

Government of Tripura
Office of the Director General of Police
Tripura :: Agartala.
(Legal Cell)

//CIRCULAR//

Hon'ble High Court of Tripura in a recent Judgment & Order dated 21-02-2017 passed in case No. CrI. A – 08 of 2012 (Member Secretary, BDO, Teliamura & Anr. –Vs- Shri Samar Bhusan Sarkar & Anr.) (arising out of Teliamura PS case No. 23 of 1996 U/S – 409/468 IPC) has directed that investigation of cases of criminal misappropriation, criminal breach of trust and similar other cases, such as the cases under Prevention of Corruption Act should be investigated promptly by experienced, efficient and competent police officers and investigation of such cases should not be entrusted as a routine like an ordinary case of theft or extortion.

Para – 17 of the aforesaid Judgment & Order dated 21-02-2017 reads as follows:-

***“17. A case of embezzlement of public fund is an offence of very very serious nature. It has to be investigated promptly by an efficient, competent and experienced police officer. We are greatly shocked that such an important case of criminal misappropriation and criminal breach of trust by a public servant was not attached with any importance by the investigating agency. We do not understand as to what sort of supervision by the superior authorities also made over the investigating officers. Can one imagine that investigation of such a case will take eight years? This is absolutely a serious lapse in the investigation of criminal cases.*”**

We would like to draw the attention of Director General of Police, Tripura and we hope that in future the cases of criminal misappropriation, criminal breach of trust and similar other cases, such as the cases under Prevention of Corruption Act should be investigated promptly by experienced, efficient and competent police officers. Investigation of such cases should not be entrusted as a routine like an ordinary case of theft or extortion.”

Copy of the above mentioned Judgment & Order dated 21-02-2017 is enclosed herewith for compliance of all concerned.

Contd.....P/2

O/C PS himself will take up investigation, or O/C will assign the investigation to a particular officer in consultation with SDPO/SP and SP(CID) will assign the investigation to a comparatively experienced officer if the case is transferred to CID for further investigation.

Noncompliance of the aforementioned direction of the Hon'ble High Court shall render concerned officer liable for Departmental action.

Encl:- As stated.

(K. Nagaraj).
Director General of Police.
Tripura

Memo No. 629-43 /R-52/DGP/LC/2017, Dated, 10 th, March, 2017.

Copy to:-

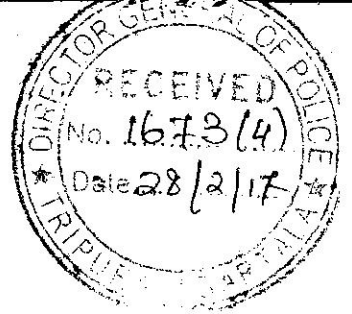
- 1-8. The District SsP West/Khowai/Shephijala/Gomati /South/Unokoti/ North/ Dhalai, Tripura for information and strict compliance of the above directions.
- 9-10. The Superintendent of Police, (GRP)/(CID), Tripura for information and strict compliance of the above directions.

Copy also to:-

11. The Insp. Genl of Police (L/O), Tripura for information please.
12. The Dy. Insp. Genl. of Police (S/R), Tripura for information please.
13. The Dy. Insp. Genl. of Police (N/R), Tripura for information please.
14. Circular file, PHQ Legal Cell.
15. I/C, E-Governance Cell, PHQ for uploading the same on the official website of Tripura Police.

(K. Nagaraj).
Director General of Police.
Tripura.

**HIGH COURT OF TRIPURA
AGARTALA**



No.F.40(13)-HCT/BENCH/CRL/2017/1827-28 Dated, the Agartala 28th February, 2017

**From : S.G.CHATTOPADHYAY
REGISTRAR GENERAL**

TO:

1. The Legal Remembrancer, Government of Tripura, Agartala,
2. The Director General of Police, Tripura, Agartala.

Sub: Transmission of copy of the Hon'ble High Court's Judgment & Order dated 21.02.2017 passed in connection with Case No.Crl.A 8 of 2012 {The Member Secretary (Block Development Officer) & Anr. vs. Sri Samar Bhusan Sarkar & Anr.}.

Sir,

In compliance with the Judgment & Order dated 21.02.2017 passed by the Hon'ble High Court in Case No. Crl.A 8 of 2012, I am sending herewith a copy of the said Judgment & Order dated 21.02.2017 for your information and compliance.

