

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1001 of 2016**

- Umashankar Sahu S/o Shri Firanta Sahu Aged About 57 Years
Occupation- Government Service, R/o Village Bhedani Wrongly
Mentioned Medaki Police Station And Tahsil Berala, Civil And
Revenue District Durg Now Bemetara, Chhattisgarh.,

---- Applicant**Versus**

- State Of Chhattisgarh Through District Magistrate, Kanker,
District North Baster Kanker, Chhattisgarh., Chhattisgarh

---- Respondent

For Applicant	: Shri Manoj Kumar Sinha, Advocate
For Respondent /State	: Shri I.Lakda, Dy.Govt.Advocate

Hon'ble Smt. Justice Rajani Dubey**Order On Board****17/07/2019**

This revision under Sections 397,401 of Cr.P.C. has been filed against the order dated 22.09.16 passed by the Additional Sessions Judge to the court of First Additional Sessions Judge, Durg in Cr. A. No.29/2015 by which the appellate court has confirmed the order of conviction and sentence passed by the learned Chief Judicial Magistrate, Kanker in Criminal Case No. 394/2015 whereby convicting him under Section 409 IPC and sentencing to undergo RI for four years and fine of Rs. 3,000/- with default stipulation.

2. Brief facts of the case are that applicant/accused is a government servant working as Accountant (Assistant Grade-II) from July 1998 to September 2003 in the office of Block Education office, Antagarh. P.R.Dhurve was posted as Block Education Officer, Antagarh. During this period, the Block Education Officer P.R.Dhurve and the present applicant had fraudulently misappropriated the government amount of Rs. 12,98,228/- under different heads (pay allowance of Rs. 2,39,469/-, MPTC of Rs.24,807, GPF of Rs. 6,42,343/- , Advance pay allowance of Rs. 16,273/-, for Mid day meals Rs. 3,69,636/- and scholarship Rs. 5700/-). FIR was registered against the applicants however, during investigation, accused P.R.Dhurve died. After investigation, charge sheet was filed against the present applicant and charge was framed accordingly.

3. In order to prove guilt of the accused/applicant, prosecution has examined 21 witnesses. Statement of the accused/applicant was also recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing counsel for the parties, on appreciation of oral and documentary evidence trial court came to the conclusion that the applicant/ accused has committed criminal breach of trust and therefore he was convicted and sentenced accordingly. This order was appealed by the applicant and in the appeal, learned appellate court has confirmed the conviction and modified the sentence by reducing the sentenced to the period already undergone by him. Hence the present revision.

5. Counsel for the applicant submits that the order impugned passed by both the courts below are bad in law and on facts. Learned appellate court has not considered the fact that there is no corroborative evidence in the case and most of the witnesses have not supported the case of prosecution and have turned hostile. All the witnesses admitted that P.R.Dhurve, Block Education Officer is responsible and authorized for withdrawal and disbursement of the said amount and it is he who had fraudulently misappropriated the government amount and therefore the findings of the trial court are illegal as the offences under Section 409 IPC is not made out against the present applicant. He submits that the alleged amount given to the applicant has not been proved and the applicant has been falsely implicated in the case and his conviction is baseless and without any evidence. He submits that the trial court has also failed to prove any evidence with regard to the forgery on the part of the applicant. He also submits that the prosecution witnesses have not stated anything against the applicant with regard to demanding of amount from the applicant and it has not been proved that the criminal breach of trust has been made by the present applicant. He further submits that there is no cogent evidence on record to prove this fact as such the offence under Section 409 IPC is not attracted.

6. Heard counsel for the parties and perused the material available on record.

7. Before the trial court, most of the witnesses have turned hostile. The trial court has relied upon the audit report but in the said report also nothing has been mentioned in the name of the applicant with

regard to embezzlement. All the witnesses have admitted that the withdrawal forms and documents bear signatures of P.R. Dhurve. C.R. Darro (PW-8) in para 4 has stated that when he withdrew the amount at that time, the Incharge Accountant was Dewangan.

8. Nothing has been proved as to what was the role of the present applicant. Neelkanth Dewangan PW-5, who is accountant has stated in para 6 that he is not aware as to who withdrew the amount. Since the entrustment of amount has not been proved, it is difficult to uphold the conviction of the applicant under **Section 409** IPC.

9. In an offence under criminal breach of trust, prosecution has to prove that, whoever being 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 has made touching the discharge of such trust or willful act of any person committing breach to trust the essential ingredients are firstly, accused must entrust that property or dominion over the property. Secondly, he must have dishonestly misappropriated the property or converted it to his own use or dispose it of in violation of any trust. When these two distinct parts of the commission of offence are not proved by the prosecution, it is difficult to convict an accused on the ground of criminal breach of trust. Therefore, in the absence of such evidence, the conviction under **Section 409** is unsustainable in law.

10. In the result, the conviction and sentence passed by the trial court under **Section** 409 IPC is set aside and the accused is set at liberty. This **revision** petition is allowed.

Sd/-
(Rajani Dubey)
Judge