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the precise mode of



**ASSIGN
BUSTER**

“ 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.

” Ingredients of offence: The essential ingredients of the offence under Section 409 are as follows: (1) Accused was a public servant or banker, merchant or agent or factor or broker or an attorney; (2) In such capacity accused was entrusted with certain property. Where a servant fails to render accounts and to deliver up the moneys realised by him in spite of repeated demands, he uses the property entrusted to him in violation of the legal contract made by him, with his master and is thus guilty of an offence under this section. Where direct evidence to establish misappropriation of the cloth over which the accused had dominion is lacking, for establishing the charge of criminal breach of trust the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he had domain. 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.

Where the accused is unable to account or renders an explanation for his failure to account which is untrue, an inference of dishonest

misappropriation may readily be made. Where the accused had committed misappropriation for the first time and this appeared to be his first offence, as he was a young man and law graduate so a serious notice of the lapse was not taken and nominal sentence of one month's R. I. and fine of Rs. 500, was held proper. (3) Criminal breach of trust by a public servant, banker, merchant, factor, broker, attorney or agent—imprisonment for life or imprisonment of either description upto ten years and fine (Section 409).
Ingredients: In order to bring home the guilt to the accused under Section 409, I. P.

C., the prosecution must prove: (1) That the accused was public servant or a banker, merchant, factor, broker, attorney or agent; (2) That he was in such capacity entrusted with the property in question or with any dominion over it; and (3) That he committed criminal breach of trust in respect of that property. It is necessary that all the above ingredients should be established. The accused was a Sarpanch of the local Panchayat and hence he was a public servant as defined under Section 21, I. P. C. But the second and the third ingredients were not proved.

There was failure to prove that there was entrustment of the money in question to the accused by the Gram Panchayat and that he misappropriated the same. Hence offence under Section 409, I. P. C.

, was not established against the accused. In the case of *Jiwan Das v. State of Haryana*, it was held that to charge a person under this section what is necessary to be proved is that the accused is a public servant and in such

capacity he was entrusted with the property in question or with dominion over it and that he committed criminal breach of trust in respect of it.

Similarly in Chondhry v. State of Bihar, where the defence was founded on a relevant and vital document seized from the custody of the accused and not deliberately produced, it was held that the conviction of the accused could not be sustained. In order to bring home the charge of criminal breach of trust by a public servant, there must be an entrustment, thereafter misappropriation or conversion to one's own use or use in violation of any legal direction or of any legal contract and finally the misappropriation, conversion or disposal must be with a dishonest intention. A Supreme Court case of Narendra Singh v. State of U. P., may be taken to illustrate these points.

In the instant case it was alleged that the accused persons who were entrusted with fertilizers, seeds etc., of the Govt. Agricultural Seed Store in their official capacity prepared forged bills in respect of the articles of the store in the name of some village level workers as if these workers were supplied with articles on credit and thereby committed criminal breach of trust under Section 409, it was pointed out that the entrustment or dominion over the property of the seed stores was not in dispute, indeed there could be none but it was held that the charge could not be sustained when it was shown that in spite of the circulars by Director, Agriculture directing to stop the practice of credit sales of fertilisers, etc., from the Govt. Agricultural Seed Store, in reality the long established practice of credit sales was continued and also when none of the bills was found to be bogus nor was found to have been dishonestly used as genuine inasmuch as the charges

under Sections 467 and 471 against the accused were set aside by the High Court and no appeal was preferred by the State against the same and the amount under the bills alleged to have been misappropriated was deposited by the accused and there was no outstanding amount at the time when the investigation was started. Consequently, it was held that the prosecution had not satisfactorily established the main ingredient of "dishonestly" against any of the accused, even though at the worst, it may be said that the first accused was guilty of dereliction of his duty in not collecting the outstanding amount by taking any appropriate steps in that regard.

Moreover, the bills which were alleged to have been forged by the accused No. 2 were of the dates before the accused No. 2 took charge of the seed store in question on his transfer from accused No. 1. Further, there was no evidence that there was any conspiracy, pre-concert or concert of the minds of the accused or any pre-arranged plan between the two accused for the offence or offences complained of. To establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion-misappropriation by the accused, of the property entrusted to him or over which he had dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may ordinarily be a matter of direct proof an 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. Where the accused is unable to account or renders an explanation for his failure to account which is untrue an inference of misappropriation with a dishonest intent may readily be made.

