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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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1. Criminal Revision No.2195 of 2012 (O&M)

Mangat Ram

... Petitioner

Versus

State of Haryana and another

... Respondents

2. Criminal Revision No.2276 of 2012

Churia Ram

... Petitioner

Versus

State of Haryana

... Respondent

Date of Decision: 18.01.2025

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Nikhil Chopra Advocate,
for the petitioners.

Mr. Apoorv Garg, Sr. DAG, Haryana,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. This common order shall dispose of the aforementioned revision petitions which have arisen out of judgment of conviction dated 09.02.2012 and order on quantum of sentence dated 10.07.2012 passed by the Court of learned Additional Sessions Judge, Kaithal in Criminal Appeal No.32 of 2009 titled as *State of Haryana v. Mangat Ram and another*, wherein by partly setting aside the judgment of acquittal dated

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05.02.2009 in case arising out of FIR No.46 dated 22.04.2002 registered under Sections 409 and 420 of IPC at Police Station Guhla, the petitioners had been held guilty and convicted for commission of offence punishable under Section 409 of IPC whereas the order of their acquittal under Section 420 of IPC as passed by the trial Magistrate was maintained.

2. For the sake of continuity and coherence, the parties shall be nominated as per their original nomenclature as given before the trial Court.

3. The aforementioned FIR was registered on a complaint lodged by Deputy Inspector General, Vigilance Department, Haryana alleging that a secret information was received to the effect that the accused Mangat Ram working as SS Master and posted at Bhuna High School and accused Churia Ram, Lab Assistant at that time posted at Senior Secondary School, Patti Afgan Kaithal had been assigned duty as the Central Superintendent and Clerk Duty respectively in the Examination Centre of Government School, Village Agondh wherein examination for students of 10th Class had taken place. Both the accused in connivance with each other, had leaked question papers of Matriculation Examination and in lieu of money, they had allowed the answer sheets to be taken by the candidates and their wards, outside the examination centre. Accused Mangat Ram had reported that as many as 50 examination sheets were damaged though infact those answer sheets had been sent outside the examination centre for helping the students for getting the questions solved through their wards. Some original answer sheets were tagged with the complaint. After registration of FIR under the

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aforementioned sections, investigation proceedings were initiated. It was revealed that as on 13.03.2001, two bundles containing 500 answer sheets bearing Serial Nos.822501 to 823000 and 607501 to 608000 respectively had been handed over to the accused Mangat Ram. Both the accused had been allotted a separate almirah in the school, for keeping those answer sheets in custody. On 21.03.2001 while submitting the disposal statement after completion of examination which took place during the month of March 2001, it was mentioned that 50 sheets were short. Their act had come to notice when sometime thereafter, the same school was made centre for conducting examination for 8th Standard. The Duty Clerk Azad Singh was allotted the same almirah which was given to the accused previously, to keep the examination related documents and on opening the same, he found four answer sheets bearing the same serial numbers, which was handed over to the accused at the time of Matriculation Examination lying therein. The accused were arrested and subsequently, they were released on bail. After completion of necessary investigation proceedings, challan was presented against them.

4. Copies of challan were supplied to the accused free of cost. On finding a prima facie case for commission of offences punishable under Sections 409 and 420 of IPC, the accused were charge-sheeted accordingly. They pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined as many as 11 witnesses besides placing reliance upon certain documents.

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6. Statements of accused were recorded under Section 313 of Cr.P.C wherein they abjured their guilt and pleaded innocence. No defence evidence was led.

7. After going through the evidence produced on record and hearing the contentions raised by both the sides, the learned trial Magistrate vide judgment dated 05.02.2009 acquitted the accused of the charges as framed against them by holding that the prosecution had failed to bring home the guilt of the accused beyond doubt. Feeling aggrieved, the respondent-State filed the aforementioned criminal appeal which was partly allowed thereby holding the petitioners guilty for commission of offence punishable under Section 409 of IPC and acquitting them under Section 420 of IPC. Both the accused were sentenced to undergo rigorous imprisonment for a period of three years and to deposit fine of Rs.1000/-. In default of payment of fine, they were further sentenced to undergo rigorous imprisonment for six months.