Yours faithfully,

Handwritten signature of S.G. Chattopadhyay

28.2.17
(S.G.CHATTOPADHYAY)
Registrar General
High Court of Tripura
Agartala

Pl. see page 1412-15 for compliance
Enclosed: As stated above.
19 (nineteen) sheets of paper

*128
1/3/17*

Put up a circular order for all concerned (M.O. sent) 28.2.17

on file pl.

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL.A.NO.08 OF 2012

1. Member Secretary
(Block Development Officer),
Teliamura Nagar Panchayat,
Teliamura, District-Khowai.

2. Teliamura Nagar Panchayat,
Teliamura, District-Khowai.

..... *Appellants*

- *Vs* -

1. Shri Samar Bhusan Sarkar,
S/O Late Bhibhuti Bhusan Sarkar of
Santinagar, P.O. Teliamura, P.S. Teliamura,
District-Khowai.

..... *Respondent*

2. The State of Tripura.

..... *Pro-respondent*

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. T. VAIPHEI
HON'BLE MR. JUSTICE S. C. DAS**

For the appellants	:	Mr. S. Deb, Sr. Advocate Mr. S. Dutta, Advocate				
For respondent No.1	:	Mr. D.K. Daschoudhury, Advocate				
For respondent No.2	:	Mr. A. Ghosh, P.P.				
Date of hearing	:	31.01.2017				
Date of delivery of judgment & order	:	21.02.2017.				
Whether Fit for Reporting	:	<table border="1"><thead><tr><th>Yes</th><th>No</th></tr></thead><tbody><tr><td style="text-align: center;">√</td><td></td></tr></tbody></table>	Yes	No	√	
Yes	No					
√						

JUDGMENT & ORDER

(S.C. Das, J.)

This appeal against acquittal is preferred by the victim(*de facto* complainant) under *proviso* to Section 372 of CrPC against the order of acquittal of the accused-respondent passed by

learned Addl. Sessions Judge, Khowai, West Tripura vide judgment dated 23.07.2012 in Cr. Appl. No.3/2012.

2. We have heard learned senior counsel, Mr. S. Deb, assisted by learned counsel, Mr. S. Dutta for the appellants, learned counsel, Mr. D.K. Daschoudhury for accused-respondent No.1 and learned P.P., Mr. A. Ghosh for respondent No.2.

3. One Santanu Debbarma in the capacity of Member Secretary(Block Development Officer) of Teliamura Nagar Panchayat on 12.03.1996 lodged an FIR in writing before O/C Teliamura P.S. alleging that the accused-respondent Samar Bhusan Sarkar(hereinafter mentioned as the accused) was working as LDC-cum-Typist in the office of Teliamura Nagar Panchayat(for short, TNP) during the period from 06.12.1989 to 28.08.1995 and he was functioning as Cashier of TNP. He had taken away cash from the local fund fraudulently showing payment through fictitious bills and irregular payment of bills. He was also engaged in collecting revenues from the public and others but did not enter the actual collected amount in the case book. It was detected by the office after preliminary checking of the records and accounts and transpired from the payment register and cash book. It was assessed that an approximate amount of ₹2,00,000/- had been taken away by the accused in breach of trust. The actual amount of misappropriation will be ascertained after reconciliation and compilation of the accounts. A statement showing fraudulent disbursement was allegedly enclosed.

On receipt of the FIR O/C Teliamura P.S. registered Teliamura P.S. Case No.23 of 1996 under *Sections 409 and 468 of IPC* and an investigation was taken up. Ultimately, after completion of investigation police submitted charge sheet against accused Samar Bhusan Sarkar on 12.12.2003 under *Sections 409 and 468 of IPC*.

4. Cognizance was taken on the basis of the police report and in course of trial learned SDJM, Khowai on 18.08.2004 framed the following charges against the accused to which he pleaded not guilty and claimed to be tired:

"THAT you, on or about from the 19th October, 1989 to 28.12.1995, you being L.D. Clerk cum-Typist of the establishment of Teliamura Nagar Panchayet, West Tripura entrusted with the property, to wit charge of cash of the office of the Teliamura Nagar Panchayet in your capacity of a public servant, committed criminal breach of trust in respect of that property like cash amounting Rs.1,94,754.15 and that you thereby committed an offence punishable under section 408 of the I.P.C. and within my cognizance.

