FDRs. Thus, the Trial Court found the Appellant guilty, and consequently convicted and sentenced him to five years imprisonment along with various fines.

20. The Appellant challenged his conviction and sentence before the High Court of Judicature, Andhra Pradesh at Hyderabad. Much like the Trial Court, the High Court did not accord any weight to the allegations or the defence raised by the Appellant pertaining to the withdrawal of Rs. 10 lakhs from account No. 282. Upon appraising itself of the evidence on record, the learned Single Judge noted that no financial loss was caused to the Bank. The High Court, however, held that a loss had been incurred by B. Satyajit Reddy, because without his consent and knowledge, his deposits in the two FDRs were transferred to another account. Whilst observing that B. Satyajit Reddy was the best person to testify about the pre-mature withdrawal of the FDRs, the Court opined that in the light of the overall circumstances of the case, the non-examination of B. Satyajit Reddy could not lead to an adverse inference against the prosecution's case. Thus, the High Court held that the Appellant had misused his official position as the Bank Manager to prematurely encash the two FDRs, and thereafter transfer the amount into the account of the Academy. The High Court also held that in order to extend an undue advantage to his brother-in-law, i.e., Accused No.3, the Appellant had intentionally indulged in the falsification of records pertaining to the three cheques passed by him in the year 1994. Accordingly, the High Court concurred with the findings of the Trial Court and dismissed the appeal preferred by the Appellant.

21. The aggrieved appellant is now before this Court.

Contentions:

22. Shri Sidharth Luthra, learned Senior Counsel on behalf of the Appellant vehemently argued that the prosecution case is based upon surmises and conjectures, and the best neutral evidence has been withheld without any explanation. He contended that the most serious accusation attributed to the Appellant is that he had unauthorizedly closed two FDRs of B. Satyajit Reddy pre-maturely and transferred the sum of Rs. 10,00,000/- and 4,00,000/- respectively to the account of his brother-in-law, i.e., account No. 282 which stood in the name of the Academy.

A Learned Senior Counsel urged that neither had B. Satyajit Reddy been examined by the CBI as a witness nor was his statement recorded during the course of internal auditing. He canvassed that there is nothing on record to doubt the two letters dated 22.02.1995 (Ex P6) and 24.02.1995 (Ex P7), whereby, B. Satyajit Reddy authorized the Appellant to pre-
B maturely withdraw the FDRs and requested him to transfer the said amount to the account of Nishita Educational Academy. He further contended that no effort was made to investigate as to whether or not the Appellant had the authorisation for pre-mature withdrawal of the FDRs. Learned Senior Counsel drew our attention to the evidence of the handwriting expert (PW-10), to highlight that signature on the letters
C dated 22.02.1995 and 24.02.1995, matched with the signature of the B. Satyajit Reddy. Thus, by relying upon the principles enunciated in ***Prabhat & Ors v. State of Maharashtra***[1] and ***Mahak Chand & Ors v. State of U.P.***[2], it was contended that the non-examination of B. Satyajit Reddy was fatal to the case of the Prosecution. It was passionately urged that
D the statement of the Appellant made under Section 313 Cr.P.C., has in this regard been completely overlooked.

23. Shri Sidharth Luthra then pointed out paragraph 23 of the High Court judgment, wherein, it was acknowledged that no loss to the Bank was caused as a result of the alleged misdemeanours of the
E Appellant. He relied upon the statements of Chairman (PW-1) and Branch Manager (PW-8) of the Bank, who have admitted that no loss was caused to the Bank and no complaint from B. Satyajit Reddy was ever received against the Appellant. Learned Senior Counsel also pressed the decisions of this Court in ***Hari Sao & Anr v. State of Bihar***[3] and ***Mohd. Ibrahim & Ors v. State of Bihar & Anr***[4], in aid to urge that in such circumstances,
F no offence can be said to have been made out against the appellant.

