

Mool Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-29-1996

Reported in : 1997(2)WLC36; 1996(2)WLN698

Judge : M.A.A. Khan, J.

Appeal No. : S.B. Criminal Revision Petition Nos. 41, 42 and 43 of 1993

Appellant : Mool Singh

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

M.A.A. Khan, J.

1. By their three separate but almost commonly worded judgments and orders of even dates the two court below have found the petitioner guilty of the offence Under Section 409 IPC, convicted him as such and sentenced him to undergo six months R.I. and pay a fine of Rs. 500/- in each of the three cases. Parties, nature of offence alleged to have been committed by the petitioner and questions of facts and law involved being common to all the three petitions these were heard together and are now being decided by this common order. The main order shall be placed on the record of Criminal Revision Petition No. 41 of 1993 Modi Singh v.

State and a copy thereof on each of the remaining case files.

2. Facts, relevant and common to all the three petitions are these: During the years 1973-76 the petitioner had been working as a 'patwari' in the Revenue Deptt. of the State Govt. from July 12, 1973 to June 7, 1976 he remained posted as Patwari in Patwari Circle No. 26 Sikroda Meena. His duties included recovery of land revenue and other Govt. dues from the agriculturists and on demand to issue copies of certain documents to them against cash payments. To carry out his official duties he was issued certain receipt books containing receipts in triplicate. The original receipt was to be delivered to the person paying the dues, the duplicate receipt was to accompany the challan through which the Govt. money was to be deposited in the treasury at Tehsil H.Q. and the triplicate was to remain in the receipt book which was to be kept by the petitioner. The amounts received and deposited were to be entered into a cash book (Sihaya) to be maintained and kept by the petitioner. During the relevant period the petitioner is alleged to have been issued, inter alia, Cash Book, Receipt Books bearing Nos. 80309 and 20773, besides other relevant papers and documents. He worked in that Circle upto 7.6.76 under his immediate Superior Officer Sh. Mohd. Rafi Girdawar.

3. The record handed over by the petitioner at the time of his transfer from that place and post appears to have been kept in a box and was received in his charge by his successor-in-office, Sh. Babu Lal Verma Patwari, on 7.8.76. On examination of the Receipt Books and the Cash Book Sh. Babu Lal Verma Patwari is stated to have noted that in the two receipt books there were several receipts whose originals had though been issued to the concerned persons yet their duplicates were still there in the receipt books. On examining the entries in the Cash Book he noted that corresponding entries relating to several receipts were not made in it. The discrepancy was brought to the notice of the higher authorities and Sh. Brij Bhushan Lal Sharma, a Revenue Inspector, was directed to conduct audit of the accounts as maintained by the petitioner. On audit of the accounts the petitioner was found to have received a sum of Rs. 2871.22 in different amounts from the cultivators but neither to have passed relevant entries in the cash book and nor to have deposited the same with the Govt. treasury. On the basis of such audit and on the receipt of the requisite sanction from the proper authority Sh.

Vijay Kumar Sharma Tehsildar sent a written report to the Station House Officer Hindon for registering a case against the petitioner and conducting investigation according to law. A case for offence Under Section 409 IPC was accordingly registered against the petitioner vide FIR No. 30/1978. Dwarka Prasad Head Constable, Buniyad Ali A.S.I and Kedar Nath S.I. conducted the necessary investigation and collected evidence relating to the commission of the offence Under Section 409 IPC by the petitioner. Since the commission of such offence spread over three years, three separate charge-sheets were submitted before the trial Magistrate giving rise to the institution of Criminal Cases Nos. 26/79 (345/89), 27/79 (344/89), 29/79 (343/89) in his court. The learned trial Magistrate framed necessary charges in all the three cases and by his three separate judgments and orders of the even date being 11.10.91 held him guilty of the offence Under Section 409 IPC, convicted him as such and sentenced him in the manner stated above. The petitioner preferred appeals bearing Nos. 29/91 (116/92), 30/91 (117/92), 28/91 (115/92) respectively to the learned Addl. Sessions Judge Hindon City who, vide his judgments and orders of the even date being 3.2.93, dismissed all the three appeals of the petitioner and confirmed the orders of his conviction and sentence for the offence Under Section 409 IPC. Hence these three petitions Under Section 397 read with Section 401 Cr.P.C.

