AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1942 of 1998

1. Harnam Singh Ore S/o Belan Singh Ore, aged about 40 years, R/o Village Andu, Tikari Tola, P.S. Gorelal, District Bilaspur (M.P.) now (C.G.).

2. Krishna Pratap Singh S/o Shiv Pratap Singh, aged about 40 years, R/o Village Wadarafnagar, P.S. Basantpur, District Surguja (M.P.) now (C.G.) (Appeal abated in respect of appellant Krishna Pratap Singh as per order dated 13/05/2014)

---- Appellants

Versus

1. State of Madhya Pradesh (now Chhattisgarh), Through Station House Officer, Police Station Jainagar, District Surguja (M.P.) now (C.G.).

---- Respondent

For Appellant No. 1	:	Shri Vishwanath Goswami, Advocate.
For Respondent/State	:	Shri Raghvendra Verma, Govt. Advocate

Hon'ble Justice Shri Gautam Chourdiya

29/08/2019

Judgment On Board

1) This appeal is filed by the accused under section 374 of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 26/08/1998 passed by 1st Additional Sessions Judge, Ambikapur (M.P.) now (C.G.) in Special Case No. 5/85; whereby the appellants Harnam Singh Ore & Krishna Pratap Singh stand convicted and sentenced as under:-

Conviction	Sentences
U/s. 409 of Indian Penal Code (in short "IPC")	R.I. for 3 years
U/s. 33 of Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982	R.I. for 3 years
U/s. 34 of Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982	R.I. for 3 years
(All sentences were directed to run concurrently)	

2) This appeal is filed by appellants accused Harnam Singh and Krishna Pratap Singh both are tried for offence under section 409 of IPC and under sections 33 & 34 of Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982 and both accused alongwith accused Chandrashekhar Prasad, Sadhucharan, Parasnath Singh and Nanhe Singh were also tried for that same offence. During trial Parasnath Singh and Nanhe Singh died and after conviction Chandrasekhar Prasad and Sadhucharan both accused person were filed separate appeal against the conviction and sentence passed by I[st] Additional Session Judge, Ambikapur, District Surguja (M.P.) in Special Case No. 5/85 judgment passed on 26/08/1998. As per the judgment of the trial Court accused Harnam Singh, Krishna Pratap Singh, Chandrashekhar Prasad and Sadhucharan all four are convicted for offence under section 409 of Indian Penal Code and under sections 33 & 34 of Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982 convicted.

3) Chandrashekhar Prasad after conviction filed appeal i.e. Criminal Appeal No. 2634/1998, during pendency of appeal appellant Chandrashekhar Prasad died, therefore, as per the order passed by Co-ordinate Bench on 18/06/2014 due to death of the appellant, appeal stands disposed of as abated. Similarly, the Sadhucharan also filed an appeal i.e. Criminal Appeal No. 2091/1998 Sadhucharan Vs/ State of M.P. and during pendency of appeal Sadhucharan died on 09/10/2003. Accordingly, vide order dated 25/04/2014 the appellant preferred by Sadhucharan was dismissed as abated. In the instant appeal, Krishna Pratap Singh also died on 03/08/2004, therefore, this appeal filed by Krishna Pratap Singh is also abated as per order passed dated 13/05/2014.

4) Case of the prosecution in brief is that Sadhucharan was appointed as a Salesman in Co-operative Society, Songara and accused appellant Harnam Singh Ore was appointed as Manager of that Society. As a Manager his official duty as per Ex. P-18 is prescribed to maintain the Cash Book, Income &

Expenditure and Profit & Loss of the Society.

As per Ex. P-1 (Audit Report), Sadhucharan received amount of Rs. 66,307.76/- by sale of commodity, out of which he deposited only Rs. 44,746.52 in the said Society and remaining amount of Rs. 21,561.24/- was not deposited. Further he received an amount of Rs. 2,300.90 and Rs. 14,079.11/- on different dates which were also not deposited by him, therefore, amount of Rs. 37,941.25 was embezzled by Sadhucharan, who was the Salesman of the said Society.