24. Adverting to another incriminating circumstance, namely, the deposit of interest accrued on the two disputed FDRs in the account of B. Satyajit Reddy even after closure of the FDRs from the personal account of the appellant and his wife, learned Senior Counsel argued
G that this allegation was raised for the first time in the deposition of PW-2, and no charge was framed against the Appellant generally or

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[1] (2013) 10 SCC 391, ¶ 11
[2] (2019) SCC OnLine All 4044, ¶ 63 to 65
[3] (1969) 3 SCC 107
H [4] (2009) 8 SCC 751

specifically in relation thereto. In this regard, he took the plea that the credit vouchers Exhibits P-37 to P-42 and the ledger Exhibit P-11 were not put to the Appellant while his statement was recorded under Section 313 Cr.P.C. Drawing force from the decision of this Court in ***Samsul Haque v. State of Assam***[5], it was argued that if circumstances are not put to the accused in his examination under Section 313 Cr.P.C., they must be excluded from consideration because the accused did not have any chance to explain them. Alternatively, learned Senior Counsel submitted that since the charge-sheet accuses the Appellant of transferring interest from his account to account no. 5520 of B. Satyajit Reddy, it is not a case where bank funds were utilized for depositing the interest in the account of B. Satyajit Reddy. The Bank, thus, has suffered no loss.

25. With respect to the second set of transactions, learned Senior Counsel for the Appellant highlighted that there is no finding of the Trial Court or the High Court, regarding insufficiency of funds in account No. 282 of the Academy when the Appellant allowed withdrawals of the amount to the tune of Rs. 10,00,000/- under the three cheques (Exhibits P-25 to P-27). It is asserted that the evidence of PW-2 and PW-6, in this regard, is inconsistent. While PW-2 admitted that there was balance in the account of the Academy by the date Ex P-25 was passed but there was inadequate balance at the time of two other transactions (cheques marked as ExP-26 and ExP-27). Rather, PW-6 in his cross-examination has candidly admitted that there were sufficient funds available in the afore-stated account on the dates when the amounts were withdrawn. Learned Senior Counsel argued that the aforesaid inconsistency has been duly noticed in the impugned judgment yet the High Court proceeded on a wrong premise that the onus was on Accused No. 3 to prove the availability of funds in the account.

26. It was further claimed that there is total absence of *mens rea* as no benefit was drawn by the Appellant even if the cash was handed over to Accused no. 3, who has since been acquitted. The statement of B. Chandrasekhar (PW-4) is said to have been misconstrued by the Trial Court and the High Court, as he had clearly admitted that not only was the amount pertaining to the three cheques- Ex P25 to P27, handed over to Accused No.3 but also that the signature of the Appellant was

[5] (2019) 18 SCC 161, ¶ 13, 22, 32

A not found on the three cheques. It was advanced that the findings of the High Court were also self-contradictory in as much as the Court held that the Appellant's acts were meant for the benefit of Accused No. 3, and yet the acquittal of Accused No. 3 was sustained.

27. With regard to the use of loose cheques and the alleged omission B to record relevant entries in the ledger of current account no. 282, it is claimed that the same cannot be a ground to convict the Appellant for offences under Sections 420, 409 and 477A IPC or under the provisions of PC Act. Learned Senior Counsel maintained that, at worst, it was a case of gross administrative misconduct for which the Appellant has already been dismissed from service and denied his pensionary benefits. C This allegation, according to him, should be mirrored in the light of the fact that the Bank has not suffered any losses. Reliance was also placed on the statements of PW-1 and PW-2 to contend that (i) Officers Cash Scroll; (ii) Transit Voucher Register; & (iii) Cashier Payment Register have not been produced by the prosecution as the production of that D record would have proved that though the total amount pertaining to the three cheques was not reflected in the account ledger, yet it finds mention in other ledgers and was duly accounted for.

28. Learned Senior Counsel further urged that once the Appellant's signatures on Exhibit P-25, P-26 and P-27 have not been proved, the E very foundation of use of loose cheques by the Appellant stands demolished. This fact is further fortified as the specimen signatures of the Appellant were never taken before a Judicial Officer.

29. It was also contended on behalf of the Appellant that charges under Sections 409 and 420 IPC cannot go together. Shri Siddharth Luthra F canvassed that the Appellant is a victim of rivalry between two factions of the Bank. It was highlighted that the overall deposit in the Bank had enormously increased during the appellant's tenure as its Branch Manager which became a cause of eyesore amongst his rivals.

30. Lastly and alternatively, learned Senior Counsel for the G Appellant persuaded this Court to take a compassionate view. Banking upon the successful performance of the Appellant that he increased the total deposit from 40,00,000/- to 7,00,00,000/- and resultant increase in the status of the Bank as Scale-II, coupled with the fact that the Appellant has no criminal antecedents, it was prayed that it is a fit case for reduction of sentence to the extent already undergone. H

31. Shri Jayant K. Sud, learned Additional Solicitor General, appearing for the prosecution—CBI, on the other hand, rigorously defended the judgments of the Trial Court and High Court. He reminded us of the well-known limitations in exercise of powers under Article 136 in a concurrent finding of facts. Learned ASG urged that there is no question of law involved in this appeal and all that has been determined, are essentially mixed questions of law and facts for which the Courts below have appraised and re-appraised the entire evidence.

