



							purpose of section 428 of IPC
A-1	Mr. Ramen Kalita	15/07/2015	28/07/2015	U/S 408/409 /420 of IPC	Acquitted	N/A	N/A

## APPENDIX-13

Date of offence	21/09/2005 to 29/06/2010
Date of FIR	12/04/2013
Date of charge-sheet	31/07/2015
Date of framing of charges	13/12/2017
Date of commencement of evidence	26/12/2018
Date on which judgment is reserved	08/09/2022
Date of judgment	08/09/2022
Date of the Sentencing Order, if any	N/A

**(J U D G M E N T)**

1. The prosecution case in brief as unfolded from the 'ejahar' filed by the informant Late H.T. Samuel, SDI, Nalbari East Sub-Division is that Sri Ramen Kalita while working as Branch Post Master at Ulabari Post Office under Karia Sub Post Office

from 21-09-2005 to 29-06-2010 misappropriated Rs. 3,21,027.05/- different savings bank and recurring accounts. The said Sri Ramen Kalita received the deposits from the account holders and authenticated by putting his signature and date stamp of the office in the passbooks but did not credit the amounts in Govt. account. Thereby misappropriated Rs. 3,21,027.05/- during the said period. Hence, the informant lodged this case.

- 2.** The Officer-in-charge, Nalbari Police station, on receipt of the Ejahar registered Nalbari P.S. Case No. 284/13, under section 408/420 of IPC and endorsed the concerned I/O for investigation. After completion of the investigation, the concerned I/O submitted charge sheet against the accused Sri Ramen Kalita under Section 408/420 of IPC.
- 3.** In due course, the accused appeared before the Court and the copies of relevant documents were furnished to him as per section 207 of Cr.P.C. Having found a prima facie case against the accused person, the charge is framed, under Section 408/409/420 of IPC against the accused person, which is read over and explained to him vide order dated 13.12.2017, to which he pleaded not guilty and claimed to be tried.
- 4.** The prosecution side examined five (05) witnesses. The Learned Assistant Public Prosecutor prayed to close the PW evidence. The PW evidence is closed as per the submission of the Ld. APP.

5. The statements of the accused person under section 313 of Cr.P.C. is recorded wherein he took the plea of innocence and false implication. Defence side examined no witnesses.
6. I have heard the arguments advanced by the Learned Counsels for both sides.

**7. POINTS FOR DETERMINATION:-**

- (i) *Whether the accused from 21-09-2005 to 29-06-2010 being a Branch Post Master of Ulabari Post Office under Karia Sub-Post Office and being entrusted with money of different saving and recurring accounts of account holder's committed criminal breach of trust of amount Rs. 3,21,027.05/- and thereby committed an offence u/s 408 of I.P.C ?*
- (ii) *Whether on the same date, time and place, the accused being entrusted with cash amount of Rs. 3,21,027.05/- as Post Master of Ulabari Post-Office committed criminal breach of trust in respect of that amount and thereby committed an offence u/s 409 of I.P.C ?*
- (iii) *Whether on the same date, time and place, the accused dishonestly induced several account holder's holding savings and recurring accounts to deliver cash to the accused and thereby committed an offence u/s 420 of I.P.C ?*