Similarly, as per Ex. P-24 (Audit Report) Sadhucharan received Rs. 18848.51 and Rs. 8527.44 by sale of different commodities on different dates which were also not deposited by Sadhucharan with the said Society, therefore amount of Rs. 27,375.95 was embezzled by Sadhucharan.

There are two Audit Reports i.e. Ex. P-1 and Ex. P-24 submitted by PW-11 K.K. Jhoolan, who is the Sub-Auditor in Assistant Registrar Office, Surguja (Ambikapur) according to which it was found that total amounting of Rs. 65,316.30 was embezzled by Sadhucharan and other accused as a Manager Harnam Singh Ore, Parasnath Singh Chief Observer of the Society, Krishna Pratap Singh Samiti Sewak, Chandrashekhar Prasad Vice President and Nanhe Singh President of the Society. They all have committed embezzlement of the said amount while dealing with the Public Distribution System, therefore, the charge under section 409 of IPC and under sections 33 & 34 of Madhya Pradesh Vinirdisht Bhrashtachar Nivaran Adhiniyam 1982 were framed and after trial, they all are convicted as above mentioned in para 1.

5) As per charge sheet and charge framed against the accused appellants that during period 11/10/1982 to 18/10/1982 that amount received by the Sadhucharan (Salesman) and deposited before Harnam Singh who is the Manager of the Society and he committed embezzlement and tempering with the system of Public Distribution System regarding essential commodity,

therefore all are convicted as per above mentioned in para 1 & 2 of this judgment.

6) Prosecution case is based on the Audit Reports i.e. Ex. P1 and Ex. P-24 submitted by PW-11 K.K. Jhoolan and document seized by the Investigating Officer during investigation.

7) The Trial Court framed charge under section 409 of IPC and under sections 33 & 34 of Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982 against the appellant/accused to which he denied the charge pleaded innocence and prayed for trial.

8) In order to prove its case, the prosecution examine total 13 witnesses i.e. PW-01 Umeshwar Sharan Singh Dev, PW-02 Heeralal, PW-03 Hriday Narayan Singh, PW-04 P.R. Kashyap, PW-05 Madanlal Gupta, PW-06 Vinod Kumar Sinha, PW-07 Rajdev Pandey, PW-08 Kamal Narayan Tiwari, PW-09 Ramchandra Singh, PW-10 Ramkumar Jaiswal, PW-11 K.K. Jhoolan, PW-12 Bhubneshwar Mishr and PW-13 Kanhai. Statement of the accused was recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. Defence witness DW-01 Parmatma Singh and DW-02 Rambriksh Singh were examined by the accused in his defence.

9) The Trial Court after considering the material available on record by the impugned judgment convicted and sentences the appellant/accused under section 409 of IPC and under sections 33 & 34 of Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982.

10) Learned counsel for the appellant submits that it was the duty of Salesman Sadhucharan Assistant Salesman who was appointed in Adim Jati Sewa Co-operative Society, Songara to sell the commodity provided to Sadhucharan and after sale that commodity amount received by the Sadhucharan he maintains

the Cash Book and that amount is submitted before the appellant who is the Manager of the society, when the amount is deposited by Sadhucharan that receipt is provided by manager but no any amount is deposited by Sadhucharan, therefore, no any embezzlement offence is committed by the appellant, only on the basis of Audit Report that amount is embezzled by Sadhucharan and without any cogent and clinching evidence appellant is convicted. As per the statement of PW-11 K.K. Jhoolan in his para 3, he admitted that amount received by the Sadhucharan was not deposited with the appellant Harnam Singh. No any receipt submitted by the Auditor or by the Prosecution that Rs. 65,316.30 received by the appellant and he embezzled the amount.

