



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

CRR-1836-2014 (O&M)

Reserved On: 02.05.2025

Pronounced on: 27.05.2025

Ram Dhari

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE H.S. GREWAL

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Ms. Shazia K. Singh, Advocate
for the petitioner.

Mr. Aditya Pal Singh, AAG, Haryana.

H.S. GREWAL J. (Oral)

1. The present revision has been filed against judgment of conviction dated 04.05.2012 and the order of sentence dated 05.05.2012 passed by learned Sub Divisional Judicial Magistrate, Ratia whereby the petitioner was held guilty and convicted of offence under Section 409 IPC and was sentenced to undergo rigorous imprisonment him for a period of two years and to pay fine of Rs.5,000/- for commission of offence punishable under Section 409 IPC and further in default of payment of fine, to undergo rigorous imprisonment for a period of two months and thereafter vide judgment dated 27.05.2014 passed by Additional Sessions Judge, Fatehabad, the appeal preferred by the appellant was dismissed.

2. The case of the prosecution is that an FIR was registered on a complaint of Ex. PA of Sh. K.M. Pandurang, IAS, the then Sub Divisional Officer (Civil), Ratia with the allegations that the Nazir posted in the office of



SDO(Civil), Ratia was entrusted with the M.C. fees at the end of every working day which used to be collected by the Computer Operator and the Nazir would deposit the money received on account of M.C. fee in the bank account the next day. When Nazir was on leave, operators would entrust the said amount at the end of every working day to the present petitioner. The money so entrusted with Ram Dhari, Clerk (the present petitioner) on different dates which has been detailed in the complaint comes out to be Rs.71,600-/. It is stated that the amount was entrusted with the present petitioner, however, after having received the amount he did not deposit the same in the Bank. When the bank account was inspected, it was found that after 16.8.2010, no money was deposited. On this enquiry was made and Computer Operators were asked as to the said anomaly whereby they disclosed that they had handed over the money so collected by them in the account of M.C. fees to the petitioner at the end of every day. Therefore, since the petitioner did not deposit the amount till 29.10.2010 , therefore, he has used the government money for his personal use which amounts to embezzlement. Hence the present FIR was registered for offence punishable under Section 409 IPC.

3. Learned counsel for the petitioner has argued that neither entrustment is proved nor the fact that the petitioner was to deposit the amount. It was also evident from the fact that on 10.11.2010, it was not the petitioner who was supposed to deposit the said amount, nobody has taken steps to find out as to who was supposed to deposit the amount and therefore, neither there is a breach of trust nor dishonesty in any manner. Even so, there is no proof so as to receipt of collection of the amount by the petitioner or having paid the amount to him or any receipt issued by the petitioner. The grievance of breach of trust requires entrustment and dishonest misappropriation in any manner. Moreover, the



evidence has not been appreciated in its true light and the counsel for the petitioner has also stated that the provisions of Section 106 of the Evidence Act have wrongly been invoked to put burden on the petitioner which is against the settled law, the benefit has to be given to the accused and the entire case lacks basic grievance of entrustment and criminal breach of trust. Therefore, the petitioner deserves to be acquitted. Moreover, it is asserted that prior sanction was not taken before prosecuting the petitioner and in the absence of a prior sanction, criminal proceedings were liable to be quashed.

4. In support of his contention, the petitioner has relied upon the case **“G.C. Manjunath and Others Vs. Seetaram” 2025 SCC Online SC 718** wherein the Hon’ble Supreme Court has held as under:

“XX XX XX

40. In the present case, it is evident that the actions attributed to the accused persons emanate from the discharge of their official duties, specifically in connection with the investigation of criminal cases pending against the complainant. As previously observed, a mere excess or overreach in the performance of official duty does not, by itself, disentitle a public servant from the statutory protection mandated by law. The safeguard of obtaining prior sanction from the competent authority, as envisaged under Section 197 of the CrPC and Section 170 of the Police Act cannot be rendered nugatory merely because the acts alleged may have exceeded the strict bounds of official duty. In view of the foregoing, we are of the considered opinion that the learned VII Additional Chief Metropolitan Magistrate erred in taking cognisance of the alleged offences against the accused persons without the requisite sanction for prosecution in the instant case. The absence of the necessary sanction vitiates the very initiation of criminal proceedings against the accused persons.”

