
(1985) 14 ILR HP 339 : (1986) 2 RCR(Criminal) 177

High Court of Himachal Pradesh

Case No: Criminal"Appeal No. 98 of 1978

State of H.P.

APPELLANT

Vs

Wazira Ram

RESPONDENT

Date of Decision: April 8, 1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 313, 386#Penal Code, 1860 (IPC) " Section 161, 406, 406, 407, 408#Prevention of Corruption Act, 1947 " Section 5, 5(1), 5(2), 6, 6(1)

Citation: (1985) 14 ILR HP 339 : (1986) 2 RCR(Criminal) 177

Hon'ble Judges: P.D. Desai, C.J; R.S. Thakur, J

Bench: Division Bench

Advocate: M.S. Guleria, Assistant Advocate General, for the Appellant; M.L.Sharma, for the Respondent

Judgement

R.S. Thakur, J.

This appeal is directed against the order of the learned Special Judge, Mandi, dated May 10, 1978, whereby the

Respondent Wazira Ram (hereinafter referred to as the accused), was acquitted of the offences in respect of which he was tried by him u/s 409 of

the Indian Penal Code, and Section 5(2) of the Prevention of Corruption Act, (hereinafter referred to as the Act").

2. The accused was challaned before the Special Judge by the Anti-Corruption Unit, Mandi, under the aforesaid offences. The prosecution case

was that the accused, in February, 1973, was working as Tehsil Jamadar in Tehsil Chachiot, District Mandi. On February 12, 1973, one Ganga

Ram Lam-bardar, came to the Tehsil with an amount of Rs. 1240/- which he had collected as land-revenue for "kharif" crop of the year 1972 in

the capacity of Lambardar, for depositing the same in the Tehsil treasury Chachiot. Since the Vasal Waki Navis in the said treasury, Sunder Singh,

was on leave on that day, the said Ganga Ram could not deposit the amount in the treasury as the same was to be deposited after the said Vasal

Waki Navis had prepared the treasury challan in respect of the said amount. Since Lambardar Ganga Ram came from a distant village, in order to

avoid coming to the Tehsil headquarters again with the amount, he handed over this amount of Rs. 1240/- on February 12, 1973 to the accused on

the accused giving an undertaking that he would deposit this amount of Rs. 1240/- in the Tehsil Treasury on behalf of said Ganga Ram. The

accused also passed a receipt for the said amount in favour of said Ganga Ram after scribing and signing the same in his own hand.

3. The accused, however, failed to deposit this amount in the treasury as undertaken by him but appropriated the same for his own use. Later on,

the Tehsil officials finding that Lambardar Ganga Ram had failed to deposit the land revenue collected by him on due date, issued a notice to the

said Lambardar in response whereof he came present before the Tehsildar, Chachiot, Shri Inder Singh, and asserted that he had handed over this

amount to the accused on February 12, 1973, against a receipt for depositing in the treasury and he also made an application (Ex. PB) in this

behalf after getting it scribed by the petition-writer, Hem Prabh. On this, the Tehsildar Shri Inder Singh called the accused and enquired from him

whether he had received the amount of Rs. 1240/- from the said Ganga Ram for depositing in the treasury and, if so, why the said amount was not

deposited in the treasury. The accused made an admission before the Tehsildar that he had received the amount from said Ganga Ram but had

failed to deposit the same in the treasury as he had appropriated the same to his own use and undertook to deposit the said amount in the treasury.

The accused, however, failed to do so despite the undertaking and in fact ran away from Chachiot which was his place of posting as Tehsil

Jamadar. It was thereafter that this case was registered against the accused.

4. At the commencement of the hearing before the learned Special Judge, the accused was charge-sheeted for the offences to which he pleaded

not guilty and claimed trial.

5. The prosecution, with a view to bringing home the offences to the accused, examined 14 witnesses. The learned Special Judge, however,

disposed of the case mainly on a preliminary point, namely, that the prosecution had failed to prove that a valid sanction was accorded in this case

to prosecute the accused u/s 6 of the Act by the competent authority after full application of its mind to the facts of the case as brought-forth by the

investigating agency incriminatory to the accused and consequently acquitted the accused.

6. We have heard the learned Counsel for the parties and have also gone through the record of the case carefully and, for reasons to be recorded

presently, the appeal deserves to be accepted.

