IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 4177 of 2013
Reserved on: 14.10.2026
Date of Decision: 06.11.2026.

Ravinder Kumar ...Petitioner

Versus

State of H.P. ...Respondents

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] *Yes.*

For the Petitioner(s) : Mr Sparsh Bhushan, Advocate.
For the Respondent : Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision petition is directed against the judgment dated 12.9.2013, passed by the learned Additional Sessions Judge-II, Una, District Una, H.P. (learned Appellate Court), vide which the judgment of conviction dated 9.9.2008 and order of sentence dated 11.9.2008, passed by the learned Judicial Magistrate First Class, Court No.3, Una, District Una (learned Trial Court), were upheld. *(The parties shall hereinafter be*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 409 and 420 of the Indian Penal Code (IPC). It was asserted that the accused was posted as Extra Departmental Branch Postmaster, Branch Post Office, Dhundla, under Lathiani Sub Post Office. He was looking after the work of deposits in the Post Office. Jaswant Singh, Bimla Devi, Parkash Chand, Mukhtiari Devi, Sikandro Devi, Babu Deen, Banta Ram, Ajeet Kaundal, Brahmi Devi, Roshani Devi, Birbal, Balbir Singh, Suresh Kumar, Anita Kumari, Onkar Singh, Asha Devi, Yog Raj, Pushpa Devi, Pankaj, Pradeep Kumar, Vijay Kumari, Pushpa Devi, Ashwani Kumar, Neelam Kumari, Neetu Devi, Parkash Chand, Leela Devi, Parkash Chand, Rakesh Kumar, Mamta, Shivani, Ritu Kumari, Ram Kishan, Meena Devi, Daleep Singh, Nirmala Devi, Rattan Chand, Gorakh Ram, Ranju, and Rajindra Devi tendered different amounts to the accused along with pay-in slips and passbooks. The accused entered the amount in the passbooks, date-stamped and initialled them and returned them

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to the depositors. However, he failed to reflect the amount in the S.B. Journal, B.O. Account, and B.O. Daily Account; hence, the amount was not credited to the depositors' accounts. The accused forged the signatures of Chaman Lal, Pushpa Devi, and withdrew different amounts from their accounts. The matter was reported to the police by means of an application (Ex.PW-3/A). The police registered an FIR (Ex.PW-5/A). Chander Singh (PW-7) investigated the matter. He seized the record vide memo (Ex.PW-1/B) and recorded the statements of witnesses as per their version. After completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of offences punishable under Sections 409 and 420 of the Indian Penal Code (IPC), to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined seven witnesses to prove its case. Prithvi Raj (PW1) produced the record. Thakur Dass (PW2) investigated the matter on behalf of the Department. Sher Singh (PW-3) proved that a complaint was made to him. Kishori

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Lal (PW-4) was working as SHO. Narpat Ram (PW-5) signed the FIR. Annulla Kumar (PW-6) made the complaint. Chander Singh (PW-7) investigated the matter.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), admitted that he was posted as an Extra Departmental Branch Postmaster. He denied the rest of the prosecution case. He claimed that he had not committed any embezzlement. However, he admitted that money was recovered from him. He examined Kishan Chand (DW-1) and Surender Kumar (DW-2) to prove his defence.

6. The learned Trial Court held that the accused admitted that he was posted as Extra Departmental Branch Postmaster. Surender Kumar (DW-2) admitted that the accused had deposited the amount. The accused was entrusted with the money, and he had failed to credit the money to the depositors' accounts. He had made false entries in the passbook. Hence, the learned Trial Court convicted and sentenced the accused as under:

Conviction	Sentence
Section 409 of IPC	To undergo rigorous

	imprisonment for three years, pay a fine of ₹5,000/- and, in default of payment of fine, to undergo rigorous imprisonment for one month.
Section 420 of IPC	To undergo rigorous imprisonment for three years, pay a fine of ₹5,000/- and, in default of payment of fine, to undergo rigorous imprisonment for one month.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-II, Una, District Una (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the money was deposited with the accused. Surender Kumar (DW-2) admitted that the accused had deposited the money, which showed his guilt. The accused had made false entries in the passbook, and the learned Trial Court had rightly convicted and sentenced the accused. There was no infirmity in the judgment and order passed by the learned Trial Court; hence, the appeal was dismissed.

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8. Being aggrieved by the judgments and order passed by the learned Courts below, the petitioner/accused has preferred the present revision, asserting that the learned Courts below erred in appreciating the material placed before them. The FIR was lodged based on an audit report in which some irregularities were detected. The entries could not be carried forward, and there was no dishonest intention on the part of the accused. The accused was the in-charge of the Post Office, and he was handling the work of the Post Office without any help. He failed to make the entries because of the excessive work. There was no *mala fide* on the part of the accused. Therefore, it was prayed that the present revision be allowed and the judgments and orders passed by the learned Courts below be set aside.