32. Learned ASG reiterated that to establish *mens rea* or criminality under Sections 420, 409 and 477A IPC, it was not necessary to prove that the Appellant had derived benefit or caused any loss to the Bank. The fact remains that the action of the Appellant involved unauthorized conversion of public funds of an individual. He pointed out that the issuance of bank receipts for withdrawal of funds without existence of securities could not be justified except for illegal benefit to a private individual, namely, brother-in-law of the Appellant (Accused No. 3). Such illegalities cannot be defended on the pretext of practice or internal procedure being followed by the Bank.

33. Learned ASG argued that the Appellant was the custodian of the Branch and had to take the entire responsibility for the duties he had failed to discharge. According to him, the onus stood shifted on the Appellant to show that he had complied with all transactions genuinely and all the requirements or conditions were adhered to (*see:* ***N.V. Subbarao Vs. State***[6]). He explained that there is no error of facts or in law when the Court relies on factual presumptions to convict or exonerate the accused like the Appellant.

34. In all fairness, we may point out that learned ASG also relied upon two more decisions of this Court in ***Vinayak Narayan Deosthali*** **v.** ***Central Bureau of Investigation***[7] and ***Neera Yadav*** **v.** ***Central Bureau of Investigation***[8].

Analysis:

35. Having heard learned Counsel for the parties at considerable length, we find that two questions fall for our consideration in the present

[6] (2013) 2 SCC 162
[7] (2015) 2 SCC 553
[8] (2017) 8 SCC 757

A appeal. First, whether a case is made out for interference by this Court in the concurrent findings of the Courts below? If yes, then whether conviction of the present Appellant for offences under Sections 409, 420 and 477-A of the IPC as well as under Section 13(2) read with Section 13(1)(d) of the PC Act is sustainable?

B 36. We may at the outset concur in principle with the contention of the learned ASG that the scope of interference by this Court in a question of fact or even in a mixed question of fact and law, is narrow. Unless there are exceptional circumstances where this Court finds that material evidence has been misread or misconstrued or has been completely overlooked resulting in a perverse finding, this Court will be C extremely reluctant to scrutinize or reappraise the evidence, more so when the concurrent view taken by the courts below, is one of the plausible or possible views.

37. These self-evolved principles on the Court's limitation to interfere with a synchronal finding of conviction are, however, always D subject to caveats and lawful exceptions. The very ethos of our criminal justice system lies in the understanding that better it is to acquit n number of suspicious persons, rather than convicting one innocent. Nevertheless, no crime should go unpunished.

E 38. We may point out that in the case before us, neither the Trial Court or the High Court has discussed the ingredients of Sections 409, 420, or 477-A IPC, nor have they made any effort to refer to the specific evidence which may satisfy such ingredients. There is no gainsaying that the role of the Trial Court and the High Court is not just to decipher and bring to light the relevant evidence, but also to apply the relevant F laws to the factual matrix before it. It further appears that the Courts below have inter-changed and mixed up the allegations against the Appellant. While the charges were framed primarily with respect to the issuance of the three loose cheques and the alleged unlawful withdrawal of Rs. 10 Lakhs from account no. 282, the Courts below have proceeded G to convict the Appellant on the ground that he prematurely and fraudulently enchased the two FDRs, which stood in the name of B. Satyajit Reddy. Further, the High Court, while acknowledging that no loss was caused to the Bank, held that a loss had been incurred by B. Satyajit Reddy. But the charges against the Appellant, as can be seen in Paragraph No. 5 above, were that the three accused, by their fraudulent and illegal actions, H caused a loss to the Bank. Even further, as pointed out by the learned

Senior Counsel for the Appellant, the High Court held that the actions of the Appellant were not to his benefit, but to the advantage of his brother-in-law, i.e., Accused No. 3. The Brother-in-law of the Appellant was, however, acquitted by the Trial Court and no appeal was preferred by the State against his acquittal. Keeping these contradictions in mind, we are of the opinion that the boundaries of judicial temperance would not be disturbed if the present matter is looked at more closely.

