IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 4174 of 2026
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] *No.*

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

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 12.9.2013, passed by the learned Additional Sessions Judge-II, Una, District Una (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, H.P. (learned Trial Court), were upheld. *(The parties shall hereinafter be referred to in the same*

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

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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. A complaint (Ext. PW-27/A) was made to the police, and the police registered an FIR (Ext. PW-27/B).

3. ASI Chander Singh (PW-32) investigated the matter. He seized the documents vide memo (Ext. PW-1/B). He filed an application for obtaining the specimen signatures and handwriting of the accused. However, the accused made a statement that he had made the entries in the record and refused to provide his specimen signatures and handwriting. ASI Chander Singh seized the appointment order (Ext. PW-1/C) of the accused. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the Court.

4. 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

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Sections 409 and 420 of the IPC, to which he pleaded not guilty and claimed to be tried.

5. The prosecution examined 32 witnesses to prove its case. Prithvi Raj (PW-1) produced the record. Sher Singh (PW-2) was posted as Assistant Superintendent of Post Offices, to whom a complaint was made regarding the non-deposit of the amount. Thakur Ram Chaudhary (PW-3) investigated the matter on behalf of the department. O.P. Sharma (PW-4) witnessed the recoveries. Jaswant Singh (PW-5), Bimla Devi (PW-6), Parkash Chand (PW-7), Chaman Lal (PW-8), Pushpa Devi (PW-9), Brahmi Devi (PW-10), Roshani Devi (PW-11), Suresh Kumar (PW-12), Babu Deen (PW-13), Ajeet Kaundal (PW-14), Onkar Singh (PW-15), Asha Devi (PW-16), Saraswati Devi (PW-17), Kamla Devi (PW-18), Kesari Devi (PW-19), Hoshiar Singh (PW-20), Dharam Singh (PW-21), Daleep Singh (PW-22), Rajindra Devi (PW-23), Rattan Chand (PW-24), Balbir Singh (PW-25), Gorahu Ram (PW-26), and Birbal (PW-30) are the depositors. Narpat Ram (PW-27) signed the FIR. Kishori Lal (PW-28) prepared the challan. Anula Kumar (PW-31) made the complaint to the police. Chander Singh (PW-32) investigated the matter.

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6. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that he was posted as Extra Departmental Branch Postmaster, Branch Post Office, Dhundla with the Indian Postal Department. He denied the rest of the prosecution case. He stated that he was falsely implicated as somebody had played mischief with him. He examined Kartar Chand (DW-1) and Surender Kumar (DW-2) in his defence.

7. The learned Trial Court held that the testimonies of the depositors proved that they had deposited different amounts with the accused. The accused entered the amount in the savings passbooks, stamped and initialled them, and returned the passbooks to the depositors. However, the money was not deposited in the depositors' accounts. The depositors' statements were corroborated by the deposit made by the accused of the embezzled amount. The accused was entrusted with the money in his capacity as Extra Departmental Branch Postmaster, and he had not deposited the money in the depositors' accounts. The accused had made false entries in the passbooks and induced the depositors to pay the money to him. Hence, the offence punishable under Section 420 of the IPC was

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also proved. Consequently, 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.

8. 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 (the learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused was a public servant. The depositors had deposited the money with him, and the accused had failed to credit the money to the depositors' accounts. The accused had made false representations to the depositors that the money was deposited by them. All the ingredients of the commission of

offences punishable under Sections 409 and 420 of the IPC were satisfied. The learned Trial Court had imposed an adequate sentence, and no interference was required with the judgment and order passed by the learned Trial Court; hence, the appeal was dismissed.

9. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that the failure to make the entries does not show any misappropriation. The accused was handling the entire work of the Post Office, and the irregularities occurred because of the burden of work. The police had registered two FIRs regarding the misappropriation, whereas only one FIR should have been registered. The judgments and order passed by the learned Courts below are not sustainable. Hence, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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

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11. Mr Sparsh Bhushan, learned counsel for the petitioner, submitted that the mere failure to make entries in the S.B. Journal and other records does not constitute any offence. It may be an irregularity for which the accused would be liable departmentally, but it cannot constitute a criminal offence. There was no evidence that any money was ever entrusted to the accused or that he had misappropriated the money. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside. He relied upon the judgment of the Hon'ble Supreme Court titled ***N. Raghavender v. State of A.P., (2021) 18 SCC 70*** in support of his submissions.

12. Mr Jitender Sharma, learned Additional Advocate General for the respondent-State, submitted that the depositors had deposited different amounts with the accused on different dates. The accused had entered the money into the savings passbooks, date-stamped it, and returned the passbooks after putting his initials. He failed to make the entry in the S.B. Journal and other documents showing the deposit of the money by the depositors. The money was entrusted to the accused in the capacity of the Branch Postmaster to be credited to the accounts

of the depositors; however, he failed to credit the amount to the depositors' accounts and misappropriated the money. The learned Courts below had rightly appreciated the evidence on record. This Court should not re-appreciate the evidence while deciding the revision; hence, he prayed that the present revision be dismissed.

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

14. 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

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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.

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.

(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.

(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

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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 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

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> 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. ..."

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.

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

16. The police had filed a charge sheet before the Court against the accused for the commission of offences punishable under Sections 409 and 420 of the IPC, which require different *mens rea* and cannot exist together. It was laid down by the

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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 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

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

17. 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."

18. 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."

19. 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.
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> 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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20. 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 Section 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.
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> **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."

21. Thus, it was impermissible to file the charge sheet before the learned Trial Court for the commission of offences punishable under Sections 409 and 420 of the IPC, or to convict the accused of the commission of offences punishable under Sections 409 and 420 of the IPC.

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

23. A similar view was taken by the Hon'ble Supreme Court in ***N. Raghavender*** (supra), 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 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.

24. The accused admitted in his statement recorded under Section 313 of the CrPC that he was posted as Extra Departmental Branch Postmaster in the Post Office. Thus, the fact that the accused was in charge of the Post Office was not in dispute.

25. Jaswant Singh (PW-5) stated that he had opened a savings account in the post office and used to deposit ₹100/- per month with the accused. The accused would put the stamp on the passbook, but he failed to deposit ₹200/- in his account. Bimla Devi (PW-6) stated that she used to deposit the money with the accused. Parkash Chand (PW-7) stated that he used to deposit the money on his behalf and Leela Devi's behalf with the accused, and the accused would make the entries in the passbook. ₹150/- was deposited less in his account. Chaman Lal (PW-8) stated that he had withdrawn ₹70/- from his account on 26.7.1991, but it was found subsequently that ₹170/- was deducted from the

account. Pushpa Devi (PW-9) stated that she found that the accused had withdrawn ₹50/- from her account. She had handed over ₹500/- to the accused, but only ₹50/- was found in her account. Brahmi Devi (PW-10) stated that she had withdrawn ₹1,000/- and deposited ₹200/-; however, ₹200/- was not credited to her account. Roshani Devi (PW-11) stated that she had deposited ₹100/- in her account through the accused, and the accused had made an entry in the savings passbook, but no money was credited to her account. Suresh Kumar (PW-12) stated that he had deposited the money with the accused, but this amount was not credited to his account. Babu Deen (PW-13) stated that he had deposited ₹270/- and ₹60/- with the accused, who made an entry in the passbook regarding the deposit, but the amount was not credited. Ajeet Kaundal (PW-14) stated that he had handed over ₹270/- to the accused, and the accused made the entry in the passbook, but the amount was not credited. Onkar Singh (PW-15) stated that he used to deposit ₹125/- per month with the accused, and the accused would make the entry; however, the amount was not credited. Asha Devi (PW-16) stated that she used to deposit money with the accused, who used to make an entry in the passbook, but the money was not credited to

