IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

01 **CRR-2022-2012 (O&M)**
Reserved on : 12.02.2026
Pronounced on; 28.04.2026

RAJINDER SINGH SODHI

......PETITIONER

Versus

STATE OF PUNJAB

...... RESPONDENT

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present: Mr. P.S. Hundal, Sr. Advocate with
Mr. Gursahib Singh Hundal, Advocate,
Ms. Arshpreet Kaur, Advocate,
Mr. Kanwar Harjinder Singh, Advocate,
Mr. Jasjeet Brar, Advocate
for the petitioner .

Mr. Rohit Bansal, Sr. DAG, Punjab.

*****

SURYA PARTAP SINGH, J.

1. This is a revision petition against the judgment dated 13.07.2012, passed by the Court of learned Sessions Judge Bathinda, whereby the appeal preferred by the revisionist-petitioner has been dismissed.

2. On 06.05.2003 for the commission of offence punishable under Sections 409, 465, 467, 468, 471 of Indian Penal Code, the FIR i.e. FIR No.70 was lodged in Police Station Nathana, District Bathinda.

3. The pith and substance of the above-mentioned FIR was that a contract to provide workers was given to a firm namely ‘M/s Sodhi Erectors’

by the authorities of 'Guru Hargobind Singh Thermal Plant', Lehra Mohabat. According to prosecution case the petitioner/accused/convict, hereinafter being referred to as 'petitioner' only being proprietor of the above-mentioned firm deducted money from the wages paid to the workers employed for the above-mentioned project, but he did not deposit the above-mentioned amount with the 'Employees' Provident Fund Authorities'. It was also the allegation against the petitioner that he also failed to deposit the share pertaining to his own contribution, and thus, misappropriated the above-mentioned money. In addition to above, there was also the allegation that in order to shield himself from the above-mentioned liability, he had filed false challan (receipts) regarding deposit of above-mentioned contribution in the 'State Bank of India', and thus, committed forgery of valuable security.

4. Once the above-mentioned FIR was lodged, the investigation was taken up and the petitioner was sent to stand trial for the commission of aforementioned offences. The trial which was conducted by the learned Judicial Magistrate 1st Class, Bathinda, hereinafter being referred to as learned trial Court, culminated into conviction of the petitioner vide judgment dated 24.08.2011, for the commission of offence punishable under Section 409 IPC [the petitioner was acquitted by the learned trial Court with regard to charges for the commission of offence punishable under Sections 465, 467, 468 and 471 of IPC]. As a result of above-mentioned judgment of conviction, the learned trial Court awarded sentence and directed that the petitioner would have to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/-.

5. Aggrieved of the above-mentioned judgment of learned trial

Court, the petitioner approached the Court of Sessions by filing an appeal. The above-mentioned appeal was dealt with by learned Sessions Judge, Bathinda, hereinafter being referred to as 'Appellate Court'. However, the above-mentioned appeal did not find favour of learned Appellate Court, and the same was dismissed vide judgment dated 13.07.2012.

6. Aggrieved of the above-mentioned judgments passed by the learned Appellate Court [and also the judgment of learned trial Court], the present revision petition has been preferred by the petitioner on the ground that both the Courts i.e. learned trial Court as well as learned Appellate Court have committed the errors of judgment, when both of them failed to appreciate the fact that no case for the commission of offence punishable under Sections 465, 467, 468 and 471 of IPC was made out against the petitioner. According to petitioner on the basis of allegations contained in the FIR the offence under Section 14(1) of the Employees' Provident Funds and Miscellaneous Provisions Act 1952, hereinafter being referred to as Section 14(1) of the EPF & MP Act 1952, was made out.

7. It has also been alleged by the petitioner that otherwise also there was no misuse or misappropriation of funds by the petitioner as the amount which was supposed to be deposited by the petitioner was not assessed by the competent authority. As per petitioner, the moment the above-mentioned amount was assessed by the concerned authority, the petitioner without delay, before the filing of FIR, deposited the same in the bank, and thus, question of misappropriation did not arise at all. While claiming that, merely, on the basis of conjectures and surmises the finding of conviction of petitioner has been recorded, the petitioner has sought for the exercise of revisional jurisdiction of

this Court in the impugned judgments, passed by the learned trial Court as well as learned Appellate Court, and urged for acquittal by setting aside of above-mentioned judgments.