7. The first question that arises for determination is whether the finding of the lower Court on the point that there was no valid sanction in

consonance with the provisions of Section 6 of the Act is sustainable? The relevant portion of the finding of the lower Court in this behalf is

reproduced hereunder:

I have myself perused the sanctioning order (Ex. PW9/B). It does not appear from it that all that relevant papers collected by the investigating

agency were placed before the Deputy Commissioner, Mandi. It is not clear as to on what facts the sanctioning authority came to the conclusion

that the accused should be prosecuted u/s 5(2) of the Prevention of Corruption Act. The sanction order indicates that it was passed in a cursory

manner by the concerned authority without applying its mind to the facts of the case in order to form an independent opinion as to whether or not

the sanction should be accorded to prosecute the accused. The prosecution has also not cared to examine Shri O. D. Parsheera the then Deputy

Commissioner to prove whether he passed the sanctioning order after applying his mind to the evidence collected by the investigating agency

against the accused.. In the absence of these facts I hold that the sanction is invalid.

The relevant sanction-order is Ex. PW 9/B on the record of the case. In order to appreciate the above finding of the learned Special Judge, it

would be proper to reproduce the same which is as under:

Whereas it is alleged that Shri Wazira Ram while functioning as Jamadar on 12-2-1973 had committed criminal breach of the trust of Rs. 1240,"-

entrusted to him by Shri Ganga Ram Lambard"ir for depositing the same in the Tehsil treasury Chachiot as revenue collection for the kharif crop

for the year 1972 as the treasurer was not available on that date in the Tehsil and Shri Wazira Ram Jamadar had given a receipt to Shri Ganga

Ram in token of the receipt of the said amount.

And whereas the said acts constitute an offence punishable u/s 409 of the Indian Penal Code and Section 5(2) read with Section 5(1)(c) of the

Prevention of Corruption Act, 1947 (Act. No. II of 1947).

And whereas, I, C. D. Parsheera, Deputy Commissioner, Mandi District Mandi, being the authority competent to remove the said Wazira Ram

Jamadar from office, after fully and carefully examining the material before me as contained in police file of case F.I.R. No. 2 dated 15-2-1974 u/s

409 IPC and Section 5(2) P.C. Act, P.S. Central Zone, A.C.U. Mandi and challan papers of the aforesaid case in regard to the said allegations

and the circumstances of the case consider that the said Wazira Ram Jamadar should be prosecuted in a Court of law for the said offences.

Now, therefore, I do hereby accord sanction under of Corruption Act, 1947, (Act No. II of 1947) for the prosecution of the said Shri Wazira

Ram Jamadar for the said offences and any other offences punishable under other provisions of law in respect of the acts aforesaid and for the

taking of cognizance of the said offences by a court of competent jurisdiction.

In view of this detailed sanction-order of the competent authority, namely, the Deputy Commissioner, Mandi district, we fail to understand as to

how the learned Special Judge came to the conclusion that this order is a cursory one and does not disclose that the same was made by the

competent authority after full application of his mind to the facts of this case. The order clearly sets out in nut-shell the entire prosecution case

against the accused, namely:

(i) that the accused was functioning as Jamadar in Tehsil Chachiot on 12-2-1973 when he received an amount of Rs. 1240/- being revenue

collection for kharif crop of the year 1972 from Ganga Ram Lambardar for depositing the same in Tehsil Treasury at Chachiot;

(ii) that at the time of receiving this amount for depositing in the treasury he executed a receipt in respect of the said amount in favour of Shri Ganga

Ram;

(iii) that he failed to deposit the said amount in the treasury and committed a criminal breach of trust in respect of the said amount and proceeds to

record: that the competent authority, that is, the Deputy Commissioner, Mandi, was according the required sanction after fully and carefully

examining the circumstances of the case and the material as placed before him by the prosecuting agency concerned in the shape of police file and

challan papers in respect of the case against the accused being F.I.R. No. 2 dated 15-2-1974 u/s 409 IPC and Section 5(2) of the Act and after

being satisfied that the accused was required to be prosecuted in a Court of law for the said offences.