**EVIDENCES OF PWs:**

- 8.** PW-1 Sri Pankaj Deka deposed that the informant H.T. Samuael was his predecessor Inspector of Posts (East), Nalbari. The accused Ramen Kalita was the Branch Postmaster of Ulabari Branch Post Office under Karia S.P.O. during the period 2005 to 2010. He joined as Inspector of Posts, Nalbari East Sub-Division on 05-08-2013. After inspection of documents he came to know that the accused Ramen Kalita did not deposited the money of S.B. (savings bank account) and R.D. (recurring deposit) received from the customers in the government account and misappropriated the same. He could know that the an 'ejahar' was filed against the accused on 12-04-2013 by the informant. In the month of June, 2015 Jagadish Kalita, I/c Kamarkuchi Outpost came to his office and seized 59 nos. of S.B. Account passbook, 35 nos. of recurring deposit passbook, original R.D. Journal book, S.B. Journal book and other related documents. Exhibit 1 is the seizure list and Exhibit 1(1) is his signature. As per his knowledge informant H.T. Samuael died in the year 2014. He is acquainted with his signature. Exhibit 2 is the 'ejahar' filed by H.T. Samuael and Exhibit 2(1) is his signature which he knows.
- 9.** During cross-examination PW-1 deposed that the Ulabari Branch Office is under Karia Sub Post Office and the Karia Sub Post Office is under Nalbari Head Post Office. The 'ejahar' was filed prior to his joining as Inspector of Posts, Nalbari. He

does not remember the amount that was misappropriated by the accused. At the time of seizure he was working at Nalbari East Sub-Division, Milanpur. The documents were seized from the Office of Inspector of Posts, Nalbari East Sub-Division, Milanpur. The seized documents were available in the office prior to his joining. He does not know who brought the documents prior to his joining in the office. He has not seen the seized documents in court on the day of his deposition. He put only one signature in the seizure list. He has not stated before police that after inspection of documents he came to know that the accused Ramen Kalita did not deposited the money of S.B. (savings bank account) and R.D. (recurring deposit) received from the customers in the government account and misappropriated the same. He does not know whether any customer filed 'ejahar' against the accused for misappropriation of deposited money. The Head Post Office monitors the daily account of Branch Office and Sub Office. He denied defence suggestion that this case was filed after three years to escape the liability of the Nalbari Head Post Office regarding misappropriation of money.

- 10.** PW-2 Sri Bichitra Rajbongshi deposed that on 19-06-2015 he was working as Mail Overseer in the office of Inspector of Posts, Nalbari East Sub-Division. He knew the informant H.T. Samuael. He saw the accused on the day of his deposition for the first time in the dock. He could know from documents that Ramen Kalita worked at Ulabari B.P.O.

49 nos. of Savings Passbook, 35 nos. of R.D. Passbook and some journal were seized by police from Pankaj Deka, the then Inspector of Posts, Nalbari East Sub-Division. Police took his signature in the seizure list. Exhibit 1(2) is his signature.

**11.** During cross-examination PW-2 deposed that he joined in his service as Postman on 09-02-2012 at Belsor Post Office. On 01-06-2015 he joined the office of Inspector of Posts, Nalbari East Sub-Division. The police seized the documents from the Head Post Office at Milanpur. He does not have personal knowledge as to who brought the seized documents to the office of Inspector of Posts, Nalbar East Sub-Division, Milanpur. He does not remember how many signatures he put in the seizure list, probably he put one signature. The Ulabari Branch Office is under Karia Sub Post Office and the Karia Sub Post Office is under Nalbari Head Post Office. The head office knows about the transaction made in the B.P.O. and Sub Post Office. He denied defence suggestion that this case was filed after three years to escape the liability of the Nalbari Head Post Office regarding misappropriation of money.

**12.** PW-3, Sri Jatin Talukdar deposed that he knows the informant H.T Samuael. He knows the accused Ramen Kalita. He worked as Branch Post Master at Branch Post Office Ulabari from 10/02/12 to 12/03/18. He heard that prior to his joining Ramen Kalita misappropriated the recurring and

savings account of several persons and it was detected during checking in their office that the amount was not reflected in the office journal. Police recorded his statement.

**13.** During cross-examination PW-3 deposed that police recorded his statement in the year 2015. In the year 2010 he was not employed. He knows Ramen Kalita as he was earlier working as Branch Post Master at Ulabari. Ulabari Branch Post Office is under Koria Sub-Office and the said Sub-Office is under Nalbari Post Office. He heard about the misappropriation from office staff after his joining. Every year inspection is conducted under the Inspector. He does not know the year of incident. He does not know when the ejahar was filed. He does not know whether any other person has filed ejahar. He denied defence suggestion that the informant filed a false case against the accused to escape his liability. He denied defence suggestion that he deposed falsely.