8. Heard.

9. It has been contended by learned counsel for the petitioner that the impugned judgments are the outcome of wrong appreciation of fact as well as law, and that the learned trial Court vis-a-vis learned Appellate Court have failed to apply proper provisions of law applicable in the present case. According to learned counsel for the petitioner if the entire contents of the FIR would have been looked into, in their totality, the only allegation against the petitioner was that he failed to deposit the requisite contribution as per provisions of the 'Employees' Provident Fund and Miscellaneous Provisions Act 1952'. With regard to above, the learned counsel for the petitioner has contended that for the above-mentioned violation, there is specific provision under Section 14(1) of the 'EPF & MP Act 1952', which provides for the punishment, including imprisonment. According to learned counsel for the petitioner instead of prosecuting the petitioner under the above-mentioned provision, the charges were framed against the petitioner under the IPC. Regarding above-mentioned fact situation, it has been contended by learned counsel for the petitioner that once special statutes had been enacted by the Legislature, it had the overriding effect over the general provision comprised under Sections 406, 409 etc. of Indian Penal Code.

10. It has also been contended by learned counsel for the petitioner that in the present case *firstly* the prosecution was defective, i.e. without sanction, *secondly,* it was under the wrong provision and thirdly, the

misappropriation of money was not proved at all as any evidence to show that it was the responsibility of the petitioner to deposit money and he had failed to do so, had not been proved before the learned trial Court. According to learned counsel for the petitioner otherwise also once the requisite liability was assessed by the competent authority, the petitioner deposited the same without any delay, the prosecution for the charge under Section 409 IPC was illegal. With regard to his above-mentioned limb of arguments, the learned counsel for the petitioner has referred to the principles of law laid down by Hon'ble Supreme Court of India in the case of 'Sardar Singh vs. State of Haryana' AIR 1977 Supreme Court 1766.

11. It has also been contended by learned counsel for the petitioner that the prosecution of the petitioner was also defective in view of the fact that the allegation against the petitioner was that he had failed to deposit the contribution towards 'Employees' Provident Fund' of his employees, and before prosecuting the petitioner, for the above-mentioned offence, the requisite sanctioned, as prescribed under Section 14AC of the Employees' Provident Funds and Miscellaneous Provisions (EPF & MP) Act, 1952, was not obtained.

12. In addition to above, it has also been contended by learned counsel for the petitioner that the falsity of the allegation against the petitioner can be gauged from the fact that charges against the petitioner were also there for the commission of offence punishable under Sections 465, 467, 468 and 471 of IPC, but with regard to those charges prosecution against the petitioner failed. While claiming that on account of wrong appreciation as well as fact an erroneous decision has been rendered by the learned trial Court, vis-a-vis

learned Appellate Court, the learned counsel for the petitioner has urged that by accepting the present revision petition, the impugned judgments [the judgment of learned trial Court vis-a-vis learned Appellate Court] be set aside and the petitioner be acquitted.

13. The learned State counsel has controverted the above-mentioned arguments. It has been contended by learned State counsel that instant case is a full proof case, wherein all the essential ingredients meant for commission of offence punishable under Section 409 IPC had been proved by the prosecution. According to learned State counsel on proper appreciation of fact as well as law a right conclusion had been drawn by the learned trial Court, which has been duly affirmed by the learned Appellate Court, and that there is no scope for indulgence or interference in the above-mentioned judgments.

14. The learned State counsel has further contended that in the present case it was duly proved by the prosecution, beyond the shadow of all reasonable doubts, that the petitioner was bound by contract of 'Guru Hargobind Singh Thermal Plant', [GHSTP in short] to provide workers, and that being employer of those workers, it was the duty of the petitioner to deposit the Employees' Provident Fund contribution, which comprised of two components, i.e. the share deducted from the wages of the employees and employer's contribution. As per learned State counsel the petitioner committed two defaults with regard to deposit of above-mentioned money. *Firstly* he failed to deposit the money which he had received from 'GHSTP' Authority, and thus, misappropriated the amount and *secondly* he failed to deposit his own contribution. As per learned State counsel the above-mentioned act of the petitioner amounted to criminal breach of trust, as defined under Section 405

IPC.