4. I heard the learned Counsel for the parties at sufficient length and carefully examined the records of the two courts below.

5. The main argument of Mr. Biri Singh, the learned Counsel for the petitioner was that in the present cases there was no evidence of entrustment of any Govt. money with the petitioner in as much as that the receipts alleged to have been issued by the petitioner in token of his having received the alleged amounts from the receipts holders were neither proved to be in his hand writing nor even got exhibited at the trials.

6. In her turn the learned Public Prosecutor vehemently urged that the two inferior courts have recorded concurrent findings that the petitioner had received the various amounts from the villagers and had issued the receipts to them but had neither made relevant entries in the cash book nor did he deposit the amounts with

the Govt. treasury. It was submitted by the learned Public Prosecutor that in exercise of its revisional powers Under Section 397 Cr.P.C. this Court should not interfere with the concurrent findings of the inferior courts unless there was very cogent and exceptional reason for doing so.

7. Ordinarily this Court does not and will not like to interfere with the concurrent findings of facts as recorded by the inferior courts on certain issues involved in a case. Re-appraisal of the evidence, unless demanded by the interest of justice and justified in the facts and circumstances of a case, has to be avoided. Section 397 Cr.P.C. confers on this Court as also, simultaneously, upon the Sessions Judge discretionary power to revise the findings, orders and sentence as recorded, made and passed by the inferior courts but such discretionary power has to be exercised judicially and not arbitrarily. The exercise of such limited powers must, therefore, depend on the facts and circumstances of each case. As a broad proposition, and which proposition is simply illustrative and not exhaustive, the exercise of such power may be justified where 1) the decision being sought to be revised is grossly erroneous, (2) there has been non-compliance of certain provisions of law causing prejudice to the accused, (3) the finding of fact affecting the decision is not based on any legal evidence, (4) material evidence having a bearing upon the decision has not been considered and (5) the judicial discretion has been exercised arbitrarily and perversely causing failure of justice. On examination of the records of the two courts below I am satisfied that the findings recorded by them are not borne out of the legal evidence on record and are not accordingly correct. Therefore, interference by this Court is called for in the present cases. This view may be appreciated if each case be discussed separately.

8. 1. Revision Petition No. 41/93 (Trial Case No. 26/79):

In this case the learned trial Magistrate framed the charge Under Section 409 IPC against the petitioner in the following manner:

fnukad 12-7-73 Is fnukad 18-1-74 ds chp dh vof/k es iVokjh] iVokj e.M+y la[k 26 fldjkSnk ehuk ds in ij tulsod dh gSfl;r Is] olwyh dh jkf'k ,oa 'kqYd Qhl dqy :lk;s 957-20 jkT; ljdkj es tek u djokdj cnfu;fr Is fel,izksfiz,V dj fdzfeuy czhp vk WQ VLV dfeV fd;k A bl rjg Is vius /kkjk 409 Hkkjrh; n.M+ lafgrk ds rgr n.M+uh; vij/k fd;k A