9. I have heard Mr Sparsh Bhushan, learned counsel for the petitioner/accused, and Mr Jitender Sharma, learned Additional Advocate General, for the respondent-State.

10. Mr Sparsh Bhushan, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in convicting and sentencing the accused. No depositor was examined to prove that any money was entrusted to the accused.

Mere entries in the statement of account are not sufficient to prove the entrustment. The learned Courts below failed to appreciate this aspect and solely relied upon the audit report, which is not sufficient. Therefore, he prayed that the revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Jitender Sharma, learned Additional Advocate General for the respondent-State, submitted that the petitioner admitted that he was posted as Extra Departmental Branch Postmaster. It was duly proved by the statement of Thakur Ram (PW-2) that the accused had made entries in the passbooks of the depositors, but he had failed to make the entries in the books of account of the Post Office. This proved that the money was entrusted to the accused, but he had failed to credit it to the depositors' accounts. This Court should not re-appreciate the evidence while deciding the revision; hence, he prayed that the present revision be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

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13. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485,*** that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
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> > "**438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
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> > *Explanation.* —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

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> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
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> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and

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correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ..."

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7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjibij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of the NI Act, while setting aside the impugned order, observed as under:

> "27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> 28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."

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> **7.5.** In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

14. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. The ingredients of Section 409 of IPC were explained by the Hon'ble Supreme Court in ***Sadhupati Nageswara Rao v. State of* A.P., *(2012) 8 SCC 547***, wherein it was observed: -

> **14.** In order to prove the offence of criminal breach of trust which attracts the provision of Section 409 IPC, the prosecution must prove that one who is, in any manner, entrusted with the property, in this case as a dealer of a fair price shop, dishonestly misappropriates the property, commits criminal breach of trust in respect of that property. In other words, in order to sustain conviction under Section 409 IPC, two ingredients are to be proved, namely,
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> > (*i*) the accused, a public servant, a banker or an agent, was entrusted with the property of which he is duty-bound to account for; and

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> (*ii*) the accused has committed a criminal breach of trust. What amounts to a criminal breach of trust is provided under Section 405 IPC.
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> The basic requirement to bring home the accusations under Section 405 is the requirement to prove conjointly (*i*) entrustment, and (*ii*) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his use to the detriment of the persons who entrusted it.

16. A similar view was taken by the Hon'ble Supreme Court in ***N. Raghavender v. State of A.P., (2021) 18 SCC 70***, wherein it was held: -

> **45.** Section 409IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker, was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See ***Sadhupati Nageswara Rao v. State of A.P. [Sadhupati Nageswara Rao v. State of A.P., (2012) 8 SCC 547 : (2012) 3 SCC (Cri) 979 : (2012) 2 SCC (L&S) 638***])
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> **46.** The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 is a *sine qua non* for making an offence punishable under Section 409IPC. The expression "criminal breach of trust" is defined under Section 405 IPC, which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal

breach of trust. Hence, to attract Section 405IPC, the following ingredients must be satisfied:

46.1. Entrusting any person with property or with any dominion over property.

46.2. That person has dishonestly misappropriated or converted that property to his use.

46.3. Or that person is dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.

47. It ought to be noted that the crucial word used in Section 405IPC is "dishonestly" and therefore, it presupposes the existence of *mens rea*. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is "misappropriates", which means improperly setting apart for one's use and to the exclusion of the owner.

48. No sooner are the two fundamental ingredients of "criminal breach of trust" within the meaning of Section 405IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409IPC, for which it is essential to prove that:

(*i*) The accused must be a public servant or a banker, merchant or agent;

(*ii*) He/She must have been entrusted, in such capacity, with property; and

(*iii*) He/She must have committed a breach of trust in respect of such property.

49. Accordingly, unless it is proved that the accused, a public servant or a banker, etc., was "entrusted" with the property which he is duty-bound to account for and that

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> such a person has committed criminal breach of trust, Section 409IPC may not be attracted. "Entrustment of property" is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was "entrusted" to the accused, it is not necessary to prove further the actual mode of entrustment of the property or misappropriation thereof. Where the "entrustment" is admitted by the accused or has been established by the prosecution, the burden then shifts to the accused to prove that the obligation vis-à-vis the entrusted property was carried out in a legally and contractually acceptable manner.