15. In addition to above, the learned State counsel has also contended that in the present case once the contribution to be deposited with the Employees' Provident Fund Authorities towards the first component, i.e. contribution of employees paid by 'GHSTP' Authority, was paid to the petitioner, the petitioner was duty bound to deposit the same, but failed to do so in the capacity of agent of public office, and therefore, the above-mentioned act amounted to an offence under Section 409 IPC. In support of his above-mentioned arguments the learned State counsel has referred to the principles of law laid down by Hon'ble Supreme Court of India in case of 'Dharwanand vs. State of U.P.' AIR 1957 SC 594, 'J.M. Desai vs. State of Bombay' AIR 1960 SC 889 and 'Krishna Kumar vs. Union of India' AIR 1959 SC 1390.

16. It has been further contended by learned State counsel that in the present case this argument of learned counsel for the petitioner has got no force that for want of requisite sanction, as enshrined under Section 14AC of the EPF & MP Act, 1952, the prosecution of the petitioner was defective. According to learned State counsel since charge against the petitioner had been framed, and proved, for an offence under Section 409 IPC, for such charges there was no requirement of sanction under Section 14AC of the EPF & MP Act, 1952. In view of above-mentioned arguments, the learned State counsel has contended that there is no scope for indulgence in the impugned judgments, and therefore, there is no scope for the exercise of revisional jurisdiction vested in this Court. As per learned State counsel the present revision petition is devoid of merits and deserves dismissal.

17. The record has been perused carefully.

18. With regard to factual matrix of the present case at the very out-set it is pertinent to mention here that the charges framed against the petitioner by the learned trial Court were for the commission of offence punishable under Sections 409, 465, 467, 468 and 471 of IPC. However, the learned trial Court convicted the petitioner for the commission of offence punishable under Section 409 of IPC only, and for rest of the offences the petitioner had been acquitted. Since against the above-mentioned part of judgment of acquittal, no appeal was preferred by the State and even against the judgment of learned Appellate Court, any revision petition has not been filed by the State, it is hereby observed that the finding of learned trial Court with regard to acquittal of petitioner qua the charges under Sections 465, 467, 468 and 471 of IPC has attained finality.

19. As far as the charges for the commission of offence under Section 409 IPC is concerned to prove the same, the prosecution had examined as many as 10 witnesses.

20. Amongst them PW-1 Inspector Des Raj deposed that on 06.05.2023 he was posted as S.H.O., P.S. Nathana and that on that day, he received one complaint from Chief Engineer, O&M, GHTP, Lehra Mohabat, which was forwarded by the then S.S.P. Bathinda vide Endst. E.PA to A.D.A. Legal. As per PW-1 on account of the endorsement Ex.PA/1 made by A.D.A. Legal, the S.S.P. Bathinda made his endorsement Ex.PA/2, whereby S.S.P., Bathinda ordered for registration of the FIR against the accused.

21. The prosecution further examined Gurdev Singh. Inadvertently this witness, too, has been numbered as PW-1, but hereinafter he is hereby referred as PW-1A. Gurdev Singh, the PW-1A, was the Provident Fund

Inspector. He had proved the record of 'M/s Sodhi Erectors' i.e. Application Ex.P-1 regarding issuance of EPF code number, Ex.P-2 reminder dated 02.09.1996, Ex.P-3 allotment letter of code number, Ex.P-4 report of Squad dated 21.02.2000, Ex.P-5 assessment order, Ex.P-6 information to Chief Engineer, Lehra Mohabat, Ex.P-7 information given by accused regarding deposit of dues, Ex.P-8 letter regarding deposit of balance amount, out of assessed amount, Ex.P-9 letter to ensure compliance. The PW-1A further deposed that all the abovesaid documents were taken into possession by the police vide memo Ex.PA.

22. The PW-2 Harbhajan Singh, EO, Regional Provident Fund Commissioner, Chandigarh deposed that on 28.01.1997 he was posted as E.O. and Rajinder Singh being Proprietor of 'M/s Sodhi Erectors' had moved an application Ex.P-1 for issuance of EPF Code, the cover performa of which was Ex.PW-2/A. As per PW-2, thereafter on 02.09.1996 'Rajinder Singh' again issued reminder letter Ex.P-2 regarding issuance of code. This witness further deposed that on 28.01.1997 code no. PB/CH/14680 was allotted to him, vide letter Ex.P-3, by their office. He had further testified that 'Sodhi Erectors' had not deposited the EPF of their workers for the period 7/97 to 12/99 amounting to Rs.54,17,493/-, and that the Enquiry officer of Squad had inspected the entire record and submitted his report to Commissioner, Chandigarh on 21.02.2000. The certified copy of the same had been proved by the above witness as Ex.P-4.