No doubt, as the trial Court has also observed, the sanctioning authority, namely, the then Deputy Commissioner, Mandi, Shri C. D. Parsheera,

did not himself step into the witness-box to state that he accorded this sanction after full application of his mind to the facts of the case but, in our

opinion, this was of no consequence. It is on record that Shri Nand Lal (PW-9), who was at that time working as Assistant in the office of the

Deputy Commissioner, Mandi, has categorically stated in his statement dated 28-1-1977 that sanction for prosecution of the accused was

accorded by the Deputy Commissioner, Mandi, Shri C. D. Parsheera, with whose handwriting and signatures he was well conversant and that the

sanctioning order (Ex. PW 9/B) contained his signatures. We are firmly of the view that this statement was sufficient in proof of this sanction order

and that it was not necessary that the sanctioning authority himself should have stepped into the witness box to reiterate the relevant facts which

have been stated in the sanction order (Ex. PW 9/B). In State of Rajasthan v. Tarachand Jain, a somewhat similar question arose for determination

in light of a comparable fact-situation. In that case, the sanction order which was in dispute read as follows:

No. F. 19 (33) Apptt. (a)/60/Group III Jaipur, the 6th October, 1960.

Whereas, it has been brought to the notice of the Governor of Rajasthan that Shri Tara Chand Jain, RAS s/o Shri Kedar Lal Jain resident of Panch

Batti Baxhi Bhawan, Jaipur City, and posted at Barmer as Sub-Divisional Magistrate has accepted or obtained Rs. 500/- for himself from Shri

Hazi Ali Mohammed s/o Shri Mari Musalman resident of village Siyar, District Barmer accused in case No. 82 of 1959 and No. 462 of 1969

State v. Shri Hazi Ali Mohammed u/s 3/6 Indian Passport Rules and State v. Hazi Ali Mohammed u/s 13/11 Rajasthan Religious Buildings and

Places Act respectively pending in his Court on 30-3-1960 at his residence at Barmer, as gratification other than legal remuneration as a motive or

reward for showing favour to him in the exercise of his official functions by extending a proviso to decide the cases in his favour or by corrupt and

illegal means or by otherwise abusing his position as a public servant has obtained for himself pecuniary advantage in the form of G. C. notes of Rs.

500/- in discharge of his duty and which gratification of Rs. 500/- was also recovered from his possession by the Deputy Superintendent of Police,

Anti-Corruption Shri Nand Singh in the presence of Motbir witnesses, complainants and Police party, and which acts of said Sub-Divisional

Magistrate are punishable u/s 161 I.P.C. and 5 (1)(d) (2) of P.C. Act, 1947.

And whereas it has also been brought to the notice of Governor of Rajasthan that Shri Tara Chand Jain RAS, Sub-Divisional Magistrate, Barmer

has habitually accepted or obtained the following amounts from the following persons in cases against them in his Court, as gratification (other than

legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code.

xxx xxx xxx

And whereas from the perusal of the facts on the record of this case placed before the Governor of Rajasthan he is satisfied that there are

reasonable ground to believe that Shri Tara Chand Jain, Sub-Divisional Magistrate, has committed the offence within the meaning of Section 161

I.P.C. and has also committed the offence of criminal misconduct in the discharge of his duties falling under Sections 5(1)(a) and 5(1)(d) read with

5(2) of P.C. Act (II of 1947), on the basis of facts stated above.

And whereas there is no other ground whatsoever to refuse or withhold the sanction for the prosecution of Shri Tara Chand Jain.

Now, therefore, in pursuance of Section 6(1) of the Prevention of Corruption Act, 1947 the Governor of Rajasthan being the competent authority

to remove Shri Tara Chand Jain from his office do hereby accord sanction for the prosecution of the said Shri Tara Chand for the offences u/s

161 I.P.C. and Section 5(2) read with Section 5(1)(a) and 5(1)(d) of P.C. Act, 1947 (No. II of 1947) or any other offence or offences which

may be found to have been committed by Shri Tara Chand Jain in this connection.

By order of the Governor,

(A)Sd/- (B)

(R.D. Thapar) I.A.S.

Special Secretary to the Government.

