

**Hem Singh Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Jan-07-1998

**Reported in :** 1998CriLJ3890; 1998WLC(Raj)UC491

**Judge :** Amaresh Ku. Singh, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 409; Code of Criminal Procedure (CrPC) - Sections 173 and 313

**Appeal No. :** Crl. Revn. Petn. No. 5/87

**Appellant :** Hem Singh

**Respondent :** State of Rajasthan

**Advocate for Def. :** D.S. Rathore, Public Prosecutor

**Advocate for Pet/Ap. :** A. Khan, Adv. on behalf of; D.S. Shishodia, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**Amaresh Ku. Singh, J.**

1. Heard the learned Counsel for the petitioner and the learned Public Prosecutor and perused the record of the case.

2. This criminal revision petition has been filed against the judgment dated 7th January, 1987 passed by the learned Sessions Judge, Merta in Criminal Appeal No. 30/82 affirming the conviction and sentence passed by the learned Munsif and Judicial Magistrate, 1st Class in Criminal Case No. 4/79 whereby the accused-petitioner was convicted under Section 409, IPC and was sentenced to rigorous imprisonment for two years and a fine of Rs. 500/- and to undergo further simple imprisonment for six months for default in payment of fine.

2. The facts of the case so far as they are relevant for the purpose of this petition may be summarised as below :-

The petitioner Hem Singh was in the employment of Rajasthan State Roadways Transport Corporation. He was holding the post of the Conductor. On 29th November, 1978 he was working as a Conductor on Bus No. RJL 6636. The bus started from Narayanpura Station at about 2 a.m. The destination was Kuchaman City and there were passengers in the bus. The fare, which were payable by every passenger was 70 paise. According to prosecution, the petitioner charged the fare from all the passengers, who were travelling in the bus but he did not issue the tickets and kept the whole amount which he had realised as fare from the passengers with him. When the bus reached Kuchaman City, Rameshwar Lal, the then member of the Legislative Assembly and other passengers demanded ticket from the petitioner, but the petitioner did not issue tickets to them/Thereafter, at the instance of Rameshwar Lal, the bus was taken to Police Station, Kuchaman City and first information report was lodged against the petitioner. The police started investigation. During investigation, the amount which had recovered from the passengers, the ticket book etc. were seized and after completing investigation report under Section 173, Cr. P.C. alleging the commission of offence under Section 409, IPC was submitted in the Court.

3. On the basis of the report submitted by the police under Section 173, Cr. P.C, the learned Judicial Magistrate, 1st Class took cognizance of the offence under Section 409, IPC. Charge under Section 409, IPC was framed against the accused-petitioner. He pleaded not guilty to the charge.

4. During trial the prosecution examined Bhanwar Lal P.W.1, Mohd. Safi P.W.2, Suresh Kumar Paharia P.W.3, Lal Ram P.W.4, Rameshwar Lal P.W.5, Gopal P.W.6, Mota Ram P.W.7, Ummed Singh P.W.8, Jagdish P.W.9 and Ved Prakash P. W. 10 in support of the prosecution. The accused petitioner was examined under Section 313, Cr. P.C. Ram Ratan Soni D.W. 1 was examined in defence. After hearing the arguments of the parties, the learned Judicial Magistrate convicted the accused petitioner under Section 409, IPC and sentenced him to rigorous imprisonment for two years and to pay a fine of Rs. 500/-and simple imprisonment for six months for default in payment of fine.

5. The accused-petitioner filed an appeal against the judgment dated 24th March, 1982 delivered by the learned Munsif and Judicial Magistrate, Nawa. The appeal was rejected by the learned District and Sessions Judge, Merta vide judgment dated 7th January, 1987, whereby the conviction as well as the sentence awarded by the trial Magistrate were maintained.

6. Feeling aggrieved by the judgment dated 24th March, 1982 passed by the learned Munsif and Judicial Magistrate, Nawa as well as the judgment dated 7th January, 1987 passed by the learned Sessions Judge, Merta, the accused-petitioner has filed this revision petition.

7. The learned Counsel for the petitioner has submitted that the prosecution case against the petitioner was a concocted one. The case was instituted at the instance of Rameshwar Lal, who was at that time a Member of the Rajasthan Legislative Assembly and that in fact the accused-petitioner did not commit any offence under Section 409, IPC and the lower Courts have committed a serious mistake by convicting and sentencing the petitioner for the offence punishable under Section 409, IPC.

8. The learned Public Prosecutor has supported the judgments passed by the learned Munsif and Judicial Magistrate, Nawa and the judgment delivered by the learned Sessions Judge, Merta.

9. I have carefully considered the arguments of the learned Counsel for the petitioner and the learned Public Prosecutor and perused the evidence produced

by the prosecution as well as the defence.