17. In the present case, the prosecution has not examined any depositor and has relied upon the audit report (Ex.PW-2/A), the statement of Thakur Ram (PW-2) and the account books to secure the conviction. This was not sufficient. Thakur Ram went through the books of accounts to prepare the audit report. It was laid down by the Hon'ble Supreme Court in ***CBI v. V.C. Shukla*, *(1998) 3 SCC 410: 1998 SCC OnLine SC 790*** that entries in the books of accounts are not sufficient to charge a person with liability. It was observed at page 424:

> **"16.** To appreciate the contentions raised before us by the learned counsel for the parties it will be necessary at this stage to refer to the material provisions of the Act. Section 3 declares that a fact is relevant to another when it is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts; and those provisions are to be found in Sections 6 to 55 appearing in Chapter II. Section 5, with which Chapter II opens, expressly provides that evidence may be given in

any suit or proceeding of the existence or non-existence of every fact in issue and the facts declared relevant in the aforesaid sections, and of no others. Section 34 of the Act reads as under:

> "34. *Entries in books of account when relevant.*—Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability."

17. From a plain reading of the section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

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35. The probative value of the liability created by an entry in books of account came up for consideration in ***Chandradhar Goswami v. Gauhati Bank Ltd. [AIR 1967 SC 1058 : (1967) 1 SCR 898 : 37 Comp Cas 108]*** That case arose out of a suit filed by Gauhati Bank against Chandradhar (the appellant therein) for recovery of a loan of Rs 40,000. In defence he contended, inter alia, that no loan was taken. To substantiate their claim the Bank solely relied upon

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certified copy of the accounts maintained by them under Section 4 of the Bankers' Book Evidence Act, 1891 and contended that certified copies became prima facie evidence of the existence of the original entries in the accounts and were admissible to prove the payment of loan given. The suit was decreed by the trial court and the appeal preferred against it was dismissed by the High Court. In setting aside the decree this Court observed that in the face of the positive case made out by Chandradhar that he did not ever borrow any sum from the Bank, the Bank had to prove the fact of such payment and could not rely on mere entries in the books of account even if they were regularly kept in the course of business in view of the clear language of Section 34 of the Act. This Court further observed that where the entries were not admitted it was the duty of the Bank, if it relied on such entries to charge any person with liability, to produce evidence in support of the entries to show that the money was advanced as indicated therein and thereafter the entries would be of use as corroborative evidence.

36. The same question came up for consideration before different High Courts on a number of occasions but to eschew prolixity we would confine our attention to some of the judgments on which Mr Sibal relied. In ***M.S. Yesuvadiyan v. P.S.A. Subba Naicker [AIR 1919 Mad 132 : 52 IC 704]*** one of the learned Judges constituting the Bench had this to say:

> "Section 34, Evidence Act, lays down that the entries in books of account, regularly kept in the course of business are relevant, but such a statement will not alone be sufficient to charge any person with liability. That merely means that the plaintiff cannot obtain a decree by merely proving the existence of certain entries in his books of account even though those books are shown to be kept in the regular course of business. He will have to show further by some independent evidence that the entries represent real and honest transactions and that the moneys were paid in

> accordance with those entries. The legislature however does not require any particular form or kind of evidence in addition to entries in books of account, and I take it that any relevant facts which can be treated as evidence within the meaning of the Evidence Act would be sufficient corroboration of the evidence furnished by entries in books of account if true."

While concurring with the above observations the other learned Judge stated as under:

> "*If no other evidence besides the accounts were given, however strongly those accounts may be supported by the probabilities, and however strong may be the evidence as to the honesty of those who kept them, such consideration could not alone with reference to Section 34, Evidence Act, be the basis of a decree.*" (emphasis supplied)

37. In ***Beni v. Bisan Dayal [AIR 1925 Nag 445 : 89 IC 371]*** it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In ***Hira Lal v. Ram Rakha [AIR 1953 Pepsu 113]*** the High Court, while negativing a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the Court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the

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entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts.

38. The evidentiary value of entries relevant under Section 34 was also considered in ***Hiralal Mahabir Pershad [ILR (1967) 1 P&H 435]*** . I.D. Dua, J. (as he then was) speaking for the Court observed that such entries though relevant were only corroborative evidence and it is to be shown further by some independent evidence that the entries represent honest and real transactions and that monies were paid in accordance with those entries.

