IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.1163 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Muzaffarpur

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Birendra Kumar, Son of Bindeshwari Prasad, Resident of Mohalla - Basanti Lane, Deewan Road, P.S.- Mithanpura, Distt – Muzaffarpur.

... ... Petitioner

Versus

(i) The State of Bihar

(ii) Bhupendra Kumar, Area Manager, Utter Bihar Gramin Bank, Area Office Suraiyaganj, P.S.- Town, District- Muzaffarpur, Permanent Address- S/o Late Dayanand Prasad, Resident of Thana Road, Post- Khagaria, P.S.- Town, District- Khagaria, Mobile No. 9431261365.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Rajesh Kumar, Advocate
For the State	:	Mr. Chandra Sen Prasad Singh, APP
For the Bank	:	Mr. Prabhakar Jha, Advocate
		Mr. Amitesh Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

Date : 22-07-2025

Introduction

The present Criminal Revision Petition has been preferred by the Petitioner against the Judgment of conviction and order of sentence dated 30.07.2019 passed by learned Sessions Judge, Muzaffarpur in Cr. Appeal No. 9 of 2019, whereby learned Appellate Court has upheld the judgment of conviction and order of sentence passed by learned Trial Court of the Judicial Magistrate Ist Class-cum- Additional Munsif,

Muzaffarpur (West), in Paroo P.S. Case No. 109 of 2009, corresponding to Trial No. 5405 of 2018, G.R. No. 1006 of 2009, whereby learned Trial Court had found the Petitioner guilty under Section 409 of the Indian Penal Code sentencing him to undergo R.I. for three years and pay fine of Rs. 10,000/- and in default to pay the fine, he was further directed to undergo S.I. for three months.

Prosecution Case

2. The criminal proceeding was initiated on a letter written by Area Manager of North Bihar Gramin Bank, Muzaffarpur addressed to the Officer-in-charge, Police Station Paroo, Muzaffarpur against the petitioner herein who was Branch Manager of North Bihar Gramin Bank, Branch Sarmastpur.

3. The sum and substance of the allegation levelled by the Area Manager against the petitioner, Branch Manger is that as per audit report during his tenure from 2005 to 2008, the petitioner has committed serious financial irregularities for sanctioning loans causing loss of Rs.96,97,000/- to the State revenue, details of the loans as given are as follows: (i) KCC loans in 190 accounts; (ii) L.T.L. loans in 13 accounts; (iii) G.C.C. loans in 57 accounts and (iv) S.C.C. loans in 49

accounts. As per further allegation, no documents regarding the address and parentage of the debtors were taken as loan documents. It has been claimed by the Area Manager/informant that *prima facie,* the petitioner has misappropriated the loan amounts by showing loans sanctioned in favour of the fake persons.

Evidence of Both the parties

4. During the trial, the prosecution has examined altogether 11 witnesses who are as follows:

(i) **P.W.1 Ravi Ranjan Kumar** – who is a retired Bank Manager.

(ii) **P.W.2 Bhupendra Kumar (informant)** who is a Senior Manager.

(iii) **P.W.3 Braj Mohan Prasad** who is retired Assistant Manager.

(iv) **P.W.4 -** Md. Shamshad Khan**, P.W.5 -** Md Aslam**, P.W.6 -** Neeraj Kumar**, P.W.7 -** Mr. Rajesh Kumar, **P.W.8 -** Ram Jappu Pandey and **P.W.9 -** Sujeet Kumar who are Investigating Officers of the case.

(v) **P.W.10 Narendra Nath** – who is an Assistant Regional Manager, who had done the audit of the bank in question.

(vi) **P.W.11 Ritesh Kumar** who is a Manager in a DAD USB head office, Muzaffarpur.

5. The prosecution has also brought on record the following documents:

(i) **Exhibit 1** - Signature of the P.W.2 on letter No.139 dated 08.07.2009.