8. Although the aforesaid sanction was in the name of the Governor and it was duly authenticated by Shri R. D. Thapar, Special Secretary to the

Government, it was proved on record that the sanction was in fact accorded by the Chief Minister of Rajasthan. The Chief Minister, however, had

not stepped into the witness box to prove the sanction and the prosecution had examined one Umraomal, a Section Officer, Appointment A-III

Department, Government of Rajasthan, who had stated that the sanction (supra) bore the signature of Shri R. D. Thapar, Special Secretary in the

appointment (A-III) Department.

9. Against the aforesaid background, the Supreme Court held that the sanction should be shown to have been given by the competent authority

after appreciating the facts constituting the offence charged and all those facts should be either apparent on the face of the order itself or, in case it

is not so, the prosecution should adduce evidence in proof of the fact that those facts were placed before the sanctioning authority and the sanction

was accorded by it after full application of its mind.

10. In view of the sanction order cited (supra) their Lordships were of the opinion that since the order on the face of it disclosed all the facts

constituting the offence, there was no need for the prosecution to adduce independent evidence to prove that the relevant facts had been placed

before the Chief Minister before he accorded the sanction. The relevant portion of the judgment may be reproduced as under:

It is no doubt true that no independent evidence was led by the prosecution to prove that the relevant facts had been placed before the Chief

Minister before he accorded sanction but that fact, in our opinion, introduces no fatal infirmity in the case. Sanction P-34 has been reproduced

earlier in this judgment and it is manifest from its perusal that the facts constituting the offence have been referred to on the face of the sanction. As

such it was not necessary to lead separate evidence to show that the relevant facts were placed before the Chief Minister. The evidence of

Umraomal shows that the formal sanction P. 34 filed in the Court bears the signature of Shri R. D. Thapar, Special Secretary to the Government.

The fact that the Chief Minister signed the sanction for the prosecution on the file and not the formal sanction produced in the Court makes no

material difference. It is, in our opinion, proved on the record that the sanction for the prosecution of the accused had been accorded by the

competent authority after it had duly applied its mind to the facts of the case.

It may be noted that the prosecution in the present case on the point in question is on a much better footing. The sanction order bears the signature

of the sanctioning authority, that is, the Deputy Commissioner Ma di, which signatures have been duly proved by his office Assistant ShriNand Lal

(PW-9) and the sanction order, as we have already observed, contains all the salient features constituting the offence of which the accused stands

charged. Under the circumstances, the answer to the poser as set out earlier with regard to the finding of the Court below qua the validity of this

sanction order is obviously in the negative and, consequently, the finding of the lower Court on this point cannot be sustained.

11. Now, in the ordinary course, we would have remanded this case to the lower Court for giving its findings after proper appreciation of the

material evidence as the lower Court has failed to decide the case on merits. However, as this case has been hanging fire since 11-3-1976, on

which date it was instituted in the lower Court, we do not think it would be just, proper and expedient to give it any longer lease of life. We have,

therefore, decided to dispose it of on merits. The provisions of sub-section (a) of Section 386 of the Code of Criminal Procedure fully empower

this Court to do so.

12. Let us now take the appraisal of the evidence on record.

13. The main witness Ganga Ram Lambardar (PW-1) has stated that he was Lambardar of halqua Thunjraseraj and in that capacity he had been

collecting the land revenue from the residents of his halqua and depositing the same in the treasury at Chachiot. On 12-2-1973 he had gone to

Tehsil Chachiot to deposit the land revenue in the treasury. Vasal Waki Navis of the Tehsil, who used to prepare the necessary papers for

depositing the land revenue in the treasury, however, was absent on that day. Finding that it would be difficult for him to come back for the same

purpose again, he handed over the land revenue collection amounting to Rs. 1240/- to the accused in the presence of Nand Ram and Sagar Ram,

Process-servers, with the request that he should deposit this amount in the treasury on the return of Vasal Waki Navis from leave. While handing

over the amount to the accused, he obtained a receipt (Ex. PA) from the accused written and signed by the accused himself. After some time,

however, he received a notice that he should deposit the land revenue in the treasury for kharif 1972 and on this he went to Chachiot and informed

the Tehsildar concerned that he had handed over the land revenue collection to the accused. The Tehsildar then called the accused in his presence

and enquired from him whether he had received the revenue collection. The accused then admitted before the Tehsildar that he had received Rs.