10. Out of ten witnesses examined by the prosecution, Bhanwar Lal P. W. 1 and Mohd. Safi P.W.2 are the motbirs. Suresh P.W.3, Lala Ram P.W.4, Rameshwar Lal P.W.5, Gopal P.W.6, Mota Ram P.W.7 and Ummed Singh P.W.8 are the persons, who were travelling in the bus and according to prosecution they are the persons acquainted with the circumstances of the case. Jagdish P.W.9 was also travelling in the bus. Ved Prakash P.W. 10 is the booking clerk. His statement is based on what he had heard from others and his evidence is of not much value. Diwan Singh D.W. 1, the Station House Officer of the Police Station, Kuchaman City, who investigated the case was not examined by the prosecution.

11. Rameshwar Lal P.W.5 is the author of the first information report. He has supported the first information report. According to his statement he boarded the bus at Railway Station, Kuchaman City at about 2 a.m. There were 45 to 50 passengers in the bus and the accused-petitioner was working as a Conductor. He was collecting fare from the passengers, but he was not issuing the tickets. When the bus reached the octroi outpost, which was near the city, Rameshwar Lal asked the accused to issue the ticket. He was shown a currency note, but the accused told him that the ticket will not be issued. According to Rameshwar Lal P.W.5, the accused did not issue the ticket and he did not give any money to the accused. It is further stated by Rameshwar Lal P.W.5 that at his instance, the bus was taken to Kuchaman City Police Station and at the Police Station the whole incident was stated to the Police Officer. The statement of Rameshwar Lal P.W.5 shows that he did not pay any money to the accused, who was working as a Conductor in the bus.

12. Bhanwar Lal P.W. 1 has stated that he was also travelling in the bus. He paid 70 paise to the Conductor and when he demanded the ticket, he was told that after collecting fare from all the passengers, the ticket would be issued. But, even after the work of collecting fare was completed, tickets were not issued. It is further stated by Bhanwar Lal P.W. 1 that the bus stopped at octroi out-post of Kuchaman City for 5 to 7 minutes and at that time a quarrel took place between the M.L.A. and the Conductor of the bus and the driver of the bus took the bus to the Police

Station.

13. Mohd. Safi P.W.2 has given evidence to the effect that he was travelling in the bus and that he paid a one rupee to the Conductor and the Conductor returned 30 paise to him, but he did not issue any ticket.

14. Suresh Kumar P.W.3 is another person, who was travelling in the bus. He has also stated that he gave 70 paise to the Conductor of the bus and other passengers also gave fare to the Conductor, but the Conductor did not issue any tickets and when he was asked to give tickets, he told that he would issue the tickets to all the passengers at once in the same time. It is also stated by this witness that at the octroi out-post of Kuchaman City, the bus stopped for sometime and at that place a quarrel took place between the M.L.A. and the accused and at the instance of the M.L.A. the bus was taken to the Police Station and at that time there was only 5 to 10 passengers in the bus.

15. Lala Ram P.W.4 is another passenger. He has also given the evidence to the effect that he gave 70 paise to the Conductor, but the witness could not recall whether the Conductor had issued any ticket to him. This witness was declared hostile by the prosecution.

16. Gopal P.W.6 has given evidence to the effect that he was travelling in the bus and he gave 70 paise to the Conductor and the Conductor said that he would issue tickets to all the passengers at once in the same time and when the bus reached the octroi out-post of Kuchaman City, a quarrel took place. The witness has added that he alighted from the bus near the out-post and went away.

17. Mota Ram P.W.7 has also given evidence to the effect that he was travelling in the bus and he paid the fare to the Conductor, The witness could not recall whether he was issued any ticket by the Conductor. However, he has admitted that the bus was taken to the Police Station and he remained sitting in the bus.

18. Ummed Singh P.W.8 was working as the driver of the bus. He has given statement to the effect that the bus was going to Kuchaman City, there were about 35 passengers in the bus and after the bus started, a quarrel took place inside the

bus. Accused Hem Singh was moving inside the bus and when he asked Hem Singh as to what was the matter, Hem Singh told that one passenger. was not taking the ticket. It is also stated by Ummed Singh P.W.8 that near the octroi out-post the road was not clear, therefore, the bus was stopped and when he looked behind he saw that Hem Singh was caught by Rameshwar Lal. Ummed Singh has added that he went to Rameshwar Lal and asked him to forgive Hem Singh, but Rameshwar Lal asked him to start the bus and he took the bus to the Police Station. Hem Singh was thereafter, taken inside the Police Station and there it was told that the accused had not issued tickets to any passenger. Ummed Singh P.W.8 could not tell whether the accused had issued tickets to the passengers or did not issue the same. Ummed Singh was declared hostile by the prosecution.

19. Jagdish P.W.9 has been declared hostile by the prosecution. He has stated that he did not pay any fare to the Conductor of the bus and that a quarrel took place between Rameshwar Lal and the Conductor and it was being said that the Conductor had not issued the tickets and therefore, he should be taken to the Police Station. This witness has also been declared hostile.

20. The learned Munsif and Judicial Magistrate after taking into consideration the evidence produced by the prosecution held that it was proved beyond reasonable doubt that the accused collected fare at the rate of 70 paise perhead from the passengers, who were travelling in the bus and that he did not issue the tickets to any passenger and thereby misappropriated the amount of fare, which he had collected from the passengers.

