

**(2009) 11 JH CK 0069**

**Jharkhand High Court**

**Case No:** Government Appeal No. 1 of 1998 (R)

State of Bihar

APPELLANT

Vs

Peter Shanti Kujur

RESPONDENT

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**Date of Decision:** Nov. 12, 2009

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 409

**Citation:** (2010) 58 BLJR 313

**Hon'ble Judges:** Pradeep Kumar, J

**Bench:** Single Bench

**Advocate:** Ravi Prakash, app, for the Appellant; Neeraj Kumar, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Pradeep Kumar, J.

This government appeal is directed against the judgment of acquittal dated 31<sup>st</sup> July, 1997 passed by Sri Bishwanath Prasad Singh, Additional Judicial Commissioner, Lohardaga in Criminal Appeal No. 63 of 1996(L)/8 of 1996, by which judgment the learned AJC, Lohardaga, has passed the judgment of acquittal against the respondent.

2. It is submitted by the learned APP that the report of the Assistant Conservator of Forest, which was the basis on which the case was filed properly has proved and the same was also supported by the evidence of P.W.2, Baikunth Nath Dwivedi. The learned trial court relying on the evidence of P.W.2 and 3 coupled with the report of the accused himself dated 17.10.2002 which was available at page 14 of the case diary rightly convicted the respondent and impugned judgment of acquittal passed by the Additional Judicial Commissioner is bad in law and fit to be set aside and the appeal should be remanded back for fresh hearing.

3. On the other hand, learned Counsel for the respondent has submitted that the judgment of Additional Judicial Commissioner is well founded since u/s 409 of the

Indian Penal Code there must be entrustment of property and the two witnesses P.Ws. 2 and 3 have failed to prove by evidence or by any document that what was the amount of food-grains and oil, entrusted to the respondent. They have also failed to prove the Register which could have shown the amount of food-grain and oil, distributed amongst the labourers. Since, the food-grain was meant for the distribution amongst the labourers in the forest and as such the learned appellate court rightly acquitted the respondent. He has further submitted that a copy of report given by accused in carbon copy was available in the case diary dated 17.10.1992, which was not proved in the trial and hence the learned Additional Judicial Commissioner rightly found that the same cannot be relied on for passing the judgment of conviction against the respondent.

4. After hearing both the parties and going through the report, I find that the prosecution case was started on the basis of a First Information Report lodged by informant (P.W.2) stating therein that the respondent-accused, Peter Shanti Kujur was In-charge of the distribution of food-grain to the labourers in Logging area of Lohardaga, under the World Food Programme. During inquiry on 25.11.1992 he found that shortage of about 12385 Kgs. of wheat, 823.050 Kg. of Pea and 783.7720 Kg. of soyobin oil.

5. On the basis of the said report police registered a case u/s 409 of the Indian Penal Code and after investigation police submitted charge-sheet against the accused-respondent and the accused-respondent was tried by the learned Magistrate, Sri Shambhu Nath Mishra, Sub Divisional Judicial Magistrate, Lohardaga, who found him guilty u/s 409 of the Indian Penal Code in G. R. Case No. 3/93. By his order dated 24.6.96 sentenced him to undergo R.I. for 3 years.

6. The accused-respondent preferred an appeal before the Judicial Commissioner, which was finally heard by Additional Judicial Commissioner in Cr. Appeal No. 63 of 1996 (L).

7. After hearing both the parties and going through the record, I find that the prosecution has failed to prove the charges beyond reasonable doubt and acquitted the accused-respondent which the impugned judgment.

8. It appears that in course of trial the prosecution has examined 4 witnesses. Only P.W.1, Sonakia Jha, has proved the formal F.I.R. in the handwriting of the Officer-Incharge Lohardaga Police Station which is as Ext. 1.

P.W.2, Baikunth Nath Diwedi, who is also D.F.O. and informant of the case.

P.W.3, Ram Bharat-Assistant Conservator of Forest, who had submitted the report.

P.W.4, Sanatan Kandayan, he is also a formal witness.

Thus, there are only two witnesses.

9. P.W.2, Baikunth Nath Diwedi he stated, in his evidence, that on 10.12.92 he received the report from the A.C.F., Lohardaga. He on physical verification report found from the go-down under the control of the accused-respondent, Peter Shanti Kujur that there are shortage of about 12385 Kgs. of wheat, 823.050 Kg. of Pea and 783.7720 Kg. of soyobin oil. On the basis of the said report he issued a show cause notice to the accused-respondent, who did not turn up for the departmental inquiry then he filed F.I.R. against him. He proved the verification report as also the application of the accused-respondent, who left the office for his operation of Hydrocil. In his cross-examination, he stated that he can not give the report as to what amount of wheat, Pea and soyobin oil was entrusted to the accused-respondent. The food-grain comes directly from the go-down of F.C.I. and the F.C.I. authorities can prove the same. He also stated that he himself never verify the go-down of the. accused-respondent. He also stated that he has not produced the Register which shows the amount of food-grain distributed by the accused-respondent to the labourer nor he has brought the same to the Court.

P.W.3, Ram Bharat- Assistant Conservator of Forest, who also verified the report and stated that as per the direction of the D.F.O. he verified the go-down of the accused-respondent. On verification he found shortage of about 12385 Kgs. of wheat, 823.050 Kg. of Pea and 783.7720 Kg. of soyobin oil. He also stated that he found the said shortage on the basis of the previous report by the accused. He also stated, in his cross-examination, that he cannot give the amount of food-grain and oil entrusted to the accused. He also stated that how may labourers were given food and oil. He cannot say since he was not said anything about that food.

10. It appears from the evidences of two witnesses that in a case u/s 409 of the Indian Penal Code the prosecution, first must prove as to what was the amount of food-grain and oil entrusted to the accused-respondent then only the prosecution can prove the shortage and embezzlement done by the accused. In the instant case both the witnesses have stated that they cannot give any detail of the entrustment made to the accused-respondent. P.W.2 stated that the food-grains comes directly from the go-down of the F.C.I. but no office of the F.C.I. was examined to prove as to what amount was sent by them to the go-down. Moreover, the basis for finding the shortage was based on a report filed by the accused-respondent then it was the duty of the prosecution to prove the said report in Court, but the same was also not filed in Court nor proved.

11. In that view of the matter, I find that there is nothing to disagree with the finding of the Additional Judicial Commissioner, Lohardaga, who by the impugned order dated 31.7.1997 in Cr. Appeal No. 63 of 1996 (L) found that the prosecution has failed to prove the charges beyond reasonable doubt, I find no merit in this government appeal and the same is accordingly dismissed.