

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 No. 2095 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Narendra Bali, Advocate, for the applicant. Mr. V.K. Gemini, Deputy A.G., for the State of Uttarakhand. It has been argued by the learned counsel for the applicant, that no offence under Section 406 of the IPC is made out against the present applicant, which could have necessitated for taking cognizance for the offences, for which, the summoning order has been issued. Learned counsel for the applicant contends, the elements prescribed under Section 409 of the IPC, to make out the breach of trust, as it has been described under Section 405 of the IPC, since the said elements are not satisfied, no cognizance as such could have been taken on the same. The aspect of entrustment, and the demonian over property are the basic elements, which are required to be considered with regard to formulation of an offence under Section 409 of the IPC, and the said aspect has been made applicable to the merchants or the agents working under the principle agent to first establish breach to bring the offence under Section 409 of the IPC. The basic ingredients of the offence under Section 405, has to be read with Section 409 of the IPC would be, that the agent who has been entrusted with the property, is bound to account for, whether he has committed a criminal breach of trust or not, is a fact to be established by evidence. The learned counsel for the applicant in support of his C-482 Application, submits that the ingredients of Section 409 of the IPC, will not be made out, owing to the bill dated 17th November, 2021, for an amount of Rs.2,87,046/- as well as the bill dated 29th June, 2022, for an amount of Rs.7,76,956/-, for the reason being, that as against

			the bill thus issued on the aforesaid dates, the ledger account of Sai Stone Crusher for the period from 1st April, 2022 to 27th October, 2022, reflects the balances as referred to in the bills by the present applicants. This Court is of the view, that a criminal breach of trust under Section 405 of the IPC to attract the criminal clause under Section 409, when it entails an appreciation of a comparative analysis about the disbursement of the money as contended thereof, not be an aspect falling under the domain of Section 482 of the Cr.P.C., as the Court exercising powers under Section 482 of the Cr.P.C. are restrained from conducting a mini trial to decide as to whether the offence is made out or not, and particularly when, for coming to that conclusion, the evidence has to be appreciated and recorded. Since, the applicant has ventured to answer the culpability of an offence under Section 406 of the IPC, based upon the appreciation of evidence and its comparative analysis, it will not be an ambit under Section 482 of the Cr.P.C., which could be gone into. Hence, this Court declines to interfere in this C-482 Application, leaving all defences open to be argued before the learned Trial Court of Judicial Magistrate, Nainital, before whom the Criminal Case No. 3395 of 2023, State Vs. Arsad Malik is pending. The C-482 Application is accordingly dismissed. (Sharad Kumar Sharma, J.) Dated 19.10.2023 Shiv
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