But on the charge of non-payment of money it is difficult to believe that witnesses after having signed the receipts would keep quiet and sleep over the matter for seven years and would not make any complaint to superior officers. This factum throws serious doubt on the truth of prosecution.

Though the entrustment of property and failure in breach of an obligation to account for the property entrusted are important elements for establishing the charge of dishonest misappropriation, they are not by themselves sufficient and must be considered in the light of other facts and circumstances of the case to find out whether an inference of dishonest misappropriation can be safely drawn. A lapse in the discharge of official duty, which may be either due to inadvertence, negligence or over work, stands on a different footing and must be clearly distinguished from criminal liability.

Criminal liability can be fastened only when it is established that the goods have been dishonestly misappropriated and not otherwise. Paddy was entrusted by the Government to the firm. It was dishonestly misappropriated and all the three partners were prosecuted for criminal breach of trust under Section 409. The paddy in question was entrusted to the second accused. Neither the first accused nor the third accused had anything to do with the entrustment. There can be no question of breach of trust in respect of property which has not been entrusted. The mere fact that the first and the third accused, as partners in the firm had dominion over the property entrusted to the second accused does not make them liable under the criminal law, if the second accused dishonestly converted the property and

thereby committed criminal breach of trust in respect of it. The sale proceeds of the paddy were credited to the assets of the firm.

This circumstance cannot be a basis to hold that the first and the third accused were either entrusted with the property or that they instigated or aided the second accused in the dishonest conversion of the entrusted property. There was no allegation of any kind indicating the necessary mens rea on the part of the first and the third accused. A partner can be held liable for criminal breach of trust, not because he is a partner and therefore has dominion over partnership property but only if entrustment in any form is proved. But a director of a company is not only an agent but is in the position of a trustee. Where the charge under Section 409, I. P. C., could not be sustained for want of necessary mens rea or any dishonesty on the part of the accused, the charge under Section 477-A must also fail because it also requires the element of dishonesty as its necessary ingredient, The essential thing to be proved in a case of temporary misappropriation is whether the accused is actuated by dishonest intention or not.

This dishonest intention is to be gathered from false accounting and absence of bona fide or reasonable explanation for non-accounting. Where there is no proof of falsity of the entries in the documents conviction cannot be sustained. In the case of L. Chandraiah v. State of A. P., it was held that the word "dishonestly" used in Section 405 implies the existence of mens rea, that is to say guilty mind. Therefore, if there is no evidence to show that the accused person had knowledge that the vouchers, on the basis of which large number of fraudulent withdrawals of recurring deposits were made,

were allegedly forged and fabricated by another accused, it cannot be said that the accused persons acted with criminal intent.

The entrustment of money by a person to the Post Master for opening a new Savings Bank Account would amount to entrustment within the meaning of Section 409, I. P. C. Property includes a chose-in-action. A Sanitary Inspector misappropriated night soil. The Court held him guilty under this section.

But in case the goods are open and pilferage can be done by any body, in the absence of specific evidence of misappropriation conviction cannot be recorded. The criminal breach of trust must be committed in respect of property to each of the persons to amount to any of the property entrusted in the course of their official business aggravated forms of the offence otherwise it would be an offence of simple breach of trust only. The parties should not be encouraged to resort to the Criminal Courts in cases in which the point at issue between them is one which can more appropriately be decided by a Civil Court, and the tendency on the part of litigants to do so should be on their guard against lending their aid to such procedure. Further, the parties should not be allowed to show their anger or return their vengeance by starting proceedings in the Criminal Courts where the proper remedy is to resort to the Civil Courts. If the prosecution in a matter which is ex facie a civil dispute is unable to prove clearly and beyond doubt that the accused has acted dishonestly, and with a view to enrich himself clandestinely at the expense of those with whom he was working and with whom he was bound by a fiduciary relationship, the case should not be entertained by a Criminal Court on a charge of criminal breach of trust. The

tendency to secure speedy results by recourse to criminal law must be checked.

The case of Queen-Empress v. Moss and others, under Section 409, I. P. C., tried by the Allahabad High Court in the exercise of its jurisdiction on the original side is a leading case under Section 409, I.

P. C. The points discussed in this case amongst others are whether the payment of dividends by a bank out of the deposits with it to the shareholders and out of the profits when no profits accrued with the object of inducing further investment in the bank amounts to criminal breach of trust or not inasmuch as dividends are to be paid out of profits and not out of deposits and further whether the manager or accountant of a bank can be said to be banker for the purposes of Section 409 or only the directors of the bank are to be deemed as bankers.