(ii) **Exhibit 2** - Original audit report for period 10.02.2009 to 14.02.2009.

(iii) **Exhibit 2/1**- Writing and signature of the P.W.10, the Auditor on the audit report for the period 10.02.2009 to 14.02.2009.

(iv) **Exhibit 2/2**- Signature and writing on the audit observation of P.W.10, the audit observation report for the period covering for the period 10.02.2009 to 14.02.2009.

(v) **Exhibit 3**-Original report of Audit Observer for audit conducted from 28.01.2008 to 31.01.2008.

(vi) **Exhibit 4**- The signature of the S.H.O., Paroo namely, Ram Kumar Singh on the formal F.I.R.

(vii) **Exhibit 5**- Charge-sheet No.47/14 dated 28.02.2017.

(viii) **Exhibit 6**- C.C. of Departmental Proceedings DAW/02/09-10/271 dt. 03.09.2009.

(ix) **Exhibit 7**- C.C. of Departmental Proceeding order HO/DAD/04/11-12/No.99 dated 29.04.2011.

(x) **Exhibit 8**- C.C. of administrative order HO/DAD/04/11-12/No.100 dated 29.04.2011.

(xi) **Exhibit 9**-C.C. of GCC loan Circular letter Credit/02/2006-07/21 dated 18.07.2006.

(xii) **Exhibit 10**-C.C. of SCC loan Circular Credit No. HO/Credit 29/2005-2006 dated 30.01.2006.

(xiii) **Exhibit 10/1**- C.C. of letter No. Credit/02/2006-07 for SCC dated 01.09.2006.

(xiv) **Exhibit 11**-C.C. of KCC loan Circular Letter No. Credit/02/2006-07 dated 01.09.2006.

(xv) **Exhibit 12**-C.C. of LTL loan Circular RRB/HO/Credit/28/2004-05/21 dated 29.09.2004.

(xvi) **Exhibit 13**-C.C. of Power Trailor under head of LTL Loan-HO/Credit 02/2009-10.02.2010 dated 16.04.2009.

6. In defence, the accused, who is petitioner herein, has examined the following witnesses in his defence: (i) **D.W.1**-Binay Pratap Singh; (ii) **D.W.2**-Yogendra Paswan; (iii) **D.W.3-** Umesh Patel; (iv) **D.W.4-** Sri Ram Rai; (v) **D.W.5-** Ramesh Patel; (vi) **D.W.6-** Manju Devi; (vii) **D.W.7-** Birendra Kumar (petitioner herein). D.W.1 to D.W.6 are loanees and D.W.7 is the accused/petitioner herein himself.

Findings of the Trial Court

7. After appreciation of the evidence, learned trial Court found the petitioner guilty under Section 409 of the Indian Penal Code, acquitting him of other charges as framed under Sections 420, 467, 468 and 471 of the Indian Penal Code and the petitioner was sentenced to R.I. for three years and a fine of Rs.10,000/- and in default to pay the fine, he was further directed to undergo S.I. for three months, finding as follows:

> "**26**. In view of discussions in the preceding paragraphs and upon analysis of all the evidences, submissions, it is proved beyond reasonable doubts that during his tenure as the Branch Manager Branch Sarmastpur, some of the loans under GCC, SCC and KCC schemes from 2007-2008 have been sanctioned by the accused person in gross violation of the rules given in the related circular issued by the Head Office and General