23. The PW-3 Harjinder Singh, Assistant Executive Engineer Shift A-1 of GHPT, Lehra Mohabat had proved the record relating to monthly salary bills, as Ex.PW-3/A to Ex.PW-3/D, the copies of challans, as Mark-1 to Mark-

3, photocopies of muster rolls, as Mark-4 to Mark-7, certificate, as Ex.PW-3/E, letter, as Ex.PW-3/F, copy of attendance register, as Ex.PW-3/G, muster rolls, as Mark-7 and Mark-8, certificate dated 04.06.1999, as Ex.PW-3/H, and copies of attendance register, as Ex.PW-3/I and Ex. PW-3/J.

24. The PW-4 Hem Lata Khanna, Deputy Manager, SBOI, Chandigarh deposed that on 09.05.2003 she was posted in Sector 17 Branch of SBI Chandigarh and was dealing with EPF. She further deposed that vide memo No. 481 W-36 dated 01.03.2000, copy of which was Mark 'A', Superintendent Engineer, GHTP Lehra Mohabat had made enquiries, regarding deposit of EPF for the period 5/99 to 12/99 and police also moved an application Ex.PW-4/A upon which she gave her report Ex.PW-4/B and intimated that as per their record no money was deposited. She further deposed that challan forms Mark 'B' to Mark 'F' were not issued by their bank and the stamps affixed on the same were forged.

25. The PW-5 Gurmeet Singh, had proved the record relating to work orders placed by GHTP, Lehra Mohabat and proved the copies of the same as Ex. PW-5/A to EX.PW-5/K, which he handed over to the police vide memo Ex.PW-5/L.

26. The PW-6 Gurcharan Kaur brought the memo No. 2011/WS-85 dated 02.05.2003, and proved on record its copy, as Ex.PW-6/A, and Ex. PW-6/A1.

27. The PW-7 Mehma Singh, UDC had deposed that on 02.06.2003 when he was posted in the Accounts section of GHTP, he handed over to the police EPF challans Mark 'A', 'E' and 'F', bills of ‘M/s Sodhi Erectors’ Ex.PW 7/A to Ex.PW- 7/D and Ex. PW-3/D and also produced before the Police

certificate regarding deposit of EPF Ex.PW-7/E, to Ex.PW-7/H and Ex.PW-3/E and payment sheet Mark-'B', Mark 8 and Mark 'C'. He further deposed that the above-mentioned record was taken into possession by the police vide memo Ex. PW-7/J.

28. The PW-8 A.S.I. Darshan Singh had proved his attestation over memo Ex.PA and Ex. PW-8/A, vide which photocopies of documents were seized.

29. The PW-9 Jarnail Singh, UDC, had proved the copies of EPF challans Ex.PW-9/A to Ex.PW-9/E and Mark PX to PX-5.

30. The PW-10 Harbinder Singh proved letter Ex.PW-10A bearing No. C&I/Pb. EB/4 dated 30.01.2003 wherein an amount of Rs.58,440/-on account of EPF for 1/99 and 2/99 was not deposited.

31. Similarly the PW-11 Jasmail Singh had proved letter Ex.PW-11/A and PW-12 Chhindi Kaur proved letter Ex.PW-12/A (written by bank SBOI to Chief Engineering GHTP Lehra Mohabat) intimating the default of deposit of EPF for the mouth of November 1999. The PW 13 Yovinder Kumar, Assistant Manager had proved the above-mentioned letters, along with letter Ex.PW-13/A, having written by their bank, and identified the signatures of Manager Hem Latta Khanna and Rajiv Tondon.

32. A careful scrutiny of the above-mentioned evidence goes to show that with the help of above-mentioned evidence the prosecution had been successful in proving following facts;-

i) that there was a contract between the petitioner and ‘GHSTP’ Authority, with regard to providing workers to work in the above-mentioned project;

ii) that the workers provided by the petitioner were the employee of the petitioner, and therefore, petitioner was supposed to contribute towards the Employees' Provident Fund, with regard to above-mentioned workers as their employees;

iii) that as per contract, the authorities of 'GHSTP' had paid the entire money towards wages of the workers provided by the petitioner to the petitioner;

iv) that the petitioner on receipt of above-mentioned money paid wages to his workers after deduction of employees contribution towards Employees' Provident Fund.

