

**State of Orissa Vs. Chamara Panda**

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**Court :** Orissa

**Decided On :** Aug-05-1985

**Reported in :** 1985(II)OLR347

**Judge :** B.K. Behera, J.

**Acts :** [Prevention of Corruption Act, 1947](#) - Sections 5(1) and 5(2); Indian Penal Code (IPC) - Sections 409

**Appeal No. :** Govt. Appeal No. 55 of 1981

**Appellant :** State of Orissa

**Respondent :** Chamara Panda

**Advocate for Def. :** G. Bohidar, S.K. Mund, G.N. Mohapatra and Shyam Mohapatra

**Advocate for Pet/Ap. :** P.K. Mohanty, Addl. Standing Counsel

**Disposition :** Appeal dismissed

**Judgement :**

**B.K. Behera, J.**

1. The State is in appeal against the judgment and order of acquittal recorded by the learned Special Judge (Vigilance), Sambalpur, finding the respondent to be not

quality of the charges under Section 5(2) read with Section (I) (c) of the [Prevention of Corruption Act, 1947](#) and under Section 409 of the Indian Penal Code with having committed criminal misappropriation in respect of an amount of Rs. 5,486.44 paise between April 1, 1968 and March 31, 1969 in his capacity as the Store-keeper-cum-Accounts Clerk in the Attabira Block Office in the district of Sambalpur and the misappropriated sum, it was alleged, had not been deposited by the respondent out of the sale proceeds of pesticides and fertilizers kept in his charge. It had not been disputed by the defence that the respondent at the relevant time had been functioning as the Store-keeper-cum-Accounts Clerk. It had also not been disputed that he was in charge of the sale of the pesticides and fertilizers. The case of the defence was that according to the prevalent practice, the aforesaid articles were being sold both on payment of cash and on credit and the deficit amount represented the sum for the articles sold on credit for which payments had not been made.

2. On a consideration of the evidence of twelve witnesses examined for the prosecution, the learned trial Judge found that neither of the two charges had been brought home to the respondent.

3. In an appeal against acquittal, it is impermissible to disturb the findings unless considered to be unreasonable, unfounded or perverse. Even if another view can be taken on the evidence, no interference is called for.

4. There was, no doubt, the evidence of the Assistant Accounts Officer (P. W. 8) who had audited the accounts of the Attabira Panchayat Samiti about the shortage of cash, but it must be kept in mind that an audit report of an inconclusive character which notes down some statements of objections cannot, by itself, saddle any, person with criminal liability. See 1984 Cri. L. J. 1823 : 1984(1) O. L. R. 585 Okila Luha v. State. It was in evidence that a part of the alleged misappropriated amount had been recovered from the salaries of the respondent after the charge period. This would not further the case of the prosecution in respect of the charge of misappropriation in the absence of legal proof of the commission of the crimes. It could be that with a hope to escape from criminal culpability, a person would make good the loss although he had not been

responsible for it. Conduct which destroys the presumption of innocence can alone be considered against an accused.

5. The defence of the respondent that the articles were also being sold on credit had found assurance from the evidence of P. W. 3, the then Head Clerk of the Attabira Block who had stated in his cross-examination :

'4. In 1968 and 1969 the accused was in charge of the sale of seeds, pesticides and fertilizer and the accused was selling these articles to V. L. Ws. and also to private individuals. The accused was selling these articles both on cash and credit.'

It would also be seen from the evidence that on March 25, 1969, the respondent had deposited a sum of Rs. 1,048. 47 paise being a part of the sale proceeds of the articles given on credit.

6. On a consideration of the evidence and in particular, with reference to the evidence of P. W. 3, the learned Special Judge has recorded a finding that it has clearly been established that the respondent had been selling the seeds, pesticides and fertilizers on credit. The learned Judge has observed and held :

'...This statement of P. W. 3 goes a long way to establish that the statement of the accused is correct. No doubt, the accused was the Store-keeper-cum-Accounts Clerk of Attabira Block Office in between 1. 4. 68 and 31. 3. 69. During this period according to the statement of the accused he was selling seeds, pesticides and fertilizers to the farmers and V. L. Ws. and he was selling these articles on credit as per the previous practice, . and this was done to the knowledge of the higher authorities. No doubt, from the evidence of P. W. 2, P. W. 3, P. W. 6, and P. W. 8 it appears that there was a shortage of Rs. 5486.44 with the accused in between 1. 4. 1968 and 31. 3. 1969. As it is established from the evidence of P. W. 3 the accused was selling the articles noted above on credit and as such there will be naturally shortage. This does not mean that the accused had misappropriated any money. The accused was selling seeds, pesticides and fertilizers to the farmers and V L. Ws. on credit and as they did not pay the money in time there was shortage in the amount with the accused. The accused was selling these articles

on credit as per previous practice according to the statement of the accused. There is no materials on record .to draw any other inference, because the statement of accused receives ample support from the evidence of P. W. 3 who has clearly stated that the accused was selling above noted articles on credit. If the articles were sold on credit and if the persons to whom the articles were sold did not return the money, naturally there would be shortage. This does not mean that the accused has misappropriated the amount of Rs. 5486.44.'

It cannot be said that the view taken by the learned trial Judge in favour of the respondent holding that he was not guilty of the charges was unreasonable or perverse and that it cannot be sustained in law. I see no reason for interference with the judgment and order of acquittal.

7. The appeal fails and is dismissed.

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