her account. Saraswati Devi (PW-17) stated that she used to pay the money to the accused for depositing it in the accounts of her children, and the accused would make an entry in the passbook, but the amount was not deposited in the account. Kamla Devi (PW-18) stated that she had opened an RD account in the name of her children. The accused would make the entry with the stamp, but the amount was not credited to her account. Kesari Devi (PW-19) stated that she had opened different RD accounts. She had deposited money with the accused, and the accused had made an entry in the passbook, but the amount was not credited to her account. Hoshiar Singh (PW-20) stated that he had deposited ₹225/- with the accused, and the accused had made an entry in the passbook, but the amount was not credited to his account. Dharam Singh (PW-21) stated that he had opened accounts in the name of his children and used to hand over money to the accused, but he was not aware whether the money was credited to his account or not. Daleep Singh (PW-22) stated that he had opened a recurring deposit account of ₹50/- per month. He used to pay money to the accused, who would make an entry into the passbook, put the stamp and his initials, and return the passbook to him; however, the amount was not credited to his account.

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Rajindra Devi (PW-23) stated that she used to pay money to the accused, who would return the passbook after making an entry, but no money was credited to her account. Rattan Chand (PW-24) stated that he had opened RD accounts and used to pay money to the accused; however, the accused had not credited this money to his account. Balbir Singh (PW-25) stated that he used to pay money to the accused, who would put the stamp on the passbook and return it to him; however, the money was not credited to his account. Gorkhu Ram (PW-26) stated that he would pay the money to the accused, and the accused would put the stamp on the passbook and return it to him. The accused had not deposited the money into his account. Birbal (PW-30) stated that he had deposited money with the accused; the accused had made an entry in his passbook, but no entry was made in the records of the Post Office.

26. The statements of these witnesses are consistent, and there is nothing in their cross-examination to show that they had any motive to depose against the accused. Their statements are duly corroborated by the entries in the passbooks. However, no corresponding entries were made in the Branch Office Daily Account, B.O. Account Book, and Savings Bank (S.B.) Journal.

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Thakur Ram Chaudhary (PW-3) inspected the record and found that the accused had not made the entries in the S.B. Journal and B.O. Account Journal, and the amount could not be credited to the accounts of the depositors. Therefore, the learned Courts below had rightly held that the depositors had entrusted the money to the accused; the accused had acknowledged the receipt of the money by putting his initials and the stamp on the passbooks; however, he failed to credit the amount in the account books of the Post Office. Thus, the accused was entrusted with the money by the depositors with an express condition that this would be credited to the depositors' accounts. However, the accused failed to deposit the money with the Post Office by crediting it in the account books of the Post Office. Thus, the prosecution version that the accused had acted contrary to the terms and conditions on which the money was entrusted to him was duly proved.

27. It was laid down by the Hon'ble Supreme Court in ***State of H.P. versus Karanvir (2006) 5 SCC 381*** that once the prosecution has proved the entrustment, it is not required to prove the manner of its misappropriation. It was observed: -

> 10. Mrs K. Sarada Devi, learned counsel appearing on behalf of the respondent, would submit that no material

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> was brought on record by the prosecution to show as to how the respondent had utilised the amount. In our opinion, the same was not necessary. In view of the admitted fact, we think that it was for the respondent himself to prove the defence raised by him that the entire amount had not been paid to him by the complainant. The learned Judge had rejected the said defence.
>
> 11. The actual manner of misappropriation, which is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it is for the accused to prove as to how the property entrusted to him was dealt with in view of Section 405 of the IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefor.