11) He further submits that no any Cash Book or Account Book is proved before the Trial Court nor exhibited nor tendered evidence, it is not duty of the Manager to see how much amount is received by the Salesman by way of sale, it is the duty of the Salesman after the commodity is sold by the Salesman to deposit the amount but no any amount entrusted to appellant and not embezzled by the appellant. As per the entire prosecution evidence only Audit Report was produced and proved nor any document is produced and proved by the prosecution, therefore, the manager is not liable to be punished for any offence if committed by Sadhucharan.

12) He further submits that as per examination under section 313 of Cr.P.C. Sadhucharan denied all the fact, he never took the defence that amount received by Sadhucharan was handed over to the appellant, he only denied all the facts in examination under section 313 of Cr.P.C. he was never appointed as Salesman, therefore, no specific defence was taken by the Sadhucharan who is the actual person responsible for receiving and depositing the amount and no any evidence adduced by the prosecution that Sadhucharan had given all the amount received by him during the period of 11/10/1982 to 18/10/1982 to the appellant, therefore, the learned Trial Court wrongly convicted

the appellant.

13) Lastly he submits that both Audit Reports were not provided to appellant and no any explanation was sought from the appellant regarding that amount, therefore, no any documentary evidence produced by the prosecution that amount is received by the appellant.

14) On the other hand learned counsel for the State/respondent supporting the impugned judgment and submits that the learned Trial Court considered all the relevant aspects of the matter. In this case Ex. P-1 and Ex. P-24 two Audit Reports were submitted by the PW-11 K.K. Jhoolan, Sub-Auditor of Society was proved and correct reports and total amount to a tune of Rs. 65,316.30/- was embezzled, hence there is no reason to disbelieve that document. The impugned judgment is based on Audit and duty of the appellant is to verify everyday sale by the Salesman and amount is deposited. Therefore, the learned Trial Court rightly convicted the appellant.

15) Heard learned counsel for both the parties and perused the material available on record.

16) For attracting the offence under section 409 of IPC, the prosecution is required to fulfill the following conditions:-

409. Criminal breach of trust by public servant, or by banker, merchant or agent.*—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

17) Sections 33 & 34 of Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982 reads as under:-

33. Tampering with the system by licensed dealer. *-Whoever, being a dealer licensed under any order issued under Section 3 of the Essential Commodities Act, 1955 (No. 10 of 1955), instead of supplying the essential commodity, declared by* *or under the said Act, as the State Government may, by notification specify for the purpose of this Chapter to the public concerned in accordance with the scheme of the public distribution system intentionally, knowingly or for corrupt motives transfers such essential commodity to other channels or maintains false or fictitious account for the fair distribution of the same, shall be punished with imprisonment of either description which may extend to three years or with fine or both.*

34. Abatement of offence under Section 33 by an officer. *- Whoever, being an officer, directly or primarily incharge of supervising the proper working of public distribution system, knowingly omits to check and report, connives or abets the commission of the offence punishable under Section 33 shall be punished with imprisonment of either description which may extend to three years or with fine or both.*

18) It is not disputed by both the parties that the appellant is working as a Manager in said Society and as per Ex. P-18 (Bye-laws of Society) his duty is described.

19) PW-01 Umeshwar Sharan Singh Dev has stated that at the relevant time he was posted as President of Central Co-Operative Bank, Ambikapur. In the month of December 1982 report Ex. P-1 of the Auditor was submitted before him, from perusal of which it appeared that some employees of the Bank have committed embezzlement of an amount of Rs. 65,316.30/- and therefore by D.O. letter Ex. P-2 he requested the District Magistrate, Ambikapur for looking into the matter and taking action against the wrong doer. PW-02 Heeralal has not supported the prosecution case. PW-03 Hriday Narayan Singh is a witness to seizure Ex. P-3 whereby Consumer Distribution Register, Stock Register, Current Cash Book and old Cash Book were seized. PW-04 P.R. Kashyap, Station House Officer of P.S. Ganj District Raipur registered Ex. P-5 and forwarded the same for further action to Police Station Jainagar as the mater related to Songara village which falls within the jurisdiction of Jainagar. PW-05 Madanlal Gupta, Clerk in Co-operative Society Bank, Ambikapur witness to seizure Ex.P-6 has not supported the prosecution case. PW-06 Vinod Kumar Sinha who was working in the complaint section of Co-Operative Society Bank in November 1983 has stated that the Police had seized certain

