

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

116

CRM-M-15106-2023

Decided on : March 24, 2023

Ashok Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

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

NAMIT KUMAR, J. (Oral)

By way of filing the instant petition under Section 482 Cr.P.C, the petitioner has challenged the order dated 02.08.2022 (Annexure P-7) passed by learned Additional Sessions Judge, Sangrur and the order dated 19.11.2019 (Annexures P-4 and P-5) passed by learned Additional Chief Judicial Magistrate, Sangrur in FIR No.11 dated 14.02.2012 registered under Section 406 IPC at Police Station Bhawanigarh, District Sangrur, whereby petitioner has been charge-sheeted under Section 409 of IPC.

Learned counsel for the petitioner has *inter alia* submitted that in the present case, the FIR was registered under Section 406 IPC and even the final report under Section 173 Cr.P.C (Annexure P-3) was submitted by the Police to prosecute the petitioner under Section 406 IPC, so at the most charges could have been framed under Section 406 IPC. He has placed reliance upon the order dated 24.02.2023 passed by a Co-ordinate Bench of this Court in ***CRM-M-10009-2023 titled as Ashok Kumar versus State of Punjab.***

Notice of motion.

Mr. Adhiraj Singh, 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 Punjab Agro Foodgrains Corporation and Punjab State Ware House Corporation for the year 2009-2010 entrusted paddy for the purpose of milling to M/s Ashoka Rice Mill, Bhawanigarh, of which petitioner is the proprietor. On physical verification conducted by the team constituted under the supervision of District Food Supply Controller, Patiala alongwith custodians of Punjab Agro Foodgrains Corporation, the entrusted paddy was found less in number of bags as well as in weight also, due to which the FIR in question was registered. The provisions of 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 a 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 liable to be set aside and instead of Section 409 IPC, *prima facie* charge should be framed under Section 406 IPC.

Ordered accordingly.

The trial court is directed to proceed accordingly.

March 24, 2023

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(NAMIT KUMAR)
JUDGE

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