39. A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person. Keeping in view the above principles, even if we proceed on the assumption that the entries made in MR 71/91 are correct and the entries in the other books and loose sheets (which we have already found to be not admissible in evidence under Section 34) are admissible under Section 9 of the Act to support an inference about the former's correctness still those entries would not be sufficient to charge Shri Advani and Shri Shukla with the accusations levelled against them for there is not an iota of independent evidence in support thereof. In that view of the matter we need not discuss, delve into or decide upon the contention raised by Mr Altaf Ahmed in this regard. Suffice it to say that the statements of the four witnesses, who have admitted receipts of the payments as shown against them in MR 71/91, can at best be proof of reliability of the entries so far as they are concerned and not others. In other words, the statements of the above witnesses cannot be independent evidence under Section 34 as against the above two respondents. So far as Shri Advani is concerned Section 34 would not come in aid of the prosecution for another reason also. According to the prosecution case itself his name finds place only in one of the loose sheets (Sheet No. 8) and not in MR 71/91. Resultantly, in view of

> our earlier discussion, Section 34 cannot at all be pressed into service against him.

18. It was laid down by the Hon'ble Supreme Court in ***Sarla Devi v. State of Kerala (Special Leave Petition (Crl.) No. 2910–2911 of 2026, decided on 19.5.2026*** that the prosecution is required to prove entrustment, which is not a matter of presumption but a foundational, jurisdictional fact. It was observed:

> 17. The offence under Section 409 IPC necessarily postulates proof of entrustment coupled with dishonest misappropriation. Entrustment is not a matter of presumption, but a foundational jurisdictional fact which the prosecution is bound to establish affirmatively and beyond reasonable doubt. Mere absence of corresponding entries in the cash book or day book of the Society cannot by itself establish misappropriation unless lawful entrustment is first proved through cogent and reliable evidence, which in our considered view was not sufficiently established.
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> 18. At the cost of repetition, the prosecution failed to produce any independent material such as contemporaneous disbursement registers, treasury records, acknowledgement registers, vouchers, or testimony of any independent witness to establish actual delivery of cash to the Appellant. Conviction, therefore, has substantially been recorded on the basis of doubtful documentary evidence coupled with testimony of witnesses whose evidence required careful and necessary corroboration.

19. Similarly, it was held in ***Ramkrushna Prahllad Dongardive v. State of Maharashtra, 2026 SCC OnLine SC 2091*** that

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where the prosecution has failed to prove the entrustment, the accused cannot be held liable. It was observed:-

> **25.** Thus, having considered the entire material on record, we are of the considered view that the trial Court had rightly acquitted the appellant. The prosecution had failed to prove entrustment of property to the appellant. The material on record is insufficient to conclude that the appellant was guilty of misappropriation of that property. There is also no evidence whatsoever to indicate any dishonest intention on the part of the appellant that would have resulted in commission of an offence punishable under Section 409 of the Penal Code, 1860.

20. In the present case, there is no proof of any entrustment, and the learned Courts below erred in relying upon the statement of Thakur Ram (PW-2) to infer entrustment and misappropriation. Thus, the judgment passed by the learned Trial Court convicting the accused of the commission of an offence punishable under Section 409 of the IPC cannot be sustained.

21. The police filed a charge-sheet before the learned Trial Court for the commission of offences punishable under Sections 409 and 420 IPC, which require different *mens rea* and cannot exist together. It was laid down by the Madras High Court in ***Vadivel vs. Packialakshmi, 1996 Crl. L.J. 300*** that dishonest intention is the *sine qua non* to attract cheating and voluntary

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entrustment is necessary to constitute the breach of trust. Both these states of mind are mutually exclusive. It was observed: -

> "8. Thus, it is seen that for identifying the concept of criminal cheating, as provided under Section 416 of the Indian Penal Code, the ingredients of fraudulent, dishonest intention have become the basic sine qua non and if it is there or identified, then it is to be further ascertained that, as a result of which, the person so represented must be made to deliver any property to the other and that the inducement must be inherent with the intention to keep the same or to utilise the said property for the use and utilisation of the person who made such an inducement with such intention. Whereas, in the concept of criminal breach of trust, as defined under Section 405 of the Indian Penal Code, voluntary entrustment following dominion over such property by one to the other person has become necessary to be identified and that the property has become necessarily disentitled, misappropriated or converted in such a way as provided by the Section. If the ingredients set out in the above sections of the law are identified, upon the materials placed by the prosecution, then Sections 406 and 420 of the Indian Penal Code, respectively, being the punishment sections, come into operation.
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> However, while doing such legal exercises, it has become imperative for the Court to see that criminal breach of trust and cheating, though generally involving dishonest intention, are mutually exclusive and different in the basic concept, in the context that criminal breach of trust is voluntary and cheating is purely on the basis of inducement with dishonest intention. In this regard, I have to say my view that both the concepts of law for the respective offences are totally distinct, different and accordingly, mutually exclusive from each other. Unless and until these are adequate materials available and made

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> before the Court of law, both offences can be dealt with together."