33. In view of above the money deducted towards the share of employee towards Employees' Provident Fund contribution was with the petitioner and he failed to deposit the same till the objection was raised by the Provident Fund Inspector.

34. In the present case one of the limb of argument of learned counsel for the petitioner has been that it was not proved on record that it was the duty of the petitioner to deposit the above-mentioned Provident Fund. According to learned counsel for the petitioner since the workers had worked for 'GHSTP', as per definition of employer, it was the duty of the authorities of 'GHSTP' to deposit the above-mentioned contribution and not the petitioner.

35. Qua above-mentioned argument, it is relevant to mention here that the facts of the present case makes it abundantly clear that it was the duty of the petitioner to deposit the above-mentioned money.

> *Firstly* because EPF code was issued at the instance of petitioner and it was awarded to the petitioner only. The above-mentioned fact makes it abundantly clear that it was the duty of

the petitioner to deposit the contribution towards Employees' Provident Fund, of the workers provided to 'GHSTP'.

Secondly in the present case there were specific allegations against the petitioner, although not proved as per requirement of law, that he had submitted fake/forged receipts regarding deposit of contribution in the bank towards Employees' Provident Fund contribution, of the employees. If the petitioner was not having such duty as per contract, there could not have been any such endeavour on the part of the petitioner.

Thirdly for the sake of argument even if it is assumed that for want of proof of above-mentioned receipts, the above-mentioned plea should not have been taken into consideration, even then the subsequent conduct of the petitioner who deposited the above-mentioned amount of Rs.2,91,498/- after the objection raised by Provident Fund Inspector, showed that it was the duty of the petitioner to deposit the above-mentioned amount.

36. In view of above discussed factors, it is hereby observed that this argument of learned counsel for the petitioner has got no force that there was no evidence on record to show that it was the duty of the petitioner to deposit the above-mentioned contribution.

37. The second limb of argument of learned counsel for the petitioner is that, that for want of requisite sanction under Section 14AC of the EPF & MP Act, 1952, the prosecution of petitioner was defective. With regard to above-mentioned contention, it is relevant to mention here that the prosecution of the petitioner was under Section 409 of IPC and not under Section 14(1) of the EPF & MP Act 1952. The provision for requisite sanction would have come into picture, if the prosecution of the petitioner would have been under Section 14(1) of the EPF & MP Act 1952. Thus, it is hereby observed that the petitioner is not entitled to draw any benefit of Section 14AC of the EPF & MP

Act, 1952.

38. The third limb of argument of learned counsel for the petitioner has been that Section 14(1) of the EPF & MP Act 1952 being a specific provision of special statute has overriding effect over the general provisions enshrined under Section 409 of IPC. With regard to above-mentioned contention, it shall be relevant to look into the definition of misappropriation, as defined under Section 405 of IPC, and also the explanation-1 to the above-mentioned Section. Section 405 of IPC and explanation-1 to the above-mentioned Section provides that:-

> *"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*
>
> *Explanation 1.— A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."*

39. A bare perusal of above-mentioned provision goes to show that

misappropriation of contribution of employee towards Employees' Provident Fund amounts to criminal breach of trust.

40. As far as applicability of Section 14(1) of the EPF & MP Act 1952 are concerned following is the factors which is necessary to be taken into consideration. *Firstly* as per definition of offence enshrined under Section 14(1) of the EPF & MP Act 1952 *mens rea* is not an essential ingredient. However, with regard to an offence under Section 406/409 IPC *mens rea* is an indispensable ingredient for the Constitution of offence. In the present case the act of the petitioner, who received employees' contribution from the 'GHSTP' Authority and failed to deposit the same with Employees' Provident Fund Authorities, makes it abundantly clear that there was the existence of *mens rea* on the part of petitioner, to mis-appropriate the above-mentioned contribution with Employees' Provident Fund Authorities. The existence of *mens rea* brought, the act of the petitioner out of the purview of Section 14(1) of the EPF & MP Act 1952.

