

**117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-10009 of 2023
Date of Decision: February 24, 2023

Ashok Kumar ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sunny K. Singla, Advocate for the petitioner.

DEEPAK GUPTA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C is to quash order dated 02.08.2022 (Annexure P.6) passed by learned Additional Sessions Judge, Sangrur and the order dated 19.11.2019 (Annexures P.3 and P.4) passed by learned Additional Chief Judicial Magistrate, Sangrur in FIR No.10 dated 14.02.2012 registered under Section 409 IPC at Police Station Bhawanigarh, District Sangrur, whereby petitioner has been charge-sheeted under Section 409 of IPC.

A short prayer made at this stage by learned counsel for the petitioner is that at the most, charges could have been framed under Section 406 IPC. It is pointed out that even the FIR was registered under Section 406 IPC and the final report under Section 173 Cr.P.C (Annexure P.2) was also submitted by the Police to prosecute the petitioner under Section 406 IPC.

Notice of motion.

Mr. P.S. Pandher, AAG, Punjab, accepts notice on behalf of the State. Learned State Counsel also concedes that challan was filed under Section 406 IPC.

Allegations are that paddy of Punjab State Ware House

Corporation for the year 2009-2010 was allotted for the purpose of milling to M/s Nabha Rice Milll Bhawanigarh of which petitioner is the proprietor. The paddy fell short due to which the FIR in question was registered. Section 409 IPC reads as under:-

“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.”

It is clear that in order to attract Section 409 IPC, the person to whom the property is entrusted should be in the capacity of public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, who commits criminal breach of trust. Here in this case, petitioner does not hold any of such capacity. Therefore, the impugned orders are hereby set aside. Instead of Section 409 IPC, prima-facie charge is liable to be framed under Section 406 IPC. The trial Court is directed to proceed accordingly.

Ordered accordingly.

February 24, 2023

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(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No