Secondly, that you during the aforesaid period, place and time, being the L.D. Clerk-cum-typist of Telimaura Nagar Panchayet and being entrusted with the charge of cashier and cash of that Nagar Panchayet Office, forged certain documents to wit, cash book, bills registers, payment registers(SE Roll) cheques, registers, counter foils, cheques book, bankers book and other relevant records like bills, sanction memo

sanction order etc, of the office of the Teliamura Nagar Panchayet intending that those documents shall be used for the purpose of cheating, and that you thereby committed an offence punishable under section 468 of the IPC and within my cognizance.

Thirdly, that you during the aforesaid period, place and time being the L.D. Clerk cum-typist of Teliamura Nagar Panchayet and being entrusted with the charge of cashier and cash of that Nagar Panchayet, you committed a criminal breach of trust, of that amount and thereby you committed an offence punishable under section 406 of the I.P.C. and within my cognizance.”

5. In course of trial prosecution examined fifteen witnesses, namely— *PW1 Shri Debabrata Saha, PW2 Shri Narayan Ch. Paul, PW3 Shri Tapash Sengupta, PW4 Shri Ratan Bhattacharjee, PW5 Shri Santanu Deb Barma, PW6 Shri Arun Roy, PW7 Shri Paritosh Nag, PW8 Shri Shyamal Sengupta, PW9 Shri Biswapada Chakraborty, PW10 Shri Satya Bhushan Kar, PW11 Shri Abhijit Roy, PW12 Shri Samir Kr. Deb, PW13 Shri Narayan Chakraborty, PW14 Shri Samarendra Ch. Deb and PW15 Shri Samiran Chakraborty.*

While examining the aforesaid witnesses prosecution also relied on the following documents/materials which were marked as follows—

- Ext.1 True copy of saving bank account No.6908 of UBI, Teliamura Branch*
- Ext.2 Xerox copy of the cash book dt. 18-1-95.*

- Ext.3 Certified Xerox copies of received Bank Scroll.*
- Ext.4 Typed FIR dt. 12-3-96.*
- Ext.5 Statement submitted by the informant relating to descriptions and excess payment made by the accused.*
- Ext.6 Seizure list dt. 12-3-96.*
- Ext.7 Some documents like 10 nos. of bills and vouchers, cash book, Vol.3, payment register, account No.6908, etc. seized by the police.*
- Ext.8 Attendance register for the year 1995.*
- Ext.9 Office order of previous member-secretary Sri M.L. Das dt. 19-10-89 by which the accused was entrusted to deal with the cash of the office.*
- Ext.10 Certificate of handing and taking over of charge between the accused and Sri Shyamal Sengupta in the cash book vol. No.3 page No.206.*
- Ext.11 Reconciliation report.*
- Ext.12 Seizure list of certain counter foils of cheque and other bills.*
- Ext.13 Seizure list of Ext.M.O.2 series.*
- Ext.14 Seizure list of Ext.M.O.3 series.*
- Ext.15 Joining report of the accused in service.*
- Ext.M.O.1 Payment register, bill register, cheque register, P.L. Account cheque register, attendance register, UBI pass book A/C No.6734 and fully vouched bills.*
- Ext.M.O.2 About 32 documents seized by the police including audit reports, cash register, issue register, etc.*
- Ext.M.O.3 Seized counter foils of several bills."*

6. After closure of the prosecution evidence accused was examined under *Section 313 of CrPC* and in his turn the accused declined to adduce any defence evidence. In his defence, the

accused simply pleaded innocence and that he has been falsely implicated without any basis.

7. Learned Judicial Magistrate, First Class, Khowai, by impugned judgment dated 16.02.2012 held the accused-respondent No.1 guilty of the charges framed against him under *Sections 408* and *468* of *IPC* and accordingly sentenced him to suffer RI for three years and to pay a fine of ₹5,000/-, in default of payment to suffer SI for three months under *Section 408* of *IPC* and again to suffer RI for three years and to pay a fine of ₹5,000/-, in default of payment to suffer SI for another three months for commission of offence punishable under *Section 468* of *IPC* and directed that both the sentences shall run concurrently. Learned Magistrate further observed that the charge under *Section 406* of *IPC* was unnecessary.

8. Aggrieved, the accused-respondent preferred Cr. Appl. No.03/2012 in the Court of learned Addl. Sessions Judge, Khowai and by impugned judgment dated 23.07.2012 learned Addl. Sessions Judge allowed the appeal and thereby set aside the judgment and order of conviction and sentence passed by learned SDJM, Khowai and accordingly acquitted the accused from the charges.

9. Though it was a police report case no appeal was preferred by the State respondent No.2.

Teliamura Nagar Panchayat through its Member Secretary, the present appellants, allegedly being the victim preferred the appeal under *proviso* to *Section 372* of *CrPC* which was admitted for hearing.