> Banking Norms; that the accused person has observed irregularity while getting the loan application filled up and due to the same it was difficult for the Bank to identify the loanee and hence, the Bank could not take any proper proceeding against the defaulters. The sizeable loss caused to bank is reflected in the Annexure-A to Exhibit '6' which gives details of NPA in SCC, KCC, GCC loan accounts sanctioned by the accused persons. His explanation as to dealing with the loan funds were not found plausible and convincing, thus giving strong inference of his dishonest disposal of the loan funds at the wrongful loss of his employer bank. The accused person has not cared at all about the recovery of the disbursed loan in these accounts by defaulting to mention the address of the loanee. It is pertinent to mention that the defence has not been successful in demolishing the allegation of 'no address details of loanee in the loan ledger'. The contents in Exhibit 2 and testimonies of PW2 and Findings in Exhibit '7' 1.e Final Order of Disciplinary Authority strongly proved the prosecution case on this issue. Overall, I found that the accused person did not observe banking norms and rules and abused the authority vested in him by keeping aside all the banking norms and the same amounts to criminal breach of trust. Further dishonest disposal of the loan funds under the scheme of GCC, SCC, KCC loans has been convincingly proved. All the ingredients to constitute offence of Criminal Breach of Trust u/sec. 409 IPC has been convincingly proved against the accused persons.”

Findings of the Appellate Court

8. Being aggrieved by the judgment of the conviction and order of sentence, the petitioner herein preferred Criminal Appeal bearing Cr. Appeal No. 09 of 2019 before the Court of Sessions, Muzaffarpur. However, the judgment of conviction and order of sentence against the petitioner was upheld by the Appellate Court below, holding as follows:

> “**8**. From the materials available on record, it is clear that the appellant being Branch Manager, Sarmastpur branch, some of the loans under GCC, SCC and KCC

> schemes from 2007-2008 were sanctioned by the appellant by committing gross violation of the rules in the related circular issued by the Head Office and general banking norms. It was difficult for the bank to identify the loanee because neither the address nor any identification of loanees was mentioned in the ledger book so, the bank was unable to take proper action against the defaulters. The sezeable loss caused to bank in respect of NPA in SCC, KCC, GCC loan accounts were sanctioned by appellant. The explanation submitted by the appellant with respect to dealing in loan funds are not plausible and convincing. The appellant never took steps for recovery of loan amount from defaulters. The prosecution has well proved that appellant dishonestly granted loan funds under the scheme of GCC, SCC, KCC loans without observing banking norms and rules and violated the powers vested in him."

Submissions of the Parties

9. Heard learned counsel for the petitioner, learned APP for the State and learned counsel for the respondent No.2.

10. Learned counsel for the petitioner submits that the impugned judgment of conviction and order of sentence is not sustainable in the eye of law. It suffers from glaring illegality and perverse appreciation of evidence.

11. Elaborating his submission, he further submits that the petitioner herein is a public servant and he cannot be prosecuted without sanction from the competent authority as required under Section 197 Cr.PC. For want of such sanction, the whole trial gets vitiated.

12. He further submits that as per the evidence on record, the ingredients of offence punishable under Section 409

of the Indian Penal Code are not fulfilled. For attracting Section 409 of the Indian Penal Code, there must be entrustment of money and misappropriation of the same by the accused. However, as per the best case of the prosecution, the petitioner herein has only committed irregularity in sanctioning the loans but there is no evidence on record to show that the loan amount has been misappropriated by the petitioner to his own benefit.

13. He further submits that there is no evidence on record even to prove irregularity in sanctioning the loans, as no ledger books have been brought on record to prove such irregularity.

14. He also submits that prosecution has not proved that the petitioner has got any unlawful gain on account of his sanctioned loan or even bank has suffered unlawful loss on account of loan sanctioned by the petitioner. There is no evidence on record to prove that the loan amount has not been recovered.

15. He further submits that some loanees who have got the loans during his period from 2005 to 2008 have been examined and all of them have deposed that they had got loans and there was no irregularity in sanctioning of their loans.

16. As such, in view of learned counsel for the

petitioner, learned trial Court as well as Appellate Court have erroneously held the petitioner guilty under Section 409 of the Indian Penal Code.

17. However, learned APP for the State and learned counsel for the respondent-bank vehemently support the impugned judgment of the learned trial Court as well as learned Appellate Court submitting that the judgment is based on proper appreciation of law and evidence and there is also no irregularity of proceeding in passing the impugned judgment.