**14.** PW-4, Sri Khanindra Kalita deposed that he knows the informant H.T Samuael. He knows the accused Ramen Kalita. At the time of the incident he was working in the Karia Post Office and accused was working at Ulabari Branch Office. He heard from some officers of their office that accused committed some kind of fraud of money at Ulabari branch office. He does not know anything in details. Police recorded his statement.

**15.** During cross-examination PW-4 admitted that Ulabari branch office is under Karia post office and Karia post

office is under the Head office of Postal Department of Nalbari district. The day to day transaction of the post office and branch office are intimated to the head post office daily.

**16.** PW-5 (IO), SI Jagadish Kalita deposed that on 27-09-2014, he was on duty as SI at Kamarkuchi Out Post under Nalbari Police Station. On that day, the then OC Nalbari PS endorsed him for investigation of the case. The instant case i.e., Nalbari PS case 284/2013 was registered u/s 408/420 of IPC by the then OC on received of the FIR filed by H. T. Samual, SD, Nalbari Sub Division. SI Jayanta Kakati was endorsed for investigation of the case and he investigated the case till 27-09-2014. Due to his transfer, the case was endorsed to him. From the FIR, he came to know the allegation made against the accused Ramen Kalita who was Sub-Postmaster, Ulabari, Nalbari and he misappropriated the money of saving pass book holder and recurring holder. He visited Karia Post office and thereafter visited Ulabari Post Office. At that time, Jatin Talukdar was post master of Ulabari post office. He prepared the sketch map. **Exhibit P-3** is the sketch map and **Exhibit P-3(1)** is his signature. He recorded the statement of Post Master of Ulabari Post Office, Jatin Talukdar. He came to know that the documents connected were already seized by their department and kept in Nalbari Postal Division Office. He came to know that the accused is already suspended and the departmental inquiry is going on. He visited Nalbari Postal Division Office and seized RD Journal

book Vol. 1 & 2 by preparing seizure list i.e. MR no. 186/2015. **Exhibit P-1** is the seizure list and **Exhibit P-1(3)** is his signature. He also seized B Journal book by MR No. 187/2015 by preparing seizure list. **Exhibit P-4/PW-5** is the seizure list and **Exhibit P-4(1)** is his signature. He also seized on the same day vide MR no. 188/2015, 35 original postal RD book by preparing seizure list in presence of seizure witnesses. **Exhibit P-5/PW-5** is the seizure list and **Exhibit P-5(1)** is his signature. He also seized 49 numbers of original postal saving book by vide MR no. 189/2015 by preparing seizure list in presence of seizure witnesses. **Exhibit P-6/PW-5** is the seizure list and **Exhibit P-6(1)** is his signature. He prepared the seizure list i.e., Exhibit P-1, Exhibit P-2, Exhibit P-3 and Exhibit P-4 in presence of seizure witnesses namely Pankaj Deka and Bichitra Rajbongshi. He recorded their statement u/s 161 CrPC. On the same day vide zimma no. 108/2015, vide zimma no. 109/2015, vide zimma no. 110/2015 and vide zimma no. 111/2015 custody of the seized documents of Exhibit P-1, Exhibit P-2, Exhibit P-3 and Exhibit P-4 were given to Pankaj Deka, Inspector of Post Office, Postal Division Nalbari. He found prima facie material that the accused person had not deposited Rs. 2,88,255/- in the accounts of the customer and misappropriated. He arrested the accused person after finding incriminating material against him. He recorded his statement and forwarded him to the Ld. Magistrate with a prayer for

judicial custody. After completion of the investigation, he found sufficient material against the accused Ramen Kalita and submitted charge sheet no. 275/2015 dated 31/7/2015, u/s 408/420 of IPC against the accused person. **Exhibit P-7** is the charge sheet and **Exhibit P-7(1)** is his signature.

