

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 67 of 2015

Kailash Chandra Upadhyaya

--Revisionist

Versus

State Of Uttarakhand Through Principal Secretary Home,
Government Of Uttarakhand, Dehradun

--Respondent

Judgment reserved on: 05.05.2026
Judgment Delivered on: 31.07.2026

Presence:-

Mr. Lalit Sharma, learned counsel with Ms. Suraiya Naaz, learned counsel
for the revisionist.

Mr. G.S. Sandhu, learned Additional Advocate General with Mr. Tumul
Nainwal, learned A.G.A. and Mr. Deepak Bhardwaj, learned Brief Holder
for the State.

Hon'ble Mr. Justice Rakesh Thapliyal, J.

1. The present criminal revision is preferred by the revisionist against his conviction for the offence punishable under section 409 of IPC by the Trial Court, which is also affirmed by the Appellate Court by reducing the sentence from three years R.I. to one year by increasing the fine upto Rs. 1 lakh from Rs. 10,000/-.

2. The brief facts of the case are that the revisionist was serving as Collection Ameen given the task of collecting money from defaulters but the amount as collected at the tune of Rs. 70,600/- were not deposited. Before advancing the argument, it

is submitted by the learned counsel for the revisionist that though the Sub Divisional Magistrate recommended for initiation of disciplinary proceeding against the revisionist but instead of initiating disciplinary proceeding and straightway the FIR was lodged and though the charge-sheet was filed for the offence under section 409 of IPC and the applicant was summoned to face the trial and thereafter on 25.10.2012 the charges were framed under section 409 of IPC and the revisionist denied all the charges and claimed trial.

3. The prosecution produced eight prosecution witnesses PW1 to PW8 and thereafter the accused/revisionist was examined under section 313 of Cr.P.C. and then the Trial Court convict the revisionist by judgment and order dated 20.04.2013 with three year R.I. and fine of Rs. 10,000/- and in default of payment of fine it is further directed that he has to serve three months additional imprisonment.

The order of conviction and sentence was assailed by the revisionist in Criminal Appeal No. 21 of 2013, which was partly allowed by the learned District and Session Judge by judgment and order dated 28.01.2025; however, the sentence as awarded by the Trial Court was reduced from three years R.I. to one year R.I. by enhancing the amount of fine from Rs. 10,000/- to Rs. 1 lakh.

4. It is argued by the learned counsel for the revisionist that the conviction and sentence as awarded by the Trial Court as well as the First Appellate Court is not illegally unsustainable because the temporary retention of money due to procedure delay does not automatically equate to dishonest misappropriation. He further submits that the conviction under section 409 of IPC cannot rely solely on an administrative

admission without independent corroborative evidence of entrustment and dishonest intention and the prosecution failed to examine the actual defaulters who allegedly paid the dues to the revisionist. Learned counsel for the revisionist further submits that the courts below erred in law by relying on the alleged admission of the revisionist and conviction and sentence is based upon the admission which is wholly unwarranted.

5. On the other side, Mr. Tumul Nainwal, learned A.G.A., submits that the revisionist collected money from several defaulters and also issued the receipts but he failed to deposit the collected amount into the Government Treasury/Society's account and after collecting all materials during investigation the charge-sheet was filed under section 409 of IPC and there is a concurrent finding of both the courts with regard to the conviction and sentence which cannot be interfered within the revisional jurisdiction. He also submits that the sentence as awarded by the Trial Court which was reduced from three years R.I. to one year R.I. is proportionate to the charge.

6. After hearing submission of learned counsel for the parties the primary issue for determination is whether the revisionist's admission is itself sufficient to prove the dishonest misappropriation of money, which he has received from the defaulters for which the receipts were given and is also sufficient to sustain conviction under section 409 of IPC. It is settled law that to establish an offence under section 409 of IPC the prosecution must prove two vital ingredients:

- i. The accused was public servant entrusted with the property.

- ii. The accused dishonestly misappropriated or converted that property to his own use.

7. This court peruse the record of the Trial Court and it reveals the prosecution relied heavily on the admission of the revisionist. Under criminal jurisprudence an admission made is not sufficient for requirement of proving mens rea (criminal intent) beyond reasonable doubt. There is no evidence that the applicant misappropriate the money or used for his personal gain.

8. After perusing the judgment of the Trial Court as well as the First Appellate Court what this court has observed that both the courts below heavily relied upon the admission of the applicant but the question is whether the admission itself is sufficient to prove the charge. There is no evidence that the money was used for the personal gain and only allegation is that the revisionist collected the money but have not deposited either in the treasury or in the account of the society.

9. The High Court in its revisional power is meant to correct manifest error of law and blatant misappropriation of evidence that lead to miscarriage of justice. On perusal of the judgment and order passed by the Trial Court as well as the First Appellate Court and after perusing the Trial Court record it reveals that there is no any iota of evidence with regard to the misappropriation of money and only this much allegation is that the amount was not credited.

10. Thus, this court is of the view that both the courts committed a material irregularity by substituting an admission for legal prove of dishonest intent. Criminal breach of trust

requires strict prove of dishonesty, which is missing in this case. Consequently, the instant Criminal Revision is allowed.

11. The judgment of conviction and sentence passed by the Trial Court as upheld by the Appellate Court is set aside. The revisionist is acquitted of the charge under section 409 of IPC.

12. His bail bonds are discharged. The Trial Court record is remitted back along with the copy of this order.

(Rakesh Thapliyal, J.)

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