22. A similar view was taken by the Punjab and Haryana High Court in ***Jalpa Parshad Aggarwal v. State of Haryana, 1987 SCC OnLine P&H 580*** wherein it was observed:

> "**3.** At the very outset, it may be mentioned that this Court held in ***Iqbal Singh Randhawa v. Doctor Satpaul Goyal, 1977 C.L.R. (Pb. & Har.) 134***, that an offence under section 406, Penal Code, 1860, is an antithesis of an offence under section 420, Penal Code, 1860. In a case of criminal misappropriation, the property is voluntarily kept in the custody of an accused, whereas in a case of cheating, the accused, by adopting deceitful means, induces the complainant to part with the property. Thus, an accused cannot be tried for these two offences simultaneously. Either he has committed an offence under Section 406, Penal Code, 1860 or under Section 420, Penal Code, 1860."

23. Gujarat High Court also took a similar view in ***Rajendrakumar Chakravarti v. Co-operative Bank of Baroda, 1997 SCC OnLine Guj 87: (1997) 2 GLH 394: 1998 Cri LJ 216: (1997) 4 GCD 520*** wherein it was observed:

> "A person can alternatively be charged under Sections 406 to 409 or Section 420, I.P.C. It is true that the ingredients of Sections 406 to 409 and the ingredients of Section 420 are required to be considered. The offence under Section 406, 408 or 409 and the offence under Section 420 could not go together. But if the alternative charge is framed, it could not be said that an alternative charge is illegal and invalid."

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24. The Rajasthan High Court also held in ***Rana Ram vs. State of Rajasthan, S.B. Criminal Misc(Pet.) No. 4893/2024 decided on 06/08/2024:2024: RJ-JD:33404*** that the offences punishable under Sections 406 and 420 of IPC are antithetical. It was observed:

> "22. There is yet another aspect of the case. The offences under Section 405 IPC and Section 420 IPC are mutually antithetical and cannot stand together. In the case of Section 405 IPC, the property is delivered by the owner in trust to the accused, and there is no element of dishonesty on the part of the accused at the inception, i.e. before or at the time of entrustment of the property to him, but the element of dishonesty of the accused develops/arises subsequent to the entrustment of the property to him. As against this, for applicability of section 420, it is necessary to show that the element of dishonesty of the accused existed prior to and/or at the time of the delivery of the property to him, i.e., at the inception itself.
>
> 22.1. Both Sections 405 and 420 of the IPC operate in distinctly different domains, i.e. entrustment versus inducement. Section 405 deals with entrustment, where the victim places trust in the accused by entrusting property, and any breach of this trust by the accused directly hurts the victim. In contrast, Section 420 pertains to inducement, where the accused actively approaches the victim, often through misrepresentation or deception, leading the victim to mistakenly believe in his honesty and part with their property under false pretences/inducement. Therefore, entrustment centres on a breach of existing trust, while inducement involves deceit from the outset."

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25. It was laid down by the Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. v. State of U.P., 2024 SCC OnLine SC 2248*** that the offences punishable under Sections 406 and 420 of IPC are distinct and cannot stand together. It was observed:

> "**41.** Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Penal Code, 1860 (IPC) was the official Criminal Code in the Republic of India inherited from British India after independence. The IPC came into force in the subcontinent during British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita ("**BNS**") in December 2023, which came into effect on 1st July 2024. It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating.
>
> **42.** When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust, as the case may be, is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from an FIR, this responsibility is of the police - to thoroughly ascertain whether the allegations levelled by the informant indeed fall under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for police officers to routinely and mechanically proceed to register an FIR for both the offences, i.e. criminal breach of trust and cheating, on a mere allegation of some dishonesty or fraud, without any proper application of mind.

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> **43.** It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating *viz-a-viz* criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins, and they cannot survive without each other."

26. Thus, it was impermissible to charge and convict the accused of the commission of offences punishable under Sections 409 and 420 of the IPC.

27. In view of the above, the present revision petition is allowed, and the judgment and order dated 09.09.2008/ 11.09.2008 passed by the learned Trial Court, as affirmed by the learned Appellate Court vide judgment dated 12.09.2013, are ordered to be set aside. The accused is acquitted of the commission of the offences punishable under Sections 409 and 420 of the IPC. The fine amount, if deposited, be refunded to the petitioner/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

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28. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the petitioner/accused is directed to furnish his personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused, on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

29. A copy of this judgment, along with records of the learned Courts below, be transmitted forthwith.

(Rakesh Kainthla)
Judge

6th November, 2026
(Chander)