1240/- from the witness. He further stated that he had also made an application (Ex. PB) to the same effect at that time after getting it scribed by

the petition-writer. He added that the receipt Ex. PA was handed over by him to the police during the course of the investigation. In the cross-

examination, he stated that he did not bring it into the notice of any superior officer, when informed that the Vasal Waki Navis was not present at

the headquarters, and that he wanted to deposit the land revenue collection. He also admitted that he had never handed over any such amount to

the accused prior thereto.

14. Sagar Ram (PW-2) has stated that the accused was posted as Jamadar in Tehsil Chachiot at the relevant time, that is, 12-2-1973, when

Ganga Ram Lambardar handed over an amount of Rs. 1240/- to the accused in his presence and that Narad Ram, for depositing the same in the

Government treasury at Chachiot and after receiving this amount the accused executed the receipt (Ex. PA) in favour of Ganga Ram which is in the

hand and under the signature of the accused himself and he was well acquainted with his handwriting and signature as he had been working as

process-server under the accused. In cross-examination he stated that he did not remember whether Tehsildar or Naib-Tehsildar were present at

the headquarters or not.

15. Similar is the statement of Narad Ram (PW-3) namely, that the amount of Rs. 1240/- was received by the accused from Ganga Ram

Lambardar under a promise that he would deposit the same in the treasury and that the accused had executed a receipt in favour of Ganga Ram in

his presence. He also stated that he was well acquainted with the handwriting and signature of the accused on the receipt as he had been working

as process-server under the accused.

16. The next witness of some consequence is Gobind Ram (PW-5), who has stated that the accused worked as Jamadar in Tehsil Chachiot and

on his being placed under suspension Rattan Dass peon was promoted as Jamadar who took over in place of the accused in the month of May,

1974.

17. Shiv Ram (PW-6) has stated that he was Sub-treasury Clerk in Tehsil Chachiot at the relevant time. According to him, on 12-2-1973 Ganga

Ram Lambardar came to Tehsil treasury and wanted to deposit the land revenue but it could not be done as the Vasal Waki Navis was absent.

He has further stated that receipt (Ex. PA) was handed over by Ganga Ram Lambardar to the police in his presence which bore the handwriting

and signature of the accused with which he was well acquainted.

18. Sunder Singh (PW-7) who was the Vasal Waki Navis in Tehsil Chachiot at the relevant time, stated that as Vasal Waki Navis, he used to

prepare challan papers with regard to the land revenue collection amount before its being deposited in the treasury and that in the absence of the

challan, the treasury clerk did not accept such amount as per the procedure followed by the Sub-treasury at that time.

19. Mohar Singh (PW-11) was at the relevant time S.D.M. Mandi, in whose presence specimen handwriting and signature of the accused were obtained by the police.

20. Inder Singh (PW-12) was the Tehsildar Chachiot at the relevant time. He has stated that Lambardar Ganga Ram presented the application Ex.

PB before him on 6-7-1973 and when he found that the said Lambardar had handed over the land revenue collection to the accused for being

deposited in the treasury and he had not deposited the same, he called and enquired from the accused in this behalf and the accused at that time

admitted before him that he had received the amount of land revenue collection from Lambardar Ganga Ram for depositing the same in the

treasury but he had not deposited the said amount and appropriated it for himself. The accused undertook to deposit the same but despite this

undertaking, the accused failed to deposit the amount and he, therefore, reported the matter to the Deputy Commissioner, Mandi for registration of

the case against the accused. In cross-examination, he stated that he did not remember whether or not he was at the headquarters on 12-2-1973.

21. Santokh Singh (PW-13) is the Assistant Examiner of Questioned Documents, Government of India, who has stated that the receipt and the

specimen writings and the signatures as also the admitted writings of the accused Wazira and also the questioned writing in receipt Ex. PA were of

none else but the accused.

22. Hira Lal (PW-14) has stated that in his presence the Tehsildar Chachiot had enquired from the accused whether he had received an amount of

Rs. 1240 - from Lambardar Ganga Ram for depositing the same in the treasury and the accused admitted that he had done so but had failed to

deposit the same and undertook to do so later on but he did not do it. This witness was the Cashier in the Sub-treasury at Chachiot at the relevant

time.

23. The accused in his examination u/s 313 Code of Criminal Procedure admitted that on 12-2-1973 he was working as Jamadar in the Tehsil at

Chachiot and on that day the Vasal Waki Navis Sunder Singh was on leave and PW Ganga Ram Lambardar had come to the Tehsil on that day

for depositing the land revenue collection for kharif 1972 in the Sub-Treasury. He, however, denied that he received a sum of Rs. 1240/- from the

Lambardar on account of land revenue collection with promise to deposit the same in the Sub-treasury or that he executed the receipt Ex. PA for

this amount in favour of PW Ganga Ram. In reply to question No. 8 touching the execution of the receipt Ex. PA his reply was: It is incorrect.

Moreover, I was mentally perturbed during that period for which I had tendered medical certificate. I might have signed that receipt that period

(presumably it should have been ""during that period"").

24. The receipt Ex. PA dated 12-2-1973 when translated into English reads as follows:

After having received a sum of Rs. 1240/- on account of revenue for kharif harvest 1972 from Shri Ganga Ram Lambardar of halqua Thurji, for

depositing the same in the treasury in cash, the receipt has been written so that it maybe kept as record.

It bears the signature of the accused with designation as "Jamadar" Tehsil Chachiot.

25. Now, on the foregoing evidence, we have to see in the first instance, whether the offence against the accused u/s 409 IPC is proved beyond all

reasonable doubt. The learned Counsel for the accused has contended that even if the evidence narrated above is accepted as correct, the offence

u/s 409 IPG is not made out against the accused. Section 405 IPC defines criminal breach of trust as follows:

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 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 suffersfany other person

so to do, commits "criminal breach of trust.

Thus, it would be seen that the offence of criminal breach of trust is committed by a person when he is entrusted with certain property or dominion

over that property and he dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of the property

entrusted to him in violation of any direction of law prescribing the mode in which the trust qua that property is to be discharged or of any legal

contract express or implied which he has made touching the discharge of such trust or he wilfully lets any person to do so. Section 406 IPC

prescribes punishment for criminal breach of trust by a person without any colour of office. Section 407 IPC prescribes punishment for carrier etc.

whereas Section 408 IPC prescribes punishment for clerks or servants. Section 409 IPC deals with commission of breach of trust by public

servant or by banker, merchant or agent. There is variation in the terms of imprisonment prescribed in each section, the maximum being in the case

of these who commit this offence in the capacity of public servant, banker, merchant or agent.

26. In the instant case, there is no doubt that there is overwhelming oral and documentary evidence to prove beyond all doubt that the accused at

the relevant time was working as Jamadar in Chachiot Tehsil and thus he was admittedly a public servant at that time. Then it has also been proved

that he as Jamadar received an amount of Rs. 1240/- from the Lambardar Ganga Ram on account of revenue collection for depositing the same in

the Tehsil Sub-treasury at Chachiot on behalf of said Lambardar. This is clearly evidenced, in the first place, by the receipt Ex. PA the contents

whereof as translated above, clearly show that the accused received this amount from Ganga Ram being land revenue collection for kharif harvest

of 1972 to be deposited in the Sub-treasury at Chachiot and executed the receipt in favour of Ganga Ram in respect of this amount in his own

hand. Then there is the evidence of Sagar Ram and Narad Ram (PWs 2 and 3) Process-servers who were working under the accused as such in

the same Tehsil office and who have categorically stated that this amount was received by the accused in their presence from Ganga Ram (PW-1)

under the receipt Ex. PA, executed by the accused in his own haaid with specific promise to deposit the amount in the Sub-treasury on behalf of

Ganga Ram. Next, there is an extra-judicial confession of the accused himself when the Tehsildar Chachiot, later on, on the complaint of Ganga

Ram Lambardar vide Ex. PB enquired from the accused as to whether he had received this amount from the said Ganga Ram for depositing in the

treasury when the accused categorically admitted having received this amount and also undertook to deposit the amount in the Sub-treasury later

on. The accused himself admits that on 12-2-1973 he was working as Jamadar in Tehsil Chachiot and that on that date, the Lambardar Ganga