39. Within these broader contours, the litmus test is whether a case under Sections 409, 420 and 477A IPC, and under Section 13(2) read with Section 13(1)(d) of the PC Act is made out against the Appellant?

40. Before we advert to the relevant evidence on record, we deem it appropriate to brace ourselves with the relevant statutory ingredients necessary to bring home the guilt of an accused when charged under Sections 409, 420 and 477A IPC.

Ingredients necessary to prove a charge under Section 409 IPC:

41. Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See: ***Sadupati Nageswara Rao* v. *State of Andhra Pradesh***[9]).

42. The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a *sine qua non* for making an offence punishable under Section 409 IPC. The expression 'criminal breach of trust' is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied:

[9] (2012) 8 SCC 547

A (i) Entrusting any person with property or with any dominion over property;

(ii) That person has dishonestly mis-appropriated or converted that property to his own use;

B (iii) Or that person dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.

43. It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of *mens rea*. In other words, mere retention of property entrusted to a person C without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is 'mis-appropriates' which means improperly setting apart for ones use and to the exclusion D of the owner.

44. No sooner are the two fundamental ingredients of 'criminal breach of trust' within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under E Section 409 IPC, for which it is essential to prove that:

(i) The accused must be a public servant or a banker, merchant or agent;

(ii) He/She must have been entrusted, in such capacity, with F property; and

(iii) He/She must have committed breach of trust in respect of such property.

45. Accordingly, unless it is proved that the accused, a public servant or a banker etc. was 'entrusted' with the property which he is duty G bound to account for and that such a person has committed criminal breach of trust, Section 409 IPC may not be attracted. 'Entrustment of property' is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was 'entrusted' to the accused, it is not necessary to prove further, the actual mode of H entrustment of the property or misappropriation thereof. Where the

'entrustment' is admitted by the accused or has been established by the prosecution, the burden then shifts on the accused to prove that the obligation *vis-à-vis* the entrusted property was carried out in a legally and contractually acceptable manner.

Ingredients necessary to prove a charge under Section 420 IPC:

46. Section 420 IPC, provides that whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.

47. It is paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

48. It is equally well-settled that the phrase 'dishonestly' emphasizes a deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. Contrarily, the mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It is equally important that for the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable doubt, *mens rea* on his part. Unless the complaint showed that the accused had dishonest or fraudulent intention '***at the time the complainant parted with the monies***', it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract.

Ingredients necessary to prove a charge under Section 477-A IPC:

49. The last provision of IPC with which we are concerned in this appeal, is Section 477A, which defines and punishes the offence of 'falsification of accounts'. According to the provision, whoever, being a clerk, officer or servant, or employed or acting in that capacity, wilfully and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in possession of his employer, or has been received by him for or on behalf of his employer, or wilfully and with intent to defraud, or if he abets to do so, shall be liable to be punished with imprisonment which may extend to seven years. This Section through its marginal note indicates the legislative intention that it only applies where there is falsification of accounts, namely, book keeping or written accounts.

50. In an accusation under Section 477A IPC, the prosecution must, therefore, prove—(a) that the accused destroyed, altered, mutilated or falsified the books, electronic records, papers, writing, valuable security or account in question; (b) the accused did so in his capacity as a clerk, officer or servant of the employer; (c) the books, papers, etc. belong to or are in possession of his employer or had been received by him for or on behalf of his employer; (d) the accused did it wilfully and with intent to defraud.

51. Let us now test the evidence to determine whether or not an *ex facie* case under the above-stated three provisions of the IPC is made out against the Appellant?

52. We may at this stage, recapitulate the two sets of allegations against the Appellant. First, is that the Appellant misused his official position at the Bank and passed three loose cheques in 1994, to withdraw funds from account No.282, despite there being insufficient funds in the said account, and thereby extended an undue advantage to his brother-in-law, Accused No. 3. It is alleged that these actions of the Appellant caused a wrongful loss to the Bank. It is further alleged that this transaction was deliberately not recorded in the current account ledger sheet of account no. 282 (Ex P23) so as to screen the offence from the Head Office. The second allegation, which according to the two courts below was the gravamen of the accusation, is that two FDRs of Rs. 10,00,000/- and Rs. 4,00,000/-, respectively belonging to B. Satyajit Reddy

were prematurely encashed by the Appellant in February 1995, and the said amount was thereafter transferred to account no. 282. It has been further held that even though the two FDRs were for a combined amount of Rs. 14 Lakhs, only Rs. 4 lakhs were shown to be credited into the Account of the Academy. The rest of the amount was adjusted towards the concealed withdrawals that took place in the year 1994.

