

**Shob Nath Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/468136](http://sooperkanoon.com/468136)

**Court :** Allahabad

**Decided On :** Jan-29-1975

**Reported in :** 1975CriLJ1122

**Judge :** P.N. Bakshi, J.

**Appellant :** Shob Nath

**Respondent :** State

**Judgement :**

ORDER

**P.N. Bakshi, J.**

1. Shob Nath was Post Master at the Branch Post Office Koerauna. On 6-4-1970, Bramha Deo Dubey Manager of Kalika Higher Secondary School Kalika Nagar gave Rs. 2540/- to the accused for opening a new Savings Bank Account under the head 'Karamchari Nirikchit Betan', the accused who was the Post Master received the money and issued a preliminary receipt No. 12 in token of the initial deposit of Rs. 2,540/- having been received from Bramha Deo Dubey. The accused, however, did not deposit the money in the Government account as per direction of Bramha Deo Dubey and instead he mis-appropriated the said money.

2. The accused admitted that he was a Post Master at the Branch Post Office Koerauna, but he denied having received the money or having issued any receipt

in token thereof.

3. On a consideration of the statements of the witnesses produced on behalf of the prosecution the Magistrate First Class Gyanpur was of the opinion that a prima facie case under Section 409 Indian Penal Code was made out against the accused. He, therefore, committed the accused to the Court of Session for trial. On the first date of hearing before the Sessions court an application was moved on behalf of the accused. Two objections were taken in this application. Firstly, that Shob Nath was only an extra Departmental Branch Post Master of Koerauna Post Office, on 6th April 1970 when the amount of Rs. 2540/- is alleged to have been made over to him by Bramha Deo Dubey, and as such he is not a public servant, and, secondly, that the facts of the case did not make out any offence under Section 409, Indian Penal Code, inasmuch as there was no entrustment of the property by Bramha Deo Dubey to the accused-applicant as envisaged in that section. Both these contentions found favour with the Sessions Judge Gyanpur. who has made the present recommendation to this Court for quashing the order of commitment.

4. I have heard learned Counsel for the parties and have also perused the record of the case. Before dealing with the legal submissions which have been made by counsel for the parties, it would be pertinent to quote Section 409, Indian Penal Code which runs thus:

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.

This Section for purposes of this case requires the existence of two ingredients before it can be said that an offence thereunder has been committed. The first ingredient is that the person to whom the entrustment of property is made must have the capacity of a public servant. The second ingredient is that he should be in any manner entrusted with the property. I shall now deal with the first ingredient

of the offence. The term 'public servant' has been defined in Section 21 of the Indian Penal Code. The relevant portion of Ninth clause of Section 21 of this Code defines 'public servant' as under:

Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government.... and every officer in the service or pay of the Government, or remunerated by fees or commission ' for the performance of any public duty.

It is not disputed that the applicant was entitled to receive the money as Post Master of the Branch Post Office Koerauna. It is also not disputed that the applicant was under the service and pay of the Government. As such, in my opinion, it is crystal clear that the applicant would be covered by the definition of the words 'public servant' as envisaged in Clause (9) of Section 21 of the Indian Penal Code. Learned Counsel for the applicant has submitted an argument that being an Extra Departmental hand the Post Master would not be a Public Servant, In reply the Counsel for the other side has placed reliance upon a decision reported in 1972 All LJ 693 : (1972 Lab IC 1459), Jogendra Bahadur v. Senior Superintendent of Post Offices, Allahabad, wherein it is observed:

It is evident that a relationship of master and servant exists between the Government of India and an Extra Departmental Agent. Such an employee is hence the holder of a civil post within meaning of Articles 310 and 311 of the Constitution . He is entitled to the protection of Article 311(2).