41. With regard to failure of an employer to deposit the contribution towards Employees' Provident Fund, there can be two situations. The first situation is that employees contribution stands deposited, but the employer has failed to deposit his own share towards the above-mentioned contribution, and the second situation can be when employer has received or deducted the employees contribution towards Employees' Provident Fund and instead of depositing the same with 'Employees' Provident Fund Authorities', misappropriated the same. The case of the petitioner comes within the purview of second situation. Thus, provisions of Section 14(1) of the EPF & MP Act 1952 are not applicable to the present case.

42. With regard to above, a coordinate Bench of this Court in the case of 'Dhirendra Kumar Rajak Vs. State of Haryana and another' Law Finder ID No.2225117 has held that prosecution under Section 406 IPC can be independently, without requiring prior sanction under Section 14AC of the EPF & MP Act, 1952. The similar view has been taken by the coordinate Bench of this Court in the case of 'Ajay Kumar Sandhu Vs. State of Haryana' [CRM-M-13975-2014 (O&M)].

43. In view of above, it is hereby observed that there was no defect in prosecuting and ultimately convicting the petitioner for the commission of offence of misappropriation of fund, and not under Section 14(1) of the EPF & MP Act 1952.

44. In the present case one of the aspect to be taken into consideration is that the petitioner has been held guilty for the commission of offence punishable under Section 409 IPC and the petitioner is not a public servant. With regard to above, it is relevant to note that Section 409 of IPC provides:-

> *"Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

45. Since the petitioner misappropriated the funds in the capacity of an agent of public office, it is hereby held that the act of misappropriation by the petitioner amounted to an offence under Section 409 IPC.

46. With regard to proving a fact in these type of cases, the principles

of law laid down by Hon'ble Supreme Court of India in the case of 'J.M. Desai' (supra) are relevant. In the above-mentioned case the Hon'ble Supreme Court of India has observed that "to establish a charge of criminal breach of trust, prosecution is not obliged to prove precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion."

47. Similarly in the case of 'Krishna Kumar' (supra) the Hon'ble Supreme Court of India has ruled that "it is not necessary or possible in every case to prove in what precise manner the accused person dealt with or misappropriated the goods of his master. The question is one of intention and not a matter of direct proof. In case of servant charged with misappropriating the goods of his master the Ingredients of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss then the facts being within the servant's knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of the accused then he has to prove them. If under the law it is not necessary or possible for the prosecution to prove the manner in which the

goods have been misappropriated then failure of the prosecution to prove facts if set out to prove the manner of misappropriation or conversion would be little consequence."

48. In the present case the learned counsel for the petitioner has also contended that once the money was deposited by the petitioner on 29.03.2000, i.e. before the filing of FIR, the cognizance for the commission of offence punishable under Section 409 IPC could not have been taken against the petitioner, *firstly* because of the bar of limitation and *secondly* in view of principles of law propounded of Hon'ble Supreme Court of India in the case of 'Sardar Singh' (supra).

49. As far as the above-mentioned argument is concerned, the bar of limitation cannot be invoked in the present case as the offence for which the petitioner has been convicted is punishable with imprisonment up to 10 years. As far as the principles laid down in the case of 'Sardar Singh' (supra) are concerned, the factual matrix of the above-mentioned case was altogether different than the factual matrix of the present case. In the case of 'Sardar Singh' (supra), there was allegation with regard to misappropriation of a document i.e. receipt book and not the money. In the case the situation is altogether different.

50. As a sequel to above-mentioned observations, it is hereby observed that in the present case neither the prosecution of the petitioner was barred by limitation nor the petitioner were prosecuted under the wrong provision nor there was any legal bar for prosecution without sanction nor the evidence adduced by the prosecution was unreliable. Thus, it is hereby observed that by returning a finding of conviction against the petitioner, for the

charge under Section 409 of IPC, no error of judgment has been committed by the learned trial Court and the petitioner has been rightly held guilty and convicted by the learned trial Court. Hence, it is hereby observed that there is no scope for indulgence and interference in the impugned judgments of learned trial Court, vis-a-vis learned Appellate Court, and both the judgments deserves to be upheld.

51. As a sequel to above-mentioned observations finding no merit the present petition is hereby **dismissed,** accordingly.

(SURYA PARTAP SINGH)
JUDGE

28.04.2026
vipin

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