documents as mentioned in Ex. P-6 from him. In the cross-examination he admits that accused Parasnath Singh had made a complaint regarding embezzlement to Adim Jati Sewa Sahkari Samiti, Songara which was submited by him before the then Chief Supervisor, Shri Bajpai the document of Ex. P-6 has been proved by him. PW-07 Rajdev Pandey, Head Constable in Police Station Jainagar as per Ex. P-7 seized duplicate copies of food grains register as also the documents as mention in Ex. P-6. He also seized the account details of Songara Co-Operative Society pertaining to the period from 06/11/1981 to 27/06/1982 amounting to Rs. 1,00,272.70/-. PW-08 Kamal Narayan Tiwari was working as clerk in Co-Operative Bank Pratappur, District Surguja at the relevant time. He is witness to seizure memo Ex. P-8 whereby certain challans as mentioned in the said documents were seized. PW-10 Ramkumar Jaiswal Samiti Sewak is witness to seizure memo Ex. P-7 whereby duplicate copy (Ex. P-22) of food grains distribution sent to Songara Adim Jati Sewa Sahkari Samiti was seized which contains the details of food grains and other house hold articles of worth Rs. 1,0,7,950.62/-.

20) From perusal of the evidence of aforesaid witnesses it is seen that they have not stated about receiving of the embezzled amount by the accused/appellant. No receipt bearing the signature of the appellant or any other documents is proved by these witnesses to establish that the amount in question received by Sadhucharan was handed over to the appellant.

21) As per PW-11 K.K. Jhoolan he examined Cash Book of Salesman and he found that Rs. 21,560/- was embezzled by Sadhucharan and that amount is not deposited with the Manager/appellant. In his para 7 also Auditor has admitted the fact that Sadhucharan is the Salesman in the Society but he has not deposited the amount received by him with the Manager. In Para 15 of his statement he also admitted the fact that commodity given by the Society was kept in custody of the Salesman for selling and first after selling the commodity amount

received by the Salesman and Salesman is the person who obtains money by selling the commodity and deposits with the Manager and obtains written receipt. But in this case no any amount received by Sadhucharan was deposited with the appellant, no any receipt issued by the appellant submitted by the prosecution nor proved by the prosecution. No any defence was taken by Sadhucharan that he deposited sale amount with the appellant, no any such defence taken by the Sadhucharan in his examination under section 313 Cr.P.C.

22) There is no Cash Book or receipt produced and proved by the prosecution that sale amount was received by the appellant/ Harnam Singh Ore and he was held guilty by the Trial Court on the basis of Audit Reports i.e. Ex. P-1 & Ex. P-24 that total sale amount of Rs. 65,316.30/- was not deposited by Sadhucharan. It is not proved by the document that Sadhucharan deposited any amount with the appellant/Harnam Singh Ore. Except the Audit Report, no evidence adduced by the prosecution against the appellant regarding embezzlement of the amount and that the commodity provided under Public Distribution System was tempered or misused by the appellant. The ingredients of the criminal breach of trust are not proved against the appellant/ Harnam Singh Ore. Therefore, the learned Trial Court has wrongly convicted appellant under section 409 of IPC and under sections 33 & 34 of Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982.

23) In the result, the appeal is allowed. The appellant is acquitted of the charges under section 409 of IPC and under sections 33 & 34 of Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982. Since the appellant is reported to be on bail, his bail bonds shall remain in force for a period of six months from today in view of provision of section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant