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**(2019) 02 CHH CK 0450**

**Chhattisgarh High Court**

**Case No:** Criminal Revision No. 49 Of 2005

Prem Chand Yadav

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Feb. 25, 2019

**Acts Referred:**

- Indian Penal Code, 1860 - Section 409

**Hon'ble Judges:** Vimla Singh Kapoor, J

**Bench:** Single Bench

**Advocate:** Y. C. Sharma, Sanjeev Pandey

**Final Decision:** Allowed

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### **Judgement**

1. The judgment under challenge passed on 19.01.2005 by Additional Sessions Judge Dhamtari, in Criminal Appeal No. 3 of 2002, the findings

recorded by the learned Judicial Magistrate First Class Dhamtari, convicting the accused/applicant under Sections 409 IPC and sentencing him to

undergo RI for three years and to pay fine of Rs. 4000/- plus default stipulation have been affirmed.

2. Facts of the case, in short, is that the applicant was posted as postmaster of post office Kukrel from 12.05.1989 to 10.08.1991. It is the allegation

that the applicant received total Rs. 7332/- from the six account holders and embezzled Rs. 100/- of the department. The applicant made entry and

affixed the seal of the department in the pass books of the account holders but subsequently failed to deposit the same in their accounts. A written

complaint regarding misappropriation of government money (Ex.P 22) was made in Police Station Arjuni by B.L. Chittoria, Sr. Superintendent of Post

Officer, Raipur against him and thereafter a departmental inquiry was conducted against the applicant vide Ex.P-23 and on the basis of said departmental inquiry, FIR (Ex.P-24) was registered against him by (PW-13). After registration of offence and completion of investigation the charge sheet was filed against the accused/applicant.

3. Learned Magistrate having perused the material before it convicted the accused/applicant under Section 409 IPC and sentenced him as above,

which on appeal has been affirmed by the judgment impugned. Hence, this revision.

4. Counsel for the applicant submits that the Courts below have committed an error in convicting and sentencing the accused/applicant as mentioned

above though the evidence led by the prosecution was lacking and therefore, the same may be set aside.

5. State counsel however, supports the findings recorded by the both the Courts below.

6. Heard learned counsel for the parties and perused the judgment impugned and the evidence available on record carefully.

7. I have perused Ex.-P/22 which was written by Sr. Superintendent of Post Officer, Raipur to Station House Officer Arjuni against the applicant in

which it was stated that the applicant had misappropriated the government money. Upon the said complaint, a departmental inquiry was conducted by

S.K. Soni (PW-2) vide Ex.P-23. The prosecution has established its case under seizure memos under Ex.P-4, Ex.P-5 and Ex.P6 to Ex.P 21, in which

the names of different accounts holders with their account numbers were mentioned. From the order sheet Ex.P-1, it is clear that the applicant has

accepted his guilt that he has misappropriated the government money. Rajaram DW-1 stated in his evidence that the applicant deposited Rs. 1700/-

and Rs 1225/- before him in the post office Dhamtari under Ex.D- 1 and Ex.D-2.

8. From the evidence of witnesses (PW-1), (PW-2), (PW-3) (PW-4), (PW-5), (PW-7), (PW-9) (PW-10) and (PW-11), it is clear that the

accused/applicant committed criminal breach of trust being a public servant and cheated the account holders by dishonestly misappropriating a sum of

Rs. 7432 and embezzled Rs. 100/-. R.S. Dhruv (PW-8) is the investigating officer and he too has fully supported the case of the prosecution. In

overall view of the matter, conviction of the accused/applicant under Section 409 IPC being based on the evidence collected by the prosecution does

not suffer from any illegality or infirmity and it is maintained accordingly.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 1989-1991, that the accused/applicant has already

remained in jail for a period of 20 days and further that by now he must be leading a well settled life saddled with innumerable responsibilities, this

Court thinks it proper to reduce the sentence imposed on him to the period already undergone. Order accordingly.

10. With the above, the revision stands allowed in part.