- 17.** During cross-examination PW-5 (IO) deposed that the FIR was received on 12-04-2013. He was endorsed after 2 years of registration of the case for investigating the case. As per the FIR, the cause of action from 21-09-2005 to 29-06-2010. He prepared the sketch map on 18-05-2015. As per the sketch map the PO is Ulabari Post Office. He recorded the statements of witnesses namely Jatin Talukdar, Bichitra Barman, Pankaj Deka and Bichitra Rajbongshi. The relevant documents were not at Ulabari Post Office at the time of his visit. The relevant documents were not seized by him at the alleged place of occurrence. The stolen property i.e., the money was misappropriated as stated in the FIR is Rs. 3,21,027.05/-. During investigation he found, Rs. 2,88,255/- was misappropriated. He denied defence suggestion that he submitted charge sheet without proper investigation. He has not recorded the statement of the informant nor he sent any material to the FSL.

**DISCUSSION, DECISION AND REASONS THEREOF:**

- 18.** The allegation against the accused is that the accused Sri Ramen Kalita was working as Branch Post Master at Ulabari Post Office under Karia Sub Post Office from 21-09-

2005 to 29-06-2010 misappropriated Rs. 3,21,027.05/- different savings bank and recurring accounts. The said Sri Ramen Kalita received the deposits from the account holders and authenticated by putting his signature and date stamp of the office in the passbooks but did not credit the amounts in Govt. account. Thereby misappropriated Rs. 3,21,027.05/- during the said period.

**19.** The evidence of PW-1, PW-2, PW-3 and PW-4 reveals that all the witnesses are from the postal department. Not a single witness of the persons who holding the account or victim aggrieved by the alleged act was produced by the I/O or prosecution side as prosecution witness.

**20.** It is to be noted that the informant of the case expired and his evidence was dispensed with.

**21.** From the evidence of PW-1, Sri Pankaj Deka, it is found that the informant H.T. Samuael was his predecessor Inspector of Posts (East), Nalbari. The accused Sri Ramen Kalita was the Branch Postmaster of Ulabari Branch Post Office under Karia S.P.O. during the period 2005 to 2010. He joined as Inspector of Posts, Nalbari East Sub-Division on 05-08-2013. After inspection of documents he came to know that the accused Sri Ramen Kalita did not deposited the money of S.B. (savings bank account) and R.D. (recurring deposit) received from the customers in the government account and misappropriated the same. He could know that an 'ejahar' was filed against the accused on 12-04-2013 by the

informant. In the month of June, 2015 Sri Jagadish Kalita, I/c Kamarkuchi Outpost came to his office and seized 59 nos. of S.B. Account passbook, 35 nos. of recurring deposit passbook, original R.D. Journal book, S.B. Journal book and other related documents. Exhibit 1 is the seizure list and Exhibit 1(1) is his signature. As per his knowledge informant H.T. Samuael died in the year 2014. He is acquainted with his signature. Exhibit 2 is the 'ejahar' filed by H.T. Samuael and Exhibit 2(1) is his signature which he knows. During cross-examination PW-1 clearly says that he could not remember the amount that was misappropriated by the accused. At the time of seizure he was working at Nalbari East Sub-Division, Milanpur. The documents were seized from the Office of Inspector of Posts, Nalbari East Sub-Division, Milanpur. The seized documents were available in the office prior to his joining. He does not know who brought the documents prior to his joining in the office. He has not seen the seized documents in court on the day of his deposition. He put only one signature in the seizure list. He has not stated before police that after inspection of documents he came to know that the accused Sri Ramen Kalita did not deposited the money of S.B. (savings bank account) and R.D. (recurring deposit) received from the customers in the government account and misappropriated the same. He does not know whether any customer filed 'ejahar' against the accused for

misappropriation of deposited money. The Head Post Office monitors the daily account of Branch Office and Sub Office.