Ram had met him in the Tehsil. No doubt he has denied that he received this amount from Ganga Ram or executed the receipt Ex. PA in his favour

for the said amount. It is significant, however, that he has not categorically denied his own signature on the receipt Ex. PA but has given an evasive

reply that he was not in his proper senses at that time and that he might have signed the receipt in that state of mind. The two Process-servers who

were working under him at that time, however, have categorically stated not only that the receipt Ex. PA was executed by the accused in their

presence after he had received this amount from said Ganga Ram for depositing in the treasury but also asserted that since they had been working

under the accused they were well acquainted with his handwriting and signature and the receipt Ex. PA was in the handwriting of the accused and

bore his signature. There" is not even a suggestion from the defence side that the two witnesses were deposing against him out of any animus or

malice. This evidence is further supported not only by other witnesses who were acquainted with the signature of the accused as officials of the

Tehsil but also by the Handwriting Expert who, after comparing the handwriting and signature on the receipt Ex. PA with his specimen handwriting

and signature and also his admitted writing and signature, has come to a considered opinion that they have been written by one and the same

person, namely, the accused. It is also established beyond reasonable doubt that the accused failed to make the deposit or to account for the

moneys he had received accordingly. In view of the facts stated above, the offence of criminal breach of trust is proved against the accused under

the first part of Section 405 IPC, namely, that he was entrusted with this amount of Rs. 1240/- by Ganga Ram for depositing in the Chachiot Sub-

tehsil on his behalf and he then dishonestly mis-appropriated or converted this money to his own use.

27. The learned Counsel for the accused has also contended, as in fact the trend of the defence in cross examination also shows, that since it was

no part of the official duties of the accused to accept this type of money, namely, revenue collection, from the Lambardars to be deposited in the

Sub-treasury. Lambardar Ganga Ram wrongly paid this amount to the accused and as such no criminal offence, muchless an offence u/s 409 IPC

can be said to have been made out against the accused. We do not agree with this contention. The requirement of law is that a person should be a

public servant and in that capacity he should receive property or dominion over property in the form of entrustment and in that situation it becomes

his bounden duty to discharge that trust in the manner undertaken by him or at least to deal with that property in an honest manner, and if he acts in

violation of those directions or dishonestly misappropriates the same, he is guilty of the offence even if that entrustment was made to him under an

erroneous assumption. In *The Superintendent and Remembrancer of Legal Affairs, W.B. v. S.K. Roy*, the Supreme Court has held as follows:

... There are, however, two distinct parts involved in the commission of the offence of criminal breach of trust. 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. In the case of an offence by a public servant punishable u/s 409

Indian Penal Code the acquisition of dominion or control over the property must also be in the capacity of a public servant. This is not the same

thing as having the authority, as a public servant, to get the control or dominion over property annexed with an obligation. The gravamen of the

offence is the dishonest misappropriation of the money or property which comes into the possession or under the control of a public servant who

has the ostensible authority to receive it even though technically speaking, from the point of view of the distribution of departmental duties under

internal rules of an office, it may not be within the scope of his authority or duty to accept the money.

... It could not be contended that even a mistaken receipt of money in official capacity does not create an obligation upon the receiver as a public

servant. We think that it is enough if the payment is made by a person dealing with a public servant in his capacity as a public servant even if it is

made on an erroneous " assumption which the public servant concerned does thing to remove. Section 409, Indian Penal Code seems noto us to

be meant for the protection, among Ors. , of those dealing with public servants purporting to have the authority to act in a certain way in exercise

of their official capacities. A legal defect in the scope of the ostensible authority of a public servant does not prevent an entrustment to or an

obligation to be fastened upon a public servant in his capacity as a public servant if the facts of the case established, as they do in the case before

us, the required nexus or connection between acts which create the obligation and the capacity.

28. In that case a public servant in his capacity as Superintendent of Pak Unit of Hindustan Co-operative Insurance Society in Calcutta (a unit of

L.I.C.), although not authorised to do so, directly realised premiums in cash from some Pakistani policy-holders and misappropriated the amounts

after making false entries in the relevant registers. On those facts the accused was found guilty of an offence punishable u/s 409 of the Indian Penal

Code.

29. In our opinion, the decision in S. K. Roy's case provides a complete answer to the contention raised by the learned Counsel for the accused.

30. In view of the above discussion, we come to the conclusion that the offence u/s 409 IPC has been brought home to the accused beyond all

reasonable doubt. Once it is held that the accused is guilty of the offence u/s 409 IPC, it follows as a necessary legal corollary that he is also guilty

of criminal misconduct under the provisions of clause (c) of sub-section (1) of Section 5 of the Act which is punishable under sub-section (2)

thereof. We, therefore, hold the accused guilty u/s 409 I.P.C. and Section 5(2) of the Act and convict him thereunder. The accused will now be

heard on the question of sentence.