53. Even though the two sets of allegations are continuous parts of one single transaction, for the sake of brevity and clarity, we propose that the two allegations may first be examined independently.

(A) Fraudulent and unlawful withdrawal of Rs. 10 Lakhs from Account No. 282 in the year 1994.

54. We may outrightly note that so far as this allegation is concerned, there is no dispute as to the factum of 'entrustment'. The Appellant being the Branch Manager was in-charge and responsible for the deposits made by the Bank customers. The prosecution in regard to this set of transaction, has put forth a five-pronged claim. First, the Appellant along with co-accused conspired to cause wrongful loss to the Bank. Second, the Appellant permitted the use of three loose cheques. Third, the cheques were passed by the Appellant even though there were insufficient funds in account No. 282. Fourth that the relevant entries regarding this transaction were intentionally not recorded in the ledger book- Ex P23, and fifth, that the amount pertaining to these cheques was collected by the Appellant. This according to the Prosecution, and as held by the High Court, was done to extend an undue benefit to the brother-in-law of the Appellant, i.e., Accused No.3.

55. It may first be noted that the Trial Court has unequivocally held that neither was there a conspiracy between the three accused persons, nor did the withdrawal result in any direct or indirect advantage to Accused No.3. In fact, the learned Special Judge went to the extent of holding that Accused No.3 merely acted in the normal course of his duties as a Treasurer/authorized signatory of the Academy. Since the prosecution has not assailed the acquittal of Accused No. 3, the findings in respect to his innocence have attained finality. In any case, the prosecution has adduced no other evidence that would indicate a prior meeting of minds between the Appellant and his co-accused.

56. There is no doubt that amongst the three accused persons, the Appellant being the Branch Manager, had the sole authority to issue and

A pass the three loose cheques. The record though clearly reveals that issuance of a loose cheque was a departure from the standard operating procedure followed at the Bank, but no evidence has been led that it was an 'illegal practice'. The deposition of PW-1 and PW-3 is clear on this point. Both have deposed that in the ordinary course of business, the cheque holder ought to only utilize the cheques that are issued to him, but in certain contingencies or exceptional situations, the Bank could issue loose cheques also. Since no explicit prohibition on issuing of loose cheques has been proved, the mere fact that the Appellant issued those loose cheques, is not sufficient to conclude that he acted unlawfully or committed a 'criminal misconduct'.

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57. The case of the Prosecution rested heavily on the premise that the three cheques in question, i.e., Ex. P25 to P27, were passed even though there weren't adequate funds in account No. 282. The first cheque (Ex P25) was for an amount of Rs. 2.5 Lakhs and was passed on 23.04.1994; the second cheque (Ex P26) which was for an amount D of Rs. 4 Lakhs was passed on 30.06.1994; and the third cheque (Ex P27) was passed on 30.07.1994 for an amount of Rs. 3.5 Lakhs. While PW-2 deposed that there were sufficient funds at the time of passing of Ex P25, he claimed insufficiency of funds when Ex P26 and Ex P27 were passed. On the other hand, the Appellant in his statement under Section 313 CrPC contradicted the stand of PW-2 and has testified about E there being sufficient funds in account No. 282 throughout. The stand of the Appellant also finds corroboration in the testimony of PW-6, Accountant of the Branch. We have perused the Current Account Ledger for account No. 282 (Ex P23) and it appears that there were sufficient funds in account No. 282 for passing all the three cheques in question. Thus, the F contention that the three cheques were passed despite insufficient funds in account No. 282, cannot be sustained. This being the case, we have no difficulty holding that so far as this part of the transaction is concerned, the Bank did not suffer any loss.

58. In order to substantiate the charge under Section 477-A IPC, G the primary contention of the Prosecution is that despite passing the three cheques (Ex P25 to Ex P27), the Appellant did not make the relevant entries into the Current Account Ledger (Ex P23) of account No. 282. This was allegedly done to conceal the withdrawals as there were insufficient funds in the account of the Academy. We may note that the expression 'intent to defraud' as given under Section of 477-A, contains

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two elements, deceit and injury. So far as the second element is concerned, it has already been noted that no financial injury was caused to the Bank.