28. This position was reiterated in ***Mustafikhan Versus State of Maharashtra (2007) 1 SCC 623,*** wherein it was observed: -

> 9. In order to sustain a conviction under Section 409 IPC, the prosecution is required to prove that (a) the accused, a public servant, was entrusted with the property for which he has a duty to account, and (b) the accused had misappropriated the property.
>
> 10. Where the entrustment is admitted by the accused, it is for him to discharge the burden that the entrustment has been carried out as accepted and the obligation has been discharged.
>
> 11. The above position was reiterated in ***Jagat Narayan Jha v. State of Bihar (1995 (Supp) 4 SCC 518***.
>
> 12. It is not necessary or possible in every case to prove as to in what precise manner the accused had dealt with or appropriated the goods. In a case of criminal breach of trust, the failure to account for the money proved to have been received by the accused or giving a false account of its use is generally considered to be a strong circumstance

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> against the accused. Although the onus lies on the prosecution to prove the charge against the accused, where the entrustment is proved or admitted, it would be difficult for the prosecution to prove the actual mode and manner of misappropriation and in such a case, the prosecution would have to rely largely on the truth or falsity of the explanation given by the accused. In the instant case, there is no dispute about the entrustment.

29. In the present case, the entrustment was duly proved. It was also proved that the accused had not credited the amount to the depositors' accounts. The accused has not explained as to what happened to the money. Therefore, the learned Courts below had rightly held that the accused had misappropriated the money.

30. Kartar Chand (DW-1) stated that the accused used to work in the Post Office for 16 to 17 years before the deposition. The matter regarding the RD was discussed and settled; however, no complaint was made. He admitted in his cross-examination that the matter arose when the people made complaints regarding the non-credit of the amount deposited by them. The statement of this witness will not help the accused; simply because the matter was settled on the spot will not mean that the accused was absolved of the crime alleged against him.

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31. Surender Kumar (DW-2) admitted that the accused had deposited various amounts with the Post Office. He stated in his cross-examination that the money was deposited after the accused was terminated from his services. The statement of this witness shows that the money was deposited by the accused voluntarily because he was not under the influence of any person at that time. This would corroborate the prosecution's version that the accused had misappropriated the money and had deposited it after the misappropriation was detected.

32. It was submitted that the failure to enter the money in the account books of the Post Office may be an administrative lapse but does not constitute the commission of an offence. This submission will not help the accused. It was duly proved by the depositors' statements that the accused was entrusted with the money, and he had made entries in the passbooks. The account books produced on record do not show that such entries were made in the account books of the post office. The failure to make the entries in the account books mean that this amount was not credited to the accounts of the depositors and remained lying with the accused. This is not an oversight, but misappropriation of the money handed over to the accused by the depositors. Thus,

the submission that the act of the accused amounted to oversight cannot be accepted.

33. Therefore, the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 409 of the IPC.

34. The learned Trial Court sentenced the accused to undergo rigorous imprisonment for three years and pay a fine of ₹5,000/-, and in default of payment of the fine, to undergo rigorous imprisonment for one month. The offence under Section 409 of the IPC is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years. The accused held a position of trust vis-à-vis the depositors. He misused the trust reposed in him by the depositors by misappropriating the money handed over to him. The offence is serious because it shakes the confidence of the public in post office deposits and can have cascading effects. Therefore, the sentence of three years cannot be said to be excessive by any stretch of imagination.

35. No other point was urged.

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36. In view of the above, the present revision is partly allowed and the judgment passed by learned Trial Court convicting the petitioner/accused for the commission of offence punishable under Section 420 of IPC and sentencing him to undergo rigorous imprisonment for three years, pay fine of ₹5,000/- and in default of payment of fine to undergo rigorous imprisonment for one month, as affirmed by learned Additional Sessions Judge-II, Una, H.P. (learned Appellate Court) are ordered to be set-aside and the petitioner/accused is acquitted of the commission of offence punishable under Section 420 of 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. Subject to this modification, rest of the judgment of conviction and order of sentence are upheld.

37. The present revision stands disposed of, and so are the pending miscellaneous application(s), if any.

38. The record of the learned Courts below be returned with a copy of the judgment.

(Rakesh Kainthla)
Judge

6th November, 2026
(Chander)