5. Further in case **“Suneeti Toteja Vs. State of U.P. and Others” 2025(2) RCR (Criminal) 138**, the Hon’ble Supreme Court held as under:

“30. The argument advanced by the respondent-State and the complainant with respect to “deemed sanction” is also not tenable. Section 197 of CrPC does not



envisage a concept of deemed sanction. The chargesheet, as well as the counter affidavit of the respondent-State, have relied upon the judgment of this Court in Vineet Narain to contend that lack of grant of sanction by the concerned authority within relevant time would amount to deemed sanction for prosecution. However, a perusal of the said judgment reveals that it did not deal with Section 197 CrPC and rather it dealt with the investigation powers and procedures of Central Bureau of Investigation and Central Vigilance Commission. While it did mention that the time limits for grant of sanction for prosecution must be strictly adhered to, there is no observation to the effect that lack of grant of sanction for prosecution within the time limit would amount to deemed sanction for prosecution.”

6. Further reliance has been placed on a judgment passed by Coordinate Bench of this Court in Criminal Revision No.2195 of 2012 vide judgment dated 18.01.2025 in case **“Mangat Ram Vs. State of Haryana”** wherein it is held as under:

“12. The accused had been chargesheeted for commission of offence punishable under Section 409 of IPC. The allegations against them were that they being appointed as Central Superintendent and Duty Clerk respectively, for the purpose of ensuring smooth conducting of Matriculation Examination in Government High School Village Agondh, were entrusted with the answer booklets of the abovesaid examination and they committed offence of breach of trust by removing 50 answer sheets out of the 500 sheets that had been handed over to them. The offence of criminal breach of trust is defined under Section 405 of Indian Penal Code. The essential ingredients of this offence are:-

- (i) The accused must have been entrusted with property or with dominion over property;*
- (ii) The accused must have misappropriated or converted to his own use, that property; or use or dispose of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged; or use or dispose of the property in violation of any legal contract (express or implied) which he has made touching the discharge of such trust; or wilfully suffered any other person so to do;*



(iii) such misappropriation or user or disposal must be dishonest or such sufferance must be wilful.

13. The offence under Section 405 is punishable under Section 406 of Indian Penal Code. So far as Section 409 of IPC is concerned, the essential ingredients to be established in a charge of an offence under this section are:-

- (i) that the accused was a public servant;*
- (ii) that he was entrusted, in such capacity, with property;*
- (iii) that he committed breach of trust*

14. The question which is required to be considered by this Court is as to whether the prosecution had brought sufficient evidence on record to prove the ingredients for commission of offence of criminal breach of trust by the accused. There is no dispute about the fact that they were Government employees being employed in a Government school and that they were entrusted with answer booklets in their capacity as public servants. It is also not in dispute that out of 500 answer sheets/answer booklets given to them at the time of Matriculation Examination by the Bhiwani Board of Examination, 50 answer sheets were reported to have been spoiled/damaged were short. The allegations are that four of such answer sheets were later on recovered from an almirah kept in Government High Court Agondh and it was the same almirah, the access of which had been given to the accused for the purpose of keeping documents relating to the Matriculation Examination at the relevant time. The learned trial Magistrate had observed that no evidence had been produced on record by the prosecution to prove that the answer booklets Ex.PW7/B bearing Sr. No.0622749, Ex.PW7/A bearing Sr. No.0822741, Mark A another answer booklets bearing No.0607556 and Mark B bearing Sr. No.570046 were entrusted to the accused as neither of these serial numbers were mentioned in the stock register Ex.PW3/A nor in Ex.P1 which was the statement showing disposal of blank answer booklets.