Even though I have mentioned the case cited by the Counsel for the State in reply to the argument addressed on behalf of the accused, that he being an Extra Departmental Hand would not be a 'public servant' within the meaning of that section, yet in my opinion, it is not necessary to go into the civil aspect of the matter. The Law of Crimes itself lays down a definition of the words 'public servant' under Section 21 of the Indian Penal Code, which I have referred to above. The qualifications as laid down in this section are to be fully found in the accused; as such I am of the opinion that the accused Shob Nath is clearly a public servant within the meaning of Section 21 of the Indian Penal Code.

5. The next question for decision is:

What meaning should be attached to the expression 'in any manner entrusted with the property' Learned Counsel for the applicant has submitted that between the customer and the bank there was no entrustment of the property. He has relied upon the provisions of the Indian Trusts Act and on that basis he has submitted that handing over of money to an official of the bank for opening a new Savings Bank Account would not amount to entrustment within the meaning of the Indian Trusts Act. Reliance for this proposition is based upon a decision of the Calcutta High Court reported in : AIR1950 Cal57 Gopesh Chandra Pal. v. Nirmal Kumar Das Gupta. Learned Counsel appearing on behalf of the accused has also cited a Single Judge decision reported in 1950 All LJ 808, Jodha Ram v. State. This argument to my mind does not hold water. A bare reading of Section 409, I. P. C. indicates that the entrustment referred to therein has not to be construed in a strict sense according to the provisions of the Indian Trusts Act, but it has to be given a very wide and liberal interpretation. As a matter of fact, the use of the expression 'in any manner entrusted with the property' itself indicates that the entrustment need not be strictly in accordance with the ingredients as contemplated in the Indian Trusts Act, but can be made in any other manner. In the present case the admitted fact is that Brahma Rao Dubey had given a sum of Rs. 2,540/- to the accused for the purpose of opening a new Savings Bank Account in the name of Karmachari Nirikchit Betan. So far as giving of the money to the accused is concerned that has been prima facie established by the evidence on the record, It is further clear that the money was not deposited by the accused in the Government Treasury and that the specific purpose for which the money was handed over namely the opening of the new Savings Bank Account was not complied with by the said Post Master. Thus the specific purpose for which the money was entrusted to the accused was not carried out by him. The dominion over this property namely the cash, which he held was for a particular and specific purpose, which was not given effect to by him. Instead he is alleged to have misappropriated the amount which was entrusted to him. In 1972 SC 1490 : 1972 Cri LJ 897, Som Nath Puri v. State of Rajasthan their Lordships of the Supreme Court have interpreted the expression 'entrusted' in the following words:

The expression 'entrusted' in Section 409 is used in a wide sense and includes all cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over.

In my opinion, the enunciation of the law as laid down by the Supreme Court clearly indicates that the entrustment of the property which is contemplated under Section 409 IPC has to be given a wide interpretation. Reference may also be made to the decision of the Supreme Court reported in : 1956 CriLJ1116 , *Jaswantrai Manilal Akhamey v. State of Bombay*, wherein a similar contention has been considered by their Lordships in the following words:

It has been contended that no offence under Section 409, Indian Penal Code has been brought home to the appellant for the reasons. (1) that there was no entrustment, (2) that there was no mens rea, and (3) that there was no dishonesty on the part of the appellant. For an offence under Section 409, Indian Penal Code, the first essential ingredient to be proved is that the property was entrusted. It has been argued that in this case there was no such entrustment as is contemplated by that section; and that the sureties were pledged with the Exchange Bank by the Co-operative Bank which was in the position of a debtor to the former. The contention is that the parties never contemplated the creation of a trust in the strict sense of the term. But when Section 405 which defines 'criminal breach of trust' speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust.

In my view, therefore, 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, Indian Penal Code. As such I take no doubt that Shob Nath accused can be tried for the offence under Section 409, Indian Penal Code. The legal objections which have been taken on his behalf have no merit,

6. For the reasons given above. I reject this reference made by the Sessions Judge Gyanpur, Varanasi and up-hold the order of commitment made by the Magistrate 1st Class, Gyanpur, dated 28-4-1973. The record of the case shall be sent back to the court below at once so that the trial of the accused may be

undertaken expeditiously.

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