18. He further submits that under revisional jurisdiction, this Court has limited scope of interference and this Court cannot re-appreciate the evidence afresh if the Trial Court as well as Appellate Court have concurrently found the petitioner guilty under Section 409 of the Indian Penal Code and no exceptional situations have been shown showing any illegality, irregularity or perversity in the impugned judgment.

19. He further submits that the petitioner/accused is a bank official and he is not protected under Section 197 Cr. PC because despite being a public servant, he is not removable from his office save by or with the sanction of the Government, whereas for protection under Section 197 Cr.PC, the accused must not be only a public servant but he should be also

removable, save by or with the sanction of the Central Government or the State Government.

Extent and Scope of Revisional Jurisdiction of the High Court

20. Before I proceed to consider the rival submission of the parties, it is desirable to see the extent and scope of revisional jurisdiction of High Court. As per the statutory provisions and judicial precedents, it is settled principle of law that the revisional jurisdiction conferred upon the High Court is a kind of paternal or supervisory jurisdiction under Section 397 read with Section 401 Cr.PC in order to correct the miscarriage of justice arising out of judgment, order, sentence or finding of subordinate Courts by looking into correctness, legality or propriety of any finding, sentence or order as recorded or passed by subordinate Courts and as to the regularity of any proceeding of such inferior Courts.

21. However, the exercise of revisional jurisdiction by the High Court is discretionary in nature to be applied judiciously in the interest of justice.

22. Under revisional jurisdiction, the High Court is not entitled to re-appreciate the evidence for itself as if it is acting as a Court of appeal, because revisional power cannot be equated with the power of an Appellate Court, nor can it be

treated even as a second appellate jurisdiction. Hence, ordinarily, it is not 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 Trial and Appellate Court, unless there are exceptional situations like glaring error of law or procedure and perversity of finding, causing flagrant miscarriage of justice, brought to the notice of the High Court. Such exceptional situations have been enumerated by Hon'ble Apex Court on several occasions which are as follows:-

(i) when it is found that the trial court has no jurisdiction to try the case or;

(ii) when it is found that the order under revision suffers from glaring illegality or;

(iii) where the trial court has illegally shut out the evidence which otherwise ought to have been considered or;

(iv) where the judgment/order is based on inadmissible evidence, or;

(v) where the material evidence which clinches the issue has been overlooked either by the Trial Court or the Appellate Court or;

(vi) where the finding recorded is based on no evidence or;

(vii) where there is perverse appreciation of evidence or;

(viii) where the judicial discretion is exercised arbitrarily or capriciously or;

(ix) where the acquittal is based on a compounding of the offence, which is invalid under the law.

23. However, it has been cautioned by Hon'ble Supreme Court that the aforesaid kinds of situations are illustrative and not exhaustive.

24. Here, one may refer to the following judicial precedents:

(i) Akalu Ahir and Ors. vs Ramdeo Ram
(1973) 2 SCC 583
(ii) K. Chinnaswami Reddy vs State of A.P.
1962 SCC Online SC 32
(iii) Duli Chand Vs Delhi Administration
(1975) 4 SCC 649
(iv) Janta Dal Vs H.S. Chowdhary & Ors.
(1992) 4 SCC 305
(v) Vimal Singh Vs Khuman Singh & Anr.
(1998) 7 SCC 323
(vi) State of Kerala Vs. Puttumana I. J. Namboodiri
(1999) 2 SCC 452
(vii) Thankappan Nada & Ors. Vs. Gopala Krishnan
(2002) 9 SCC 393
(viii) Jagannath Chaudhary Vs. Ramayan Singh
(2002) 5 SCC 659
(ix) Bindeshwari Prasad Singh @ B.P. Singh & Ors.
Vs. State of Bihar (Now Jharkhand) & Anr.
(2002) 6 SCC 650
(x) Manju Ram Kalita v. State of Assam
(2009) 13 SCC 330
(xi) Amit Kapoor v. Ramesh Chander
(2012) 9 SCC 460