10. Mr. Deb, learned senior counsel appearing for the appellants submitted that it is not in dispute that the accused was working as Cashier of the office of the TNP under the informant, *i.e.* the Member Secretary of the Nagar Panchayat during the period from 06.12.1989 to 28.08.1995. He did not properly maintain the books of accounts and siphoned away the public fund making false entry in the books of accounts and creating fictitious bills, vouches, etc. He also submitted that a reconciliation team was constituted by the informant consisting of PWs 7 to 11 in which the accused was also a member and the reconciliation team submitted a report which initially revealed that there was misappropriation of the fund of TNP and thereafter audit was also conducted and it was found that the accused committed misappropriation of fund. The trial Court rightly convicted the accused but the appellate Court interfered in the judgment of the trial Court and such interference was not called for.

While confronted by us in respect of the proof of the documents on which the prosecution relied about the alleged embezzlement of fund, learned senior counsel Mr. Deb with all his modest admitted that the particular entries in the cash book and

the particular bill vouchers through which the alleged misappropriation was committed by the accused have not been specifically proved, and therefore if this Court considers it appropriate the case may be remanded back to the trial Court to prove the documents in accordance with law.

11. Learned counsel, Mr. Daschoudhury submitted that police took about eight years in submitting charge sheet and thereafter it took another four years in concluding the trial before the Magistrate. The accused has been subjected to harassment because of such long delay in the investigation and trial. The appellate Court rightly construed that the trial Court failed to appreciate the evidence and relied on the materials which have not been properly proved and hence the judgment and order of acquittal passed by learned Addl. Sessions Judge may not be interfered. He also submitted that the charges framed against the accused were vague and the prosecution utterly failed to prove the charges and hence the order of acquittal should not be disturbed.

12. The fundamental principle of criminal justice is that an accused should be tried with an initial presumption of innocence and burden absolutely lies on the prosecution to prove the charges framed against the accused. This burden cannot be shifted on the shoulder of the accused. Once an accused is acquitted from the charge either by the trial Court or by the appellate Court, the presumption of innocence multiplies. It is also a settled position of

law that if two views on the basis of the evidence are reasonably possible the High Court should not interfere in an order of acquittal recorded by the trial Court or by the appellate Court.

In an appeal under *Section 378 of CrPC* or under *proviso to Section 372 of CrPC* we are of considered opinion that the High Court has full power to review and re-appreciate the evidence on which the initial order of conviction was recorded by the trial Court and the subsequent order of acquittal recorded by the appellate Court to arrive at a reasonable conclusion.

13. The first charge framed against the accused was under *Section 408 of IPC*, which reads as follows:

"408. Criminal breach of trust by clerk or servant.—Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The words, '*criminal breach of trust*' defined in *Section 405 of IPC*, read as follows—

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of

law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

To appreciate the ingredients of criminal breach of trust the definition of '*dishonestly*' also may be looked into as defined in *Section 24* of IPC which reads thus—

"Dishonestly'.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'."

A combined reading of the above makes it abundantly clear that the prosecution was required to prove that the accused was a clerk or servant under the informant and that in such capacity the accused was entrusted with certain property and/or dominion over the property belonged to the informant and that the accused committed criminal breach of trust in respect of such property.

14. A case of criminal breach of trust has to be proved by documentary evidence. The prosecution must be clear as to what are the documents which required to be proved to take the charges against the accused at home, and, how those documents to be proved. Mere seizure and presentation of some bundle of document, bill, voucher, register, cash book, etc. and an oral

statement in addition thereto, that, through those documents the accused committed the criminal breach of trust does not prove the charges against the accused.

15. We are really shocked to see that neither the investigation nor the prosecution was conducted aiming to prove before the Court the material allegation in respect of the charges of breach of trust.

Prosecution case was that the accused had taken away official fund fraudulently showing payment through fictitious bills and irregular payments of bills. It was the further case of the prosecution that the accused collected revenues, whereas did not make entry in the cash book. To prove the said allegations the prosecution was required to prove that the accused prepared some fictitious bills and presenting those bills the accused collected money and taken away the money. No such particular bill has been proved by the prosecution. No such record also placed through which the accused collected revenue from the public and did not enter the said revenue in the cash book. A particular bill or voucher has to be seized and proved before the Court that the particular bill or voucher was prepared by the accused under his hand or under his direction and that through that bill or voucher money was drawn. Since the accused was working as cashier, as alleged, those particular entries made in the cash book which relates to the commission of the offence was supposed to be proved by the

prosecution. If certain amount was collected by the accused on a particular date but did not enter it in the cash book that has to be specifically proved. A general statement that the accused collected the money but did not enter in the cash book or that the accused prepared false bill or voucher and thereby taken away official fund, in a case of criminal breach of trust is of no use.