21. The crucial question is whether the charge under Section 409, IPC has been brought home to the accused-petitioner beyond reasonable doubt. First Information Report lodged by Rameshwar Lal Choudhary has not been exhibited. The Investigating Officer, who conducted the investigation has not been examined. The prosecution has not cared to prove how much amount had been recovered from the possession of the accused-petitioner when he was taken to the Police Station. The prosecution has also not cared to prove as to how many tickets had been issued from the ticket book, which was recovered from the possession of the accused-petitioner. The crucial question is whether the prosecution story has

become doubtful on account of failure on the part of the prosecution to examine the Investigating Officer and to prove the amount recovered from the possession of the accused and the number of tickets issued from the ticket book, which was recovered during investigation.

22. I have carefully considered the facts and circumstances of the case. The amount in respect of which the allegations of criminal misappropriation has been made was recovered from the accused at the Police Station before he could misappropriate any amount. In view of this fact, it is difficult to say that the offence of criminal misappropriation was committed by the accused. So far as the attempt to commit offence under Section 409, IPC is concerned, the only evidence against the accused-petitioner is to the effect that he collected the bus fare from the passengers, who were travelling in the bus and did not issue tickets to them. It has however come on record that when the passengers asked accused-petitioner to give the tickets, he said that he would give tickets to all the passengers after completing the collection of fare. The evidence of Ummed Singh P.W.8, who is the driver of the bus shows that when the quarrel took place, he asked the accused as to what was the matter and the accused at that time told that one passenger was not taking the ticket. Rameshwar Lal P.W.5 has given statement to the effect that he did not give any amount to the Conductor, but he had showed him a currency note. It has also come on record that the quarrel had taken place between Rameshwar Lal and the accused when the bus reached the octroi out-post of Kuchaman City and the hands of the accused-petitioner were caught by Rameshwar Lal and thereafter, he was taken to the Police Station. Since, the hands of the accused-petitioner were caught by Rameshwar Lal, it is obvious that the accused-petitioner could not issue the tickets. Rameshwar Lal P.W.5 did not pay any fare to the accused-petitioner. He, therefore, had no right to demand a ticket from the petitioner and much less to hold the accused-petitioner's hands in his grip. In these circumstances, it cannot be ruled out that Rameshwar Lal P.W.5 held the hands of the accused-petitioner in his grip in order to prevent the accused-petitioner from issuing the tickets.

23. Several witnesses, who have been examined by the prosecution have not been able to recall whether the accused had or had not issued tickets to them. In

these circumstances, it was necessary for the prosecution to prove as to how many tickets had been issued from the ticket book, which was recovered from the possession of the accused and how much amount had been recovered from the accused when he was taken to the Police Station.

24. It has come on record that when the bus stopped near the octroi out-post, a quarrel took place between Rameshwar Lal and the accused-petitioner and at that time several passengers alighted from the bus and went away. It is, therefore, proper to infer that when the bus reached the Police Station, the number of passengers present in the bus was far similar than 40 to 45. In these circumstances, omission on the part of the prosecution to prove the amount recovered and the number of tickets issued from the ticket book, makes the prosecution story doubtful. In any case, having regard to the quality of the statements given by the prosecution witnesses, it is not safe to agree with the finding that the accused-petitioner intended to misappropriate the amount of fare, which he had realised from the passengers. It may be pointed out that the fare, which was collected was at the rate of 70 paise per head. Even if, there were 40 to 45 passengers in the bus, the total amount which could be collected from them would not be more than Rs. 31.50. It is inconceivable that a Conductor of the bus would make attempt to commit criminal misappropriation of the petty amount of Rs. 31.50 by deliberately omitting to issue the tickets to the passengers.

25. For the reasons mentioned above, it must held that in the instant case, there is no evidence to show that any amount was criminally misappropriated by the accused. So far as the attempt to commit criminal misappropriation is concerned, there is no evidence to show that the accused made such attempt. The only evidence against him is that he did not issue tickets to the passengers from whom he collected fare at the rate of 70 paise per head. It has come on record that when the accused was asked to give the tickets, he told that he would issue the tickets to all the passengers after completing the collection work, Rameshwar Lal P.W.5 at whose instance the case was registered did not pay any fare to the petitioner and prevented the petitioner from issuing the tickets by holding his hands in his grip. It is reasonable to infer that if Rameshwar Lal P.W.5 had not prevented the petitioner from issuing the tickets, the accused-petitioner might have issued the

tickets to the passengers from whom he had collected the fare. In these circumstances, it cannot be said that any offence has been proved against the petitioner beyond reasonable doubt.

26. In view of the findings given above, this revision petition deserves to be allowed and is hereby allowed. The judgment dated 24th March, 1982 passed by the learned Munsif and Judicial Magistrate, Nawa and the judgment dated 7th January, 1987 passed by the learned Sessions Judge, Merta in Criminal Appeal No. 30/82 are hereby quashed and set aside. The accused-petitioner Hem Singh is hereby acquitted of the charge under Section 409, IPC. His bail bonds are hereby cancelled. He need not surrender.

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