(xii) Ganesha Vs. Sharanappa & Anr.
(2014) 1 SCC 87
(xiii) Shlok Bhardwaj v. Runika Bhardwaj & Ors.
(2015) 2 SCC 721
(xiv) Sanjaysinh R. Chavan Vs. D. G. Phalke
(2015) 3 SCC 123
(xv) Malkeet Singh Gill v. State of Chhattisgarh
(2022) 8 SCC 204

Present Case

25. Coming back to the case on hand, I find that the petitioner/convict herein has made first and foremost submission that the whole prosecution is vitiated for want of sanction under Section 197 Cr.PC because he is a public servant. This question requires to be considered first.

26. Here it would be pertinent to point out that undisputedly, the petitioner, being a Branch Manager of North Bihar Gramin Bank, Sarmaspur, is a public servant in terms of Section 21 of the Indian Penal Code. As per Sub-clause (b) of clause twelfth of Section 21 of the Indian Penal Code, every person in service or pay of the local authority or corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 is a public servant.

27. However, for protection under 197 Cr.PC only being a public servant is not sufficient. Besides being a public

servant, he is also required, as per sub-section (1) of Section 197 Cr.PC, to be removable from his office save by or with the sanction of the Government. But officials of a public sector bank are not such public servants, as held by Hon'ble Supreme Court in (i) **A. Sreenivasa Reddy v. Rakesh Sharma**, (2023) 8 SCC 711, (ii) **S.K. Miglani v. State (NCT of Delhi)**, (2019) 6 SCC 111 and (iii) **K. Ch. Prasad v. J. Vanalatha Devi**, (1987) 2 SCC 52.

28. In **A. Sreenivasa Reddy Case** (supra), Hon'ble Supreme Court has held as follows:

> "45. The appellant was serving as an Assistant General Manager, State Bank of India, Overseas Bank at Hyderabad. State Bank of India is a nationalised bank. Although a person working in a nationalised bank is a public servant, yet the provisions of Section 197CrPC would not be attracted at all as Section 197 is attracted only in cases where the public servant is such who is not removable from his service save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter, even if it is alleged that the appellant herein is a public servant, still the provisions of Section 197CrPC are not attracted at all.
>
> 46. The question as to whether a Manager of nationalised bank can claim benefit of Section 197CrPC is not res integra. This Court in **K. Ch. Prasad v. Vanalatha Devi, (1987) 2 SCC 52**, had the occasion to consider the very same question in reference to one who claimed to be a public servant working in a nationalised bank. The application filed by the appellant therein questioned the maintainability of the prosecution for want of sanction under Section 197CrPC, was rejected by the Metropolitan Magistrate and revision to the High Court also met the same fate. This Court, while dismissing the appeal held that though a person working in a nationalised bank is a

public servant, the provisions of Section 197 are not attracted at all. In para 6 of the judgment, following has been held :

> "6. It is very clear from this provision that this section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter even if it is held that the appellant is a public servant still provisions of Section 197 are not attracted at all."

47. The aforesaid decision of this Court in K. Ch. Prasad has been quoted with approval in a later decision in **S.K. Miglani v. State (NCT of Delhi), (2019) 6 SCC 111.** In this case, the appellant was working as a Manager in Bank of Baroda, Faridabad Branch. A complaint in writing was lodged by the Director, Housing against the appellant. On the strength of the said complaint, Kotla Mubarakpur Police Station registered a first information report for the offences under Sections 201, 409, 419, 420, 467, 468, 471 and 120-B, respectively, of IPC. It was the case of the prosecution that the appellant therein and another co-accused in collusion with each other acted on a fake request of original allottee for cost reduction of a flat from Rs 10.66 lakhs to Rs 7.77 lakhs with the approval of the competent authority. Many other allegations were levelled in the said FIR. Upon completion of the investigation, charge-sheet was submitted. The appellant filed an application before the ACMM, Saket Court, New Delhi in the FIR referred to above, stating that he being a public servant employed with the nationalised bank as a Manager, it was mandatory to seek sanction against him in terms of Section 197CrPC.