In a criminal case accused cannot be compelled to give evidence against him. He cannot be compelled to prove the entries in the cash book or particular bill and voucher. Burden lies on the prosecution to prove the same. The particular bill and voucher and the particular entry in the cash book on a particular date was required to be proved by the prosecution to sustain the charge. According to law, a document or an entry should be proved by the person who made the entry or by any other person who knows the handwriting of the person making the entry or in whose presence the entry was made. A bill or voucher also may be proved in similar manner. In the present case, cash book, the bill register, the attendance register, etc. were seized in bulk by the investigating agency and produced before the Court and those were marked as material objects. Such marking of those registers as material objects is of no use in a criminal case.

16. According to the prosecution the accused was a clerk-cum-typist and was in-charge of cashier. That fact is not denied by the accused. He was directed to hand over the charge to Shyamal

Sengupta(PW8) by an order dated 14.08.1995 and he handed over the charge on 28.08.1995. The accused did not deny the fact that he was working as a cashier during that period. We will come to the point of charge later on. Here we are only impressing upon the manner in which the prosecution case has been conducted. Learned senior counsel, Mr. Deb candidly admitted that the particular entries in the cash book and the particular bill/voucher allegedly prepared by the accused have not been proved according to the provisions of the Evidence Act. The list of *exhibits* shows that a bunch of documents was seized by the seizure list prepared by I.O. marked as *Exbts.12, 13 and 14*. What was the purpose of those seizure? It must be understood by the I.O. at first as to which particular document is necessary to make out the charge against the accused.

17. A case of embezzlement of public fund is an offence of very very serious nature. It has to be investigated promptly by an efficient, competent and experienced police officer. We are greatly shocked that such an important case of criminal misappropriation and criminal breach of trust by a public servant was not attached with any importance by the investigating agency. We do not understand as to what sort of supervision by the superior authorities also made over the investigating officers. Can one imagine that investigation of such a case will take eight years? This is absolutely a serious lapse in the investigation of criminal cases.

We would like to draw the attention of Director General of Police, Tripura and we hope that in future the cases of criminal

misappropriation, criminal breach of trust and similar other cases, such as the cases under Prevention of Corruption Act should be investigated promptly by experienced, efficient and competent police officers. Investigation of such cases should not be entrusted as a routine like an ordinary case of theft or extortion.

18. It appears *PW5* is the star witness of the prosecution who was the Member Secretary of TNP. In his deposition he made a lengthy statement, but we are constrained to observe that the entire statement is of little value. According to *PW5* he constituted a reconciliation committee consisting of *PWs 7 to 11* and they submitted a report. That report has been exhibited as *Exbt.11* by *PW7*. That is a typed statement signed by *PWs 7, 8 and 11*. Other members did not sign it. Accused was also a member of that reconciliation committee but he also did not sign it.

Be that as it may, we find nothing in that reconciliation statement as to what was the amount which has been embezzled by the accused and how. In the deposition of *PW5* he stated that there was double entry in respect of an amount of ₹35,500/- in a bank account of UBI, but the members of the reconciliation committee did not say anything on that issue. The passbook of that bank account has been placed on record but how it was relevant and what were those entries which were wrongly made has not been proved. *PWs 1, 2 and 3* are the bank officials and there is nothing incriminating in their statements against the accused. Other

witnesses, *i.e.* PWs 12 to 15 were all IOs of the case who conducted investigation at different phases.

19. We are also constrained to observe that the prosecution was conducted without any aim and object. Prosecution of such a serious case of criminal misappropriation/criminal breach of trust ought to have been conducted by a competent prosecutor. The prosecutor was supposed to identify the particular entry made in the cash book and payment register and was supposed to prove the particular entry by particular witness. The prosecution was also supposed to identify the particular bill/voucher which was falsely prepared showing payment, but nothing has been done. It is clear that the prosecutor aimlessly, as a matter of routine conducted the case. In cases of criminal breach of trust or Prevention of Corruption Act the State shall engage a competent and experienced prosecutor so that the case is properly presented before the Court. It cannot be expected that a prosecutor does not know how an entry in the cash book or payment register is to be proved or how a bill or voucher is to be proved. A mere oral statement that the cash book/ payment register shows that the amount has been embezzled, is of no consequence at all unless the particular entry in the cash book or payment register and/or the particular bill or voucher is proved according to law.