- 22.** PW-2, Sri Bichitra Rajbongshi is a seizure witness. From his evidence also it is found that he does not have any personal knowledge of the alleged incident. He saw the accused for the first time in the dock while he came for deposition.
- 23.** PW-3, Sri Jatin Talukdar also does not know whether any other person has filed ejarah. During his evidence he stated that he heard that prior to his joining Sri Ramen Kalita misappropriated the recurring and savings account of several persons and it was detected during checking in their office that the amount was not reflected in the office journal.
- 24.** PW-4, Sri Khanindra Kalita also does not know anything in details.
- 25.** PW-5, SI Jagadish Kalita is the I/O of this case. In his evidence he deposed about the investigation of the case. During cross-examination he says that the FIR was received on 12-04-2013. He was endorsed after 2 years of registration of the case for investigating the case. As per the FIR, the cause of action from 21-09-2005 to 29-06-2010. He prepared the sketch map on 18-05-2015. As per the sketch map the PO is Ulabari Post Office. He recorded the statements of witnesses namely Sri Jatin Talukdar, Sri Bichitra Barman, Sri Pankaj Deka and Sri Bichitra Rajbongshi. The relevant

documents were not at Ulabari Post Office at the time of his visit. The relevant documents were not seized by him at the alleged place of occurrence. The stolen property i.e., the money was misappropriated as stated in the FIR is Rs. 3,21,027.05/-. During investigation he found, Rs. 2,88,255/- was misappropriated. He denied defence suggestion that he submitted charge sheet without proper investigation. He has not recorded the statement of the informant nor he sent any material to the FSL.

**26.** From the evidence on record it is found that though the allegation against the accused is that he misappropriated the money of the account holder in this case, no evidence of account holder is with the record. The account statement and other documents were also not produced before this court. The transaction of the stolen property i.e., the stolen money also not produced before this court.

**27.** It is a cardinal principle of criminal jurisprudence that the guilt of the accused to be proved beyond reasonable doubt. But in the present case at hand nothing incriminating can be found against the accused person.

**28.** Situated thus, in my considered opinion the prosecution side has failed to bring home the guilt of the accused person Under Section 408/409/420 of IPC.

## **CONCLUSION**

The prosecution side failed to prove its case that accused person has committed offence u/s 408/409/420 of IPC.

**ORDER**

In the light of aforesaid discussions and reasons, it is seen that the prosecution side failed to prove the guilt of the accused person beyond reasonable doubt.

Accordingly, the accused Sri Ramen Kalita is acquitted from the offence under section 408/409/420 of IPC and he is set at liberty forthwith.

The bail bond of the accused person and his surety shall remain in force for a period of 6 months from today as per amended Cr.P.C.

**Given under my hand and seal of this court on this 08<sup>th</sup> day of September, 2022.**

Sri Jayanta Kumar Saikia  
Addl. Chief Judicial Magistrate  
Nalbari

**APPENDIX-14****LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES****A. Prosecution witness**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sri Pankaj Deka	Other witness
PW-2	Sri Bichitra Rajbongshi	Other witness
PW-3	Sri Jatin Talukdar	Other witness
PW-4	Sri Khanindra Kalita	Medical witness
PW-5	SI Jagadish Kalita	Police witness

**B. Defence witnesses, if any: NOT APPLICABLE**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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**C. Court witnesses, if any: NOT APPLICABLE**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

## **LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

### **A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exhibit 1	Seizure list
2.	Exhibit 2	Ejahaar
3.	Exhibit P-3	Sketch map
4.	Exhibit P-1	Seizure list
5.	Exhibit P-4/PW-5	Seizure list
6.	Exhibit P-5/PW-5	Seizure list
7.	Exhibit P-6/PW-5	Seizure list
8.	Exhibit P-7	Charge sheet

### **B. Defence: NOT APPLICABLE**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>

### **C. Court Exhibits: NOT APPLICABLE**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>

**D. Material Objects: Not applicable**

Sr. No.	Exhibit Number	Description
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Sri Jayanta Kumar Saikia  
Addl. Chief Judicial Magistrate  
Nalbari