48. It was argued before the court that he may be discharged on account of non-compliance under Section 197CrPC. The Chief Metropolitan Magistrate (South), Saket Court rejected the application filed by the appellant therein, seeking discharge for want of sanction. The matter reached up to this Court. This Court held in paras 10 and 12, respectively, as under.

> "10. The appellant being a Manager in a nationalised bank whether can claim that before prosecuting him sanction is required under Section 197. The CMM having come to the opinion that the appellant having not satisfied

> that he was a public servant not removable from his office save by or with the sanction of the Government, Section 197CrPC was not attracted with regard to the appellant. After coming to the above conclusions, it was not necessary for the CMM to enter into the question as to whether the acts alleged against the appellant were discharged in performance of official duty.
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> ***
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> 12. The High Court in its impugned judgment S.K. Miglani v. State, 2018 SCC OnLine Del 10571 has not adverted to the above aspect and has only confined to the discussion as to whether the acts alleged of the appellant were in discharge of official duty. The High Court also had relied on the judgment of this Court in Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1. We, having come to the conclusion that the appellant being not a public servant removable from his office save by or with the sanction of the Government, sanction under Section 197CrPC was not applicable. The appellant cannot claim protection under Section 197CrPC. We are of the view that examination of further question as to whether the appellant was acting or purporting to act in the discharge of his official duty was not required to be gone into, when he did not fulfil conditions for applicability of Section 197(1)CrPC."

49. It is pertinent to note that the banking sector being governed by Reserve Bank of India and considered as a limb of the State under Article 12 of the Constitution and also by virtue of Section 46-A of the Banking Regulation Act, 1949, the appellant herein is deemed to be a "public servant" for the purpose of provisions under the PC Act, 1988. However, the same cannot be extended to IPC. Assuming for a moment that the appellant herein should be considered as a "public servant" for IPC sanction also, the protection available under Section 197CrPC is not available to the appellant herein since, the conditions in-built under Section 197CrPC are not fulfilled.

50. Unfortunately, in the case on hand, the High Court also missed or overlooked the aforesaid aspect and confined its adjudication as to whether the acts alleged of the appellant were in discharge of the official duty.

51. Question (i) is answered accordingly."

(Emphasis supplied)

29. As such, it is clearly found that the petitioner, who is a bank official, is not protected under Section 197 Cr.PC. In view of this finding, it is no longer necessary to go into the question whether the petitioner has committed the alleged offence in discharge of his official duty.

30. Now, the only question is whether the conviction of the petitioner under Section 409 IPC made by learned Trial Court and learned Appellate Court below is sustainable in the eye of law.

Criminal Breach of Trust by a Public Servant or by a Banker, Merchant or Agent

31. Here is it would be imperative to refer to Section 409 IPC to proceed further. Section 409 IPC reads as follows:

> **"409. Criminal breach of trust by public servant, or by banker, merchant or agent.**— Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, mer-chant, 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."

32. Explaining the ingredients of Section 409 IPC, Hon'ble Supreme Court in **N. Raghavendra vs. State of AP** as reported in **(2021) 18 SCC 70** has held as follows:

"45. Section 409 IPC 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. Sadhupati Nageswara Rao v. State of A.P., (2012) 8 SCC 547

46. The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409 IPC. 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 a property, dishonestly misappropriates or converts to his own 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 own 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 pre-supposes 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 ones use and to the exclusion of the

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 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 on the accused to prove that the obligation vis-à-vis the entrusted property was carried out in a legally and contractually acceptable manner."
>
> (Emphasis supplied)

33. In **Chelloor Mankkal Narayan Ittiravi Nambudiri Vs. State of Travancore-Cochin,** as reported in **(1952) 2 SCC 392,** Hon'ble Supreme Court has held that to constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

34. In **Onkar Nath Mishra Vs. State (NCT of Delhi) (2008) 2 SCC 561** Hon'ble Apex Court has noted that in the commission of the offence of criminal breach of trust, two

distinct parts are involved. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.