8. Feeling aggrieved from the order of their conviction, the petitioners have preferred these two revision petitions.

9. It is argued by learned counsel for the petitioners that the impugned judgment dated 09.02.2012 and order on quantum of sentence dated 10.07.2012 are liable to be set aside as the findings as given by learned First Appellate Court are not sustainable in the eyes of law and are liable to be set aside. It is submitted that while recording findings of guilt of the accused under Section 409 of IPC, the learned First Appellate Court did not

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apply its judicious mind. The fact that the prosecution had failed to produce any cogent, convincing and reliable evidence of such nature on record which could be acted and relied upon beyond probabilities of all reasonable doubt, had not been taken into consideration. The learned First Appellate Court gravely erred in observing that the ingredients for commission of offence under Section 409 of IPC were established as against the accused though infact, the evidence produced on record did not prove the factum of commission of offence under the aforementioned section. The findings as given by learned trial Magistrate, on the other hand, were well reasoned which had not been properly appreciated by learned First Appellate Court. With these broad submissions, it is urged that the impugned judgment of learned First Appellate Court is liable to be set aside, the petitions deserve to be accepted and further that the petitioners deserve to be acquitted of charge under Section 409 of IPC and the judgment of the learned trial Court deserves to be maintained.

10. Per contra, learned Senior Deputy Advocate General, Haryana has argued that the findings as given by learned First Appellate Court are well reasoned and do not warrant any interference. It is argued that the petitions being devoid of any merit are liable to be dismissed.

11. I have given due deliberations to the contentions raised by learned counsel for both the parties and have minutely appraised the material placed on record and on perusal of the same, I am of the considered opinion that the findings as given by learned First Appellate Court as to conviction

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of the petitioner under Section 409 of IPC are not sustainable for the reasons to be discussed hereinafter.

12. The accused had been chargesheeted for commission of offence punishable under Section 409 of IPC. The allegations against them were that they being appointed as Central Superintendent and Duty Clerk respectively, for the purpose of ensuring smooth conducting of Matriculation Examination in Government High School Village Agondh, were entrusted with the answer booklets of the abovesaid examination and they committed offence of breach of trust by removing 50 answer sheets out of the 500 sheets that had been handed over to them. The offence of criminal breach of trust is defined under Section 405 of Indian Penal Code. The essential ingredients of this offence are:-

- (i) The accused must have been entrusted with property or with dominion over property;
- (ii) The accused must have misappropriated or converted to his own use, that property; or use or dispose of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged; or use or dispose of the property in violation of any legal contract (express or implied) which he has made touching the discharge of such trust; or wilfully suffered any other person so to do;
- (iii) such misappropriation or user or disposal must be dishonest or such sufference must be wilful.

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13. The offence under Section 405 is punishable under Section 406 of Indian Penal Code. So far as Section 409 of IPC is concerned, the essential ingredients to be established in a charge of an offence under this section are:-

- (i) that the accused was a public servant;
- (ii) that he was entrusted, in such capacity, with property;
- (iii) that he committed breach of trust.

14. The question which is required to be considered by this Court is as to whether the prosecution had brought sufficient evidence on record to prove the ingredients for commission of offence of criminal breach of trust by the accused. There is no dispute about the fact that they were Government employees being employed in a Government school and that they were entrusted with answer booklets in their capacity as public servants. It is also not in dispute that out of 500 answer sheets/answer booklets given to them at the time of Matriculation Examination by the Bhiwani Board of Examination, 50 answer sheets were reported to have been spoiled/damaged were short. The allegations are that four of such answer sheets were later on recovered from an almira kept in Government High Court Agondh and it was the same almira, the access of which had been given to the accused for the purpose of keeping documents relating to the Matriculation Examination at the relevant time. The learned trial Magistrate had observed that no evidence had been produced on record by the prosecution to prove that the answer booklets Ex.PW7/B bearing Sr.