15. The case of the prosecution mainly rested on the testimony of PW-7 Azad Singh who was appointed as a Duty Clerk at Government High School, Agondh for the purpose of examination of 8th Class at Government High School Agondh. On a perusal of his statement, it is revealed that this



witness stated that he had found four answer sheets in almirah of the abovesaid school two of which were blank. These sheets were having three seals of the Board as well as of the seal of the Central Superintendent which used to be affixed after examinations started. He identified two of these sheets as Ex.PW7/A and PW7/B and another two as Mark A and Mark B respectively. During cross-examination, it was admitted by this witness that these answer sheets were not bearing any Code Centre and he could not say as to which Centre these sheets belonged. Then PW-10 Surender Singh who as per the prosecution version had been appointed as Centre Superintendent simply deposed that four answer sheets had been shown to him by PW-7 and they had handed over the same to CID. His statement is totally formal in nature as neither this witness disclosed the serial number or the roll numbers mentioned in the answer booklets nor the answer booklets Ex.PW7/A, PW7/B, Mark A and Mark B were shown to him. The learned trial Magistrate had observed that from the statements of these two material witnesses it had not been proved that the answer booklets which were recovered from the almirah were the same that had been entrusted to the accused and they were having any specific identification mark. In my considered opinion also, the prosecution had failed to extract any convincing evidence on record from the statements of these two witnesses for the purpose of proving that the four answer sheets allegedly found by PW-7 were the same which were handed over/entrusted to the accused. The statements of remaining witnesses which had been examined by the prosecution also did not help to come at that conclusion. Neither the Investigating Officer of the case had been examined to prove that the answer sheets which had been recovered from the almirah by PW-7 were the same which had been handed over to the accused persons nor any other official witness had been examined for that purpose. As such, the evidence led by the prosecution was certainly not convincing, reliable and sufficient enough to prove that the almirah from where the answer sheets were recovered were actually allotted to the accused, further that the booklets which were recovered were actually handed over to the accused and lastly that they had misappropriated the same with any mala fide.

16. The learned trial Magistrate after taking all these into consideration had acquitted the accused. The learned First Appellate Court while reversing the findings given by learned trial Court with regard to



commission of offence punishable under Section 409 of IPC had observed that the prosecution was only required to prove entrustment of answer sheets for invoking the provision of Section 409 of IPC and since that entrustment stood proved from the evidence produced on record, therefore, the accused were liable to be held guilty as it also stood proved that 50 answer sheets had gone missing and they were liable to explain the loss thereof. In my considered opinion, the findings so given by learned First Appellate Court are not based on proper appreciation of the evidence produced on record because infact, no evidence whatsoever had been produced on record to prove that the particular answer sheets which had been recovered from the almirah of the Agondh school were amongst the same answer sheets which had been handed over/entrusted to the accused. More so, the learned First Appellate Court wrongly observed that on the basis of entrustment of such answer sheet only, the guilt of the accused stood established because for holding an accused guilty for commission of offence punishable under Section 409 of IPC, not only the factum of entrustment of such property but misappropriation thereof with some dishonest intention was necessarily required to be proved. However, not even an iota of evidence had been produced by the prosecution on record to show that the accused persons had misappropriated the same with some intention. As such, it is held that the findings as given by learned First Appellate Court do not deserve to be sustained. Hence, the same are reversed. The judgment of the learned First Appellate Court thereby partly allowing the appeal is also set aside and appeal is ordered to be dismissed. The findings as given by learned trial Court are affirmed. As a consequence, both the revision petitions are allowed and the accused are acquitted of the charge under Section 409 of IPC. Their bail bond and surety bond also stand discharged.”

7. Similarly, reliance has also been placed on judgment dated 03.07.1995 passed by Division Bench of this Court passed in CRA-465-DB of 1984; in CRR No.784 of 1994 vide judgment dated 19.02.1997 passed by this Court.

9. On the other hand, learned counsel for the State submits that the petitioner has been convicted by the trial Court based on correct appreciation of



facts and law and thereafter, order of conviction and sentence has rightly been upheld by the learned Appellate Court.

8. The admitted case is that the petitioner has already deposited/ returned the amount at a later stage, therefore no loss has been caused to the complainant-respondent/ State. The petitioner's later deposition or return of the amount negates any claim of financial loss to the State and therefore, this case can be disposed of without further action against the petitioner.

9. In the light of above, the judgment of conviction dated 04.05.2012 and the order of sentence dated 05.05.2012 passed by learned Sub Divisional Judicial Magistrate, Ratia and thereafter, judgment dated 27.05.2014 passed by Additional Sessions Judge, Fatehabad are set aside. As a consequence, the present revision petition is allowed and the petitioner is acquitted of charge under Section 409 of IPC. His bail bond and surety bonds, if any, also stand discharged.

27.05.2025

Sonia Puri

**(H.S. GREWAL)
JUDGE**

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