59. With respect to the question of 'deceit', the depositions of PW-2 and PW-6 unveil that though the relevant entries were missing in the Current Account Ledger, they do find a mention in the other ledger sheets maintained by the Bank, namely, the Officer's Cash Scroll and the Cashier Payment Register. PW-6 has further deposed that the entry relating to Ex P25, has been mentioned in the Current Account Ledger. The ledger- Ex P23 does reveal that there is some truth in the deposition of PW-6. It can be seen that there is an entry made with a pencil for an amount of Rs. 2.5 lakhs and the relevant cheque number of Ex P25 has also been recorded. We have further noted that two other entries marked as Ex D3 and Ex D4, pertaining to the other amounts of Rs. 4 Lakhs and Rs. 3.5 Lakhs have also been inserted, but here the relevant cheque numbers have not been recorded. When this is viewed in the light of the deposition of PW-2, non-production of the other relevant ledgers cannot be overlooked. Had the prosecution produced the other ledgers with some discrepancies therein, we would have been inclined to take an alternative view. But since the direct and relevant evidence has been withheld, the benefit of doubt for such failure ought to be accorded to the Appellant.

60. It is also alleged that the afore-said amount of Rs. 10 lakh was collected by the Appellant. The prosecution witnesses have deposed that the operating procedure at the Bank entailed that the signature of the person who received the cheque would be recorded on the back side of the cheque. Two incriminating circumstances have come on record in so far as this allegation is concerned. First, as deposed by PW-2, and corroborated by PW-10, the signature on the back of the cheque did not tally with that of Accused No.3. Second, the signature of the wife of the Appellant- N. Lalitha, appears on the back of Ex. P25. Undoubtedly, this raises a suspicion. But as can also be seen from the record, there are contradictions on this point as well. PW-4 has acknowledged that the payment for the three cheques was received by the Appellant and he subsequently handed over the same to Accused No.3, who at the relevant time, was waiting in the office room of the Appellant. Further, neither of the courts below have recorded a finding that the Appellant gained any pecuniary benefit nor is there any other adverse circumstance

A which may lead us to reach such a conclusion. Therefore, in view of such slippery evidence, we are not inclined to accord much weight to this allegation.

(B) Unauthorised premature encashment of the two FDRs belonging to B. Satyajit Reddy

B 61. We may now consider the second set of allegations pertaining to the alleged premature withdrawal of two FDRs and the subsequent unauthorised transfer of Rs. 14 Lakhs to account No. 282. It may be noted that the allegation of premature withdrawal is also accompanied by the averment that despite the premature withdrawal, the interests relating to the two FDRs continued to be deposited into savings account C No. 5520 of B. Satyajit Reddy. The interest amount, however, was transferred from account No. 5555, which stood in the name of the Appellant and his wife. It is alleged that the subsequent interest payments were made to 'deceive' the FDR holder into believing that the FDRs were still alive.

D 62. As already clarified by us, to prove the charge under Section 409 IPC, the prosecution need not prove the exact manner of misappropriation. Once the 'entrustment' is admitted or proved, as has been done in the present case, the onus lies on the Accused to prove that the entrusted property was dealt by him in an acceptable manner. Thus, misappropriation with this dishonest intention is one of the most important E ingredients of proof of 'criminal breach of trust'. The offence under Section 409 IPC can be committed in varied manners, and as we are concerned with its applicability in the case of a bank officer, it is fruitful to point out that the banker is one who receives money to be drawn out again when the owner has occasion for it. Since the present case involves F a conventional bank transaction, it may be further noted that in such situations, the customer is the lender and the bank is the borrower, the latter being under a super added obligation of honouring the customer's cheques up to the amount of the money received and still in the banker's hands. The money that a customer deposits in a bank is not held by the G latter on trust for him. It becomes a part of the banker's funds who is under a contractual obligation to pay the sum deposited by a customer to him on demand with the agreed rate of interest. Such a relationship between the customer and the Bank is one of a creditor and a debtor. The Bank is liable to pay money back to the customers when called upon, but until it's called upon to pay it, the Bank is entitled to utilize the H money in any manner for earning profit.

63. In the case in hand, the Appellant in his examination under Section 313 Cr.P.C. has neither disputed the factum of the premature withdrawal, nor of the subsequent transfer of the amount to account No. 282. On the contrary, he has specifically claimed that he only acted on the written request made by the customer. The Appellant has fortified his assertion by producing two letters (Ex P6 and Ex P7) statedly written by B. Satyajit Reddy and addressed to the Branch Manager. The deposition of the handwriting expert (PW-10) has given some credence to the Appellant's version as according to his opinion, both the letters bear the signature(s) of B. Satyajit Reddy.