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No.0622749, Ex.PW7/A bearing Sr. No.0822741, Mark A another answer booklets bearing No.0607556 and Mark B bearing Sr. No.570046 were entrusted to the accused as neither of these serial numbers were mentioned in the stock register Ex.PW3/A nor in Ex.P1 which was the statement showing disposal of blank answer booklets.

15. The case of the prosecution mainly rested on the testimony of PW-7 Azad Singh who was appointed as a Duty Clerk at Government High School, Agondh for the purpose of examination of 8th Class at Government High School Agondh. On a perusal of his statement, it is revealed that this witness stated that he had found four answer sheets in almirah of the abovesaid school two of which were blank. These sheets were having three seals of the Board as well as of the seal of the Central Superintendent which used to be affixed after examinations started. He identified two of these sheets as Ex.PW7/A and PW7/B and another two as Mark A and Mark B respectively. During cross-examination, it was admitted by this witness that these answer sheets were not bearing any Code Centre and he could not say as to which Centre these sheets belonged. Then PW-10 Surender Singh who as per the prosecution version had been appointed as Centre Superintendent simply deposed that four answer sheets had been shown to him by PW-7 and they had handed over the same to CID. His statement is totally formal in nature as neither this witness disclosed the serial number or the roll numbers mentioned in the answer booklets nor the answer booklets Ex.PW7/A, PW7/B, Mark A and Mark B were shown to him. The learned trial

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Magistrate had observed that from the statements of these two material witnesses it had not been proved that the answer booklets which were recovered from the almirah were the same that had been entrusted to the accused and they were having any specific identification mark. In my considered opinion also, the prosecution had failed to extract any convincing evidence on record from the statements of these two witnesses for the purpose of proving that the four answer sheets allegedly found by PW-7 were the same which were handed over/entrusted to the accused. The statements of remaining witnesses which had been examined by the prosecution also did not help to come at that conclusion. Neither the Investigating Officer of the case had been examined to prove that the answer sheets which had been recovered from the almirah by PW-7 were the same which had been handed over to the accused persons nor any other official witness had been examined for that purpose. As such, the evidence led by the prosecution was certainly not convincing, reliable and sufficient enough to prove that the almirah from where the answer sheets were recovered were actually allotted to the accused, further that the booklets which were recovered were actually handed over to the accused and lastly that they had misappropriated the same with any mala fide.

16. The learned trial Magistrate after taking all these into consideration had acquitted the accused. The learned First Appellate Court while reversing the findings given by learned trial Court with regard to commission of offence punishable under Section 409 of IPC had observed

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that the prosecution was only required to prove entrustment of answer sheets for invoking the provision of Section 409 of IPC and since that entrustment stood proved from the evidence produced on record, therefore, the accused were liable to be held guilty as it also stood proved that 50 answer sheets had gone missing and they were liable to explain the loss thereof. In my considered opinion, the findings so given by learned First Appellate Court are not based on proper appreciation of the evidence produced on record because infact, no evidence whatsoever had been produced on record to prove that the particular answer sheets which had been recovered from the almira of the Agondh school were amongst the same answer sheets which had been handed over/entrusted to the accused. More so, the learned First Appellate Court wrongly observed that on the basis of entrustment of such answer sheet only, the guilt of the accused stood established because for holding an accused guilty for commission of offence punishable under Section 409 of IPC, not only the factum of entrustment of such property but misappropriation thereof with some dishonest intention was necessarily required to be proved. However, not even an iota of evidence had been produced by the prosecution on record to show that the accused persons had misappropriated the same with some intention. As such, it is held that the findings as given by learned First Appellate Court do not deserve to be sustained. Hence, the same are reversed. The judgment of the learned First Appellate Court thereby partly allowing the appeal is also set aside and appeal is ordered to be dismissed. The findings as given by learned trial

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Court are affirmed. As a consequence, both the revision petitions are allowed and the accused are acquitted of the charge under Section 409 of IPC. Their bail bond and surety bond also stand discharged.

17. Miscellaneous application(s), if any, also stand disposed of.

**(MANISHA BATRA)
JUDGE**

18.01.2025

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No