8-4-1985 Present:- Shri M.S. Guleria, Asstt. Advocate Gener-

al, for the Appellant.

Shri M.L. Sharma, Advocate, for the

Respondent-accused.

31. At the request of Shri M. L. Sharma, made on behalf of the accused, the matter be listed on April 16, 1985, to hear him on the question of

sentence.

17-4-1985 Present:- Shri P.N. Nag, Advocate-General for

the Appellant.

Miss Madhu Khanduja, Advocate, vice

Shri M.L. Sharma, counsel, for the

Respondent-accused.

32. Shri M. L. Sharma is not present. Request for adjournment has been made on his behalf by Miss Madhu Khanduja. The request is granted

and the case is adjourned to April 18, 1985. Miss Madhu Khanduja has been informed that the accused, if he so desires, may remain present on

April 18, 1985.

18-4-1985 Present:- Shri M.S. Guleria, Asstt. Advocate-

General, for the Appellant.

Miss Madhu Khanduja, Advocate, vice

Shri M.L. Sharma, Advocate, for the

accused.

33. Shri M. L. Sharma is not present, since it is stated on his behalf that he is not well. The case, therefore, is adjourned to April 22, 1985. It is

expected that the counsel will attend the Court on that date so that the Court can hear him on the question of sentence and pass appropriate orders

in accordance with law.

22-4-1985 Present:-Shri P.N. Nag, Advocate-

General, for the Appellant-State.

Miss Madhu Khanduja, Advocate, vice

Shri M. L. Sharma, counsel for the

Respondent.

34. Shri M. L. Sharma is not present even today. Miss Madhu Khanduja states that she has instructions to address the Court on the question of

sentence but no material, bearing on the question of quantum of sentence, could be placed on record because it is not possible to establish contact

with the Respondent. In order to enable the Court to pass a just and proper order, in the aforementioned circumstances, it appears to be expedient

in the interest of justice to direct the issue of a bailable warrant in the sum of Rs. 1000/- securing the presence of the Respondent before this Court

on 6-5-1985.

6-5-1985 Present:- Miss Madhu Khanduja, Advocate, vice

Shri M. L. Sharma, Advocate for the

Respondent.

Shri L.S. Panta, DAG, for the Appellant-

State.

35. The Registry reports that the bailable warrant issued against the Respondent has not been received back inspite of reminder. Under the

circumstances, the case is adjourned to May 15, 1985. Let a fresh reminder issue to the competent authority with regard to the service of the

process. The learned Deputy Advocate-General will also instruct the Superintendent of Police, Mandi, to ensure that the warrant is duly served

before the next day of hearing.

15-5-1985 Present: -Shri M.S. Guleria, Asstt. Advocate-

General, for the Appellant.

Shri M.L. Sharma, Advocate, for the

Respondent/accused.

36. The accused is present. We have heard the learned Counsel for the accused on the question of sentence. The learned Counsel has submitted

that this is a fit case where lenient view may be taken in view of the fact that the accused is aged about 65 and that he has lost his job on account of

his conviction in some other case resulting in the forfeiture of his pensionary benefits and that by itself is sufficient punishment. He has also pleaded

that the accused has two unmarried daughters and a wife amongst his family members.

37. Having regard to all the circumstances of the case, we take a lenient view of the matter and sentence the accused to rigorous imprisonment for

one year and to pay a fine of Rs. 1,000/- for each of the offences u/s 409 of the Indian Penal Code and Section 5(2) of the Prevention of

Corruption Act, 1947. In default of payment of fine, he will undergo rigorous imprisonment for three months for each of the above offences. The

substantive sentences are ordered to run concurrently.

38. At the oral request of the learned Counsel for the accused, the accused is ordered to be released on bail for a period of one month on his

furnishing fresh bail bonds in the sum of Rs. 4,000/- with one surety in the like amount to the satisfaction of the Chief Judicial Magistrate/Judicial

Magistrate 1st Class, Mandi, in order to enable him to present an appeal to the Supreme Court of India.