64. On the other hand, the Prosecution disputed the genuineness of these two letters and has accused the Appellant of securing these letters antedated. The subsequent conduct of the Appellant i.e., the deposit of interest from his own account to that of B. Satyajit Reddy has been strongly highlighted to emphasize that the Appellant had made the withdrawal without the knowledge or consent of the FDR holder and in contravention of the law. The latter fact weighed heavily on the minds of the Courts below as both have proceeded to convict the Appellant on the assumption that he did not receive any authorization for the premature encashment and transfer. There is thus a serious dispute on the factum of whether or not B. Satyajit Reddy had sought the premature withdrawal and the subsequent transfer of the proceeds of FDRs to the account of Academy. The best person to clear the air and enlighten us would have been B. Satyajit Reddy himself, but neither was he associated during the course of inquiry/audit or the investigation nor was he examined as a prosecution witness in the trial.

65. The investigating agency did not care to record the statement of B. Satyajit Reddy either under Section 161 Cr.P.C. or as a court witness. There is not even a whisper that B. Satyajit Reddy was won over by the appellant from the very inception and/or his examination at any stage would have been an exercise in futility. Further, there is also no written or oral complaint made by B. Satyajit Reddy against the Appellant or other officials of the Bank accusing them of misusing his FDRs or causing any financial loss to him. On the contrary, the Appellant has produced on record two letters dated 22.02.1995 and 24.02.1995 (Ex P6 and Ex P7) purportedly written by B. Satyajit Reddy for premature encashment of his FDRs and to deposit the amount in the account of the Academy. These two letters (which the Appellant is accused to have obtained antedated) suggest that copies thereof were physically received/

A handed over to the Chairman and other officials of the Bank. There was, thus, sufficient time to contact a valuable customer like B. Satyajit Reddy and enquire about the genuineness of those letters. The Chairman of the Bank (PW-1) in his complaint to CBI dated 27.11.1995 (Ex P1) did not make even a bald allegation about genuineness of these two letters which were already in his possession. Unfortunately, CBI too made no effort to contact B. Satyajit Reddy and ascertain the correct facts. There is indeed no quarrel that no financial loss was caused to B. Satyajit Reddy. It, thus, emerges indisputably that:

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(i) B. Satyajit Reddy had made no complaint alleging any loss to him;

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(ii) His written requests dated 22.02.1995 and 24.2.1995 (Ex P6 and Ex P7) have gone unrebutted;

(iii) The prosecution has surely proved payment of interest on those FDRs to B. Satyajit Reddy even after pre-mature closure thereof, but that payment was made by the Appellant from his personal account and no public fund has been divested for such payment;

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(iv) B. Satyajit Reddy has been receiving interest even after premature encashment of the FDRs. He may or may not have got undue monetary gain but definitely he suffered no loss in any manner.

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66. Having given our anxious thought to these facts, we are of the considered opinion that the Prosecution has failed to establish the charge of criminal breach of trust against the Appellant beyond a reasonable doubt. We are inclined to agree with the learned Senior Counsel for the

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Appellant that the non-examination of B. Satyajit Reddy has been materially fatal to the case of the prosecution. Furthermore, it appears that B. Satyajit Reddy was deliberately not examined as he would have deposed against the prosecution. Undoubtedly, some of the proven facts, like deposit of interest amount from the account of the appellant to that

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of B. Satyajit Reddy, do create a strong suspicion against the Appellant, but as held by this Court time and again, suspicion cannot take the place of proof, howsoever, strong it may be. We are, therefore, of the firm belief that in the absence of cogent and unimpeachable evidence to prove that the Appellant has misappropriated the funds of the Bank and/or of B. Satyajit Reddy, it would not be safe to convict him under the provisions

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of Section 409 IPC.

67. So far as the charge under Section 420 IPC is concerned, once again, the best and the only person who could throw light on whether or not he had voluntarily agreed to transfer his FDR amount in the account of the Academy or there was an element of inducement, cheating or a false promise, was B. Satyajit Reddy himself who has chosen not to enter the witness box. In the absence of even an ordinary complaint by B. Satyajit Reddy regarding misuse of his FDRs, it will be too far-fetched to hold that the Appellant had any *mens rea* to deceive or to misappropriate or destroy valuable property of B. Satyajit Reddy.