35. Explaining the provisions of Section 409 IPC, Hon'ble Apex Court in **Mir Nagvi Askari Vs. CBI,** as reported in **(2009) 15 SCC 643** has held as follows:

> "168. The terms of the section are very wide. It applies to one who is in any manner entrusted with property or dominion over property. The section does not require that the trust should be in furtherance of any lawful object. The section provides, inter alia, that if such a person dishonestly misappropriates or converts to his own use property entrusted to him he commits criminal breach of trust. There are separate offences by which criminal breach of trust may be committed. This section requires:
> (1) Entrusting any person with property or with dominion over property.
> (2) That person entrusted (a) dishonestly misappropriates or converting to his own use that property; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation—
> (i) of any direction of law prescribing the mode in which such trust is to be discharged, or
> (ii) of any legal contract made touching the discharge of such trust.
> .....
> 173. Therefore, in view of the principles of law extracted above in our opinion there is no doubt that the offences relating to criminal breach of trust stands established against the accused. They were the officers in the Funds Department of Andhra Bank. In the said capacity they had been entrusted with the funds of the Bank. In that sense they had dominion over a thing. The money which was transferred to the account of A-3 was the money belonging to the Bank. Only the said accused had the power to transfer it to the account of A-3. In the present case, the

same has been done dishonestly to cause wrongful gain to A-3 and in the process wrongful loss has been caused to the Bank.

174. The instruments based on which the funds of Andhra Bank were transferred to the account of A-3 were not physically available with Andhra Bank at the time the accused persons authorised the transfer of the funds of Andhra Bank to the account of A-3. A-3 also utilised the said credit given and accordingly even cheques issued by him were honoured. Had it not been for the credits given on the relevant dates his account would have been overdrawn. Interest was not charged from A-3 and was not debited from his account and loss was therefore caused to the Bank.

175. Moreover, it must be noted in this respect that banking norms and established practices and procedures would contain directions of law prescribing the mode in which the trust is to be discharged. The expression "direction of law" in the context of Sections 405 and 409 would include not only legislations pure and simple but also directions, instruments and circulars issued by an authority entitled therefor. The trust in this regard would therefore have to be discharged in terms of such directions. Acting in violation thereof causing wrongful gain to A-3 and loss to the Bank would bring the action within Section 409 IPC.

176. Established banking norms are binding on an officer of the bank in the matter of discharge of the trust i.e. in dealing with the money entrusted to him. He is required to follow the same and that would be an implied term of his contract of service as an officer of the bank. The accused before us here acted in breach of the same. We are, therefore, of the opinion that the prosecution has sufficiently been able to prove the involvement of A-1, A-2 and A-4 as regards the offence of criminal breach of trust."

(Emphasis supplied)

36. In **Sudhir Shantilal Mehta Vs. CBI,** as reported in **(2009) 8 SCC 1,** Hon'ble Supreme Court has held as follows:

"65. The ingredients of Section 409 are:

1. The accused must be a public servant, merchant, agent, a factor, broker or an attorney.

> 2. In his such capacity he must be entrusted with some property or must have gained dominion thereover.
> 3. He must have committed criminal breach of trust.
>
> 66. The criminal breach of trust would, inter alia, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust."