For ends of justice, to prevent the offence by the public servants in the discharge of their duties, the State agency must be

very very careful and serious. Not only investigation is to be made by the proper experienced and efficient police officer but also the prosecution has to be conducted by an efficient, experienced and law knowing prosecutor. The Directorate of Prosecution as prescribed under Section 25A of the CrPC should be set up and the Director of Prosecution should effectively monitor the prosecution of such cases so that the offender is booked and cannot escape punishment. It is required for effective administration since the State is a welfare State and the welfare works are to be done by the public servants. If the public servants do not discharge their duties with honesty, integrity and devotion, the ultimate fruit of the welfare Government will not reach to the deserving people. We hope that in future in such cases the prosecution should be entrusted to efficient, experienced and law knowing prosecutors. Such cases should not be conducted mechanically as a routine work of ordinary simple criminal offence.

20. We are also shocked to see that the trial Court was not alive at the time of recording evidence. A trial Judge cannot be a silent spectator. He should be active and alive when the witnesses have been brought and their statements have been recorded. A trial Judge is expected to be very sensitive from the stage of framing of charge and must have an idea about the materials on record. He cannot be a mere spectator. At the same time he should not take the role of the prosecutor but he should ensure that the materials on the basis of which charges have been framed are properly and

legally proved. It is the duty of the trial Judge to see and to find out all the material aspects of evidence of a case for fair ends of justice. Justice cannot be one sided. The role of a judge should be neutral and the ultimate aim should be to ensure justice irrespective of it is the accused or the victim of the offence. A trial Judge should not remain silent but should control a criminal case by actively participating therein to find out the truth. The law has empowered a trial Judge to put any question to a witness which is required to unearth the truth. It is not that trial Judge is to act for the prosecution or the defence. He is for the justice irrespective of the parties before him and for that purpose he should remain active and alive while conducting a trial.

We are not at all happy in the manner the trial Judge conducted the case. The relevant documents were not proved according to law. The trial Judge would know it that mere marking of the documents as material object does not prove the contents of the documents. In a case of criminal breach of trust it has to be proved that the particular entry was made by the accused and that the particular bill voucher or the document was prepared by the accused through which the embezzlement of public fund has been made.

We therefore direct all the trial Judges to remain alive at the time of recording evidence and to actively participate in the process and should control the criminal trial by such active participation to find out the truth and to ensure justice.

21. It appears that the trial Judge framed the charges against the accused for the period between 19.10.1989 to 28.12.1995. As required under *Sub-Section (2) of Section 212 of CrPC* a charge of criminal breach of trust of dishonest misappropriation of money shall be prepared with mention of gross sum or property and the days between which the offence allegedly committed.

Section 219 of CrPC clearly prescribes that the offences committed within a span of twelve months may be charged in the trial. But here a period of nine years was mentioned in the charge which was contrary to the provisions prescribed in the *Code of Criminal Procedure*. However, this defect will not vitiate the trial in view of the provision of *Section 464 of CrPC* if the prosecution could prove that the criminal breach of trust was committed within one year of the period of charge. This was, no doubt a defect in the charge which should not have occurred and the trial Judge would remain cautious about framing of the charges, since a charge is a notice to the accused to which he will be tried.

22. In respect of the charge under *Section 468 of IPC*, we find the learned trial Judge practically based on no evidence recorded punishment. The learned Addl. P.P. before the appellate Court submitted that there was no cogent evidence that the accused forged any document. The finding recorded in *para 28* of the judgment passed by the learned Addl. Sessions Judge has not

been confronted by the Public Prosecutor. The observation of the learned Addl. Sessions Judge that there is no legal evidence to show that the accused forged any document is a correct finding and we find nothing to interfere in the finding.

23. We also find nothing to remand the case after such a long period. However, if the victim/the informant so consider that the accused committed any misconduct in respect of maintaining the books of accounts and other documents and thereby any loss sustained by the State it will be at liberty to proceed against the accused departmentally for misconduct in accordance with law.

24. The appeal therefore fails and is dismissed.

25. Registrar General is directed to send a copy of this judgment to the Legal Remembrancer, Government of Tripura, the Director General of Police, Tripura and also to all the Judicial Officers of the State.

JUDGE

CHIEF JUSTICE