68. We may at this stage, briefly note that learned Senior Counsel for the Appellant had raised another contention, namely, that the charges under Section 409 and Section 420 IPC cannot go together. He eloquently argued that the essential ingredients of the two offences are conflicting in nature. Section 409 (or 405) IPC deals with offences where the accused has been 'entrusted' with the property and Section 420 IPC deals with offences where the accused has 'dishonestly induced' the victim/complainant to depart with the property in question. It was, therefore, argued that an accused cannot be charged under both the sections simultaneously. This contention, however, has been rendered academic in the light of the afore-stated discussion and conclusion(s). We thus do not express any opinion and leave this question open for adjudication in an appropriate case.

69. Having held so, we hasten to add that the Appellant acted brazenly contrary to the norms and internal instructions of the Bank. Although he was clever enough to not trespass into the prohibited area(s) of Sections 409, 420 and 477-A IPC, he ran the risk of causing financial loss to the Bank. Despite his subsequent act of depositing the interest accrued upon the FDRs of B. Satyajit Reddy, from his personal account, and thereby absolving the Bank from such liability, the actions of the Appellant constitute gross departmental misconduct and are unbecoming of a senior Bank Officer. The management of the Bank rightly lost faith in the Appellant and the punishment of dismissal from service imposed on him vide order dated 06.01.2006, on the basis of his conduct which led to his conviction by the Trial Court, is fully justified. In the peculiar facts and circumstances of this case, there was no legal necessity to hold any departmental enquiry to reiterate the same factual conclusions which have surfaced during the course of criminal trial. Such findings though may not be sufficient to fasten criminal liability on the appellant, his dismissal from service of the Bank is fully legitimised and the

A punishment so awarded, is proportionate to the proven misconduct. We say so, also for the reason that neither can the Appellant be allowed to take undue advantage of the benefit of doubt being extended to him, nor is a recourse to a departmental enquiry desirable at this belated stage. On the other hand, upholding the order of dismissal dated 06.01.2006 will serve the cause of public interest and send a befitting message amongst B the Appellant's peers.

70. We are also constrained to observe that in this case the CBI has either adopted a casual and callous approach or there was some hidden pressure to derail a fair investigation. The resultant effect is that though there is a strong suspicion of criminal breach of trust, cheating C and/or fabrication of the Bank records against the Appellant, but such suspicion falls short of a conclusive proof to hold him guilty of the criminal charges. The best evidence having been withheld by the prosecution, the benefit of doubt must be extended to the Appellant, for no conviction can be sustained on the basis of conjectures and surmises. Non-production D of the records of the Bank also adversely comments on the fairness and independence of the investigation conducted in the instant case.

71. To sum-up the above-stated discussion, the following incontrovertible factors have emerged in the present appeal:

First, no financial loss was caused to the Bank. E

Second, the record before us does not indicate that any pecuniary loss was caused to B. Satyajit Reddy or to any other customer of the Bank.

Third, the material before us does not disclose any conspiracy between the accused persons. In the absence of any reliable evidence F that could unfold a prior meeting of minds, the High Court erred in holding that Appellant and other accused orchestrated the transactions in question to extend an undue benefit to Accused No.3.

Fourth, the Appellant committed gross misconduct by misusing his position as the Branch Manager. Notwithstanding the final outcome, G the Appellant's abuse of powers clearly put the Bank at the risk of financial loss.

Fifth, despite dereliction of his duties, none of the acts proved against the Appellant constitute 'criminal misconduct' or fall under the ambit of Sections 409, 420 and 477-A IPC. H

Conclusion:

72. We face no difficulty in holding that the prosecution has failed to prove the charges under Sections 409, 420 and 477A IPC against the Appellant beyond reasonable doubt. As a necessary corollary thereto, his conviction under Section 13(2) read with Section 13(1)(d) of the PC Act can also not be sustained. However, the benefit of doubt being extended to him on account of a thin margin between 'strong suspicion' and 'conclusive proof', shall not entitle him to initiate a second round of *lis* to seek his reinstatement or to claim other service benefits from the Bank. We have already held that the Appellant is deemed to be guilty of gross departmental misconduct, for which the punishment of dismissal from service has been adequately awarded. It requires no repetition that standard of proof to establish a misconduct in a domestic enquiry i.e. even preponderance of evidence, is drastically different to those of proving a 'criminal charge' beyond any reasonable doubt. The Appeal is accordingly disposed of in the above terms. Bail bonds, if any, furnished by the Appellant stand discharged.

Divya Pandey Appeal disposed of.