37. Hon'ble Supreme Court in **Ram Narayan Popli v. CBI,** as reported in **(2003) 3 SCC 641** has held as follows:

> "361. To constitute an offence of criminal breach of trust, there must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract; and the misappropriation or conversion or disposal must be with a dishonest intention. When a person allows others to misappropriate the money entrusted to him, that amounts to a criminal breach of trust as defined by Section 405. The section is relatable to property in a positive part and a negative part. The positive part deals with criminal misappropriation or conversion of the property and the negative part consists of dishonestly using or disposing of the property in violation of any direction and of law or any contract touching the discharge of trust."

38. Coming back again to the case on hand, I find that altogether 11 witnesses have been examined on behalf of the prosecution, out of which, six prosecution witnesses; P.W.-4, P.W.-5, P.W.-6, P.W.-7, P.W.-8 and P.W.-9 are Investigating Officers of the case. P.W.-3, Braj Mohan Prasad knows nothing

about the case as he has deposed in his examination-in-chief. P.W.-1, Ravi Ranjan Kumar, who is a retired Bank Manager, also knows nothing about the case. He has only filed Audit Report in Court. P.W.-2, Bhupendra Kumar, is the Informant. As per his deposition, he has filed the F.I.R. on the basis of Audit Report which was conducted from 10.10.2009 to 14.10.2009. As per his deposition, defalcated amount is Rs. 96,97,000/- which has been misappropriated during the period from 2005 to 2008. In ledgers of 309 loan accounts, there was no address and other details of the loanees. The Auditor, Narendra Nath has been examined as P.W.-10. In his cross-examination, he has clearly deposed that he has not used the word “defalcation” in his Audit Report. He has pointed out only irregularities because no details or documents regarding the debtors was in the ledgers. P.W.-11 is also a document witness and he has no personal knowledge about the case.

39. I further find that the sum and substance of the allegation against the petitioner is that as per Audit Report, during the tenure of the petitioner as Bank Manager from 2005 to 2008, he has committed serious financial irregularities in sanctioning the loans, causing a loss of Rs. 96,97,000/- to the Bank. These financial irregularities are related with (i) 190

accounts of KCC loans, (ii) 13 accounts of L.T.L loans, (iii) 57 accounts of G.C.C. loans and (iv) 49 accounts of S.C.C loans. As per further allegation, no document was taken by the petitioner in regard to address and parentage of the loanees.

40. As such, I find that there is no direct witness to the alleged offence. The whole case is based on documentary evidence and the best evidence to prove the allegation against the petitioner was the ledger books regarding the loan accounts in which details of the loanees and the documents required for sanctioning loans were not available. But no ledger books regarding any loan account has been produced by the prosecution in the Court by way of exhibits. The Audit Report containing the observation of the Auditor is not primary evidence to prove the prosecution case against the petitioner beyond reasonable doubt. The ledger books of the specific loan accounts should have been produced in the court to show the financial irregularities in sanctioning of loans in violation of rules, regulations, or circular of the Bank. The audit report and the observations of the Auditor are at best only opinions.

41. On the other hand, the petitioner has examined seven defence witnesses. All of them were loanees and all have deposed that there was no irregularity in sanctioning the loans.

42. Hence, I find that the finding of conviction of the petitioner by learned Trial Court as well as learned Appellate Court is based on conjecture and surmises. There is no cogent evidence to prove the prosecution case beyond reasonable doubts. The impugned judgments of the Trial Court as well as the Appellate Court are based only on perverse appreciation of evidence. As such, the impugned judgment is liable to be set aside under revisional jurisdiction of this Court.

43. Accordingly, the impugned judgments passed by learned Trial Court as well as learned Appellate Court are set aside allowing the present petition and acquitting the petitioner of all the charges levelled against him. The bail bonds of the petitioner stand discharged.

44. Pending Interim Applications, if any, stand disposed of.

45. L.C.R be sent back to the court concerned forthwith along with a copy of this judgment.

(Jitendra Kumar, J.)

Chandan/Ravishankar/S.Ali

AFR/NAFR	A.F.R
CAV DATE	19.06.2025
Uploading Date	22.07.2025
Transmission Date	22. 07.2025