9. In order to prove the above charge against the petitioner the prosecution had examined fifteen witnesses in all. These witnesses included PW. 1 Brij Bhushan Sharma Auditor, PW. 3 Mohd. Rafi Girdawar, PW. 3 Babu Lal Patwari, PW. 8 Baboo Lal Tehsildar, PW. 5 Vijay Kumar Sharma Tehsildar cum informant in the case and PW. 15 Kirori Lal TRA of the Revenue Deptt., PW. 9 Ram Swaroop, PW. 10 Prabhu, PW. 11 Kalyan, PW. 12 Jai Narain, PW. 13 Nathuwa and PW. 14 Ram Rattan villagers, and PW. 4 Kedar Nath S.I. PW. 6 Buniyad Ali ASI of the investigating agency and PW. 7 Dwarka Prasad, a witness to the arrest of the petitioner. The village witnesses from whom the petitioner was alleged to have received various amounts against receipts issued by him to them and the witnesses from the Revenue Deptt. made the most material witnesses in this case. Of the village-witnesses, PW. 9 Ram Swaroop had stated that he had paid Rs. 72.13 to the petitioner against the receipt delivered to him and that the said receipt was taken from him by the police vide seizure memo Ex. P. 14. PW. 4 Kedar Nath S.I. stated that the receipt seized by him was Ex. P. 9. There is no evidence to prove that this receipt Ex. P. 9 is written in the handwriting of the petitioner. PW. 1 Brij Bhushan Lal auditor stated that he did know and could not identify the handwriting of the petitioner. PW. 2 Mohd. Rafi Girdawar, who was the immediate Senior Officer of the petitioner, was not produced to complete his examination-in-chief and to allow the petitioner to cross examine him. PW. 3 Baboo Lal, the succeeding patwari, no doubt stated that receipts excluding Nos. 7 to 10 in Receipt Book No. 71 524 were signed by the petitioner but receipt Ex. P. 9 or other like receipts were not put to this witness to identify the handwriting of the petitioner thereupon. Moreover, the witness did not tell as to how did he know and was in a position to identify the handwriting of the petitioner. PW. 8 Baboo Lal Tehsildar, under whose over all supervision and charge the petitioner is stated to have been working as a patwari during the relevant period, stated that he did not know and therefore could not identify the handwriting of the petitioner on any document. This witness was declared hostile but no useful purpose could be served on cross-examining him by the Public Prosecutor. Almost same is the position with regard to the receipts Exhibited as Ex.P.10 and Ex.P.11 at the trial in this case. PW. 10 Prabhu stated that his uncle Ram Sahai had paid some amount to the petitioner on account of land revenue but what was that amount and which

was the receipt issued by the petitioner, the witness could not tell. PW. 11 Kalyan stated to have paid an amount of Rs. 80/- to the petitioner but neither the relevant receipt was got proved through him nor could he tell as to for which Samvat year did he pay that amount. The alleged amount was not proved to be making the part of the mis-appropriated amount as mentioned in the charge framed against the petitioner-PW. 12 Jai Narain stated that Badri and Ram Swaroop had paid some amounts to the petitioner and certain receipts had been seized by the police officer vide Ex.P.13 and Ex.P. 14. This witness is thus the witness of the seizure memos only and not of either the payments alleged to have been made by Badri and Ram Swaroop to the petitioner nor of the receipts allegedly issued by the petitioner to them. PW. 13 Nathu though stated to have given a sum of Rs. 140/- to the petitioner and received a receipt from him yet the receipt so issued by the petitioner to him was not got proved. PW. 14 Ram Ratan is again a witness to the seizure memo Ex.P. 14 and neither of any payment to the petitioner by anybody nor of any receipt issued by the petitioner. This witness was declared hostile.

10. PW 15 Kirodi Lal was working as TRA in Tehsil Hindon in the year 1978. He has stated that the police officer had shown four receipts to him and asked him to tell whether the amounts mentioned in those receipts had been deposited in the Govt. Treasury or not. The witness stated that he could not verify that fact from the record with him. He further stated that he did not know as to which receipt from the Receipts Book got verified by the policemen from his record. The evidence of this witness, too, therefore does not throw any helpful light on the merits of the charge framed against the petitioner in this case.

11. It is thus evident that no specific and direct evidence on the point of entrustment of the sum of Rs. 957.20, as mentioned in the body of the charge framed against the petitioner in this case, was led by the prosecution. More, attention was paid to prove the seizure memos Ex.P.13 and Ex.P. 14 rather than to the alleged receipts. The petitioner on being examined Under Section 313 Cr.P.C. had denied to have issued the exhibited receipts and the witnesses from the Deptt. had failed to prove the receipts, exhibited at the trial, to be in the handwriting of the petitioner, General and not specific evidence was adduced at the trial. The various receipts kept in the relevant Receipt Book Ex.P.2 and Ex.P.3

and the entries made in the relevant cash book were not proved to be in the handwriting of the petitioner. This aspect of the case assumes some importance for the reason that the audit was carried out much after the transfer of the petitioner from that station and the record kept in a box, which is not proved to have been sealed at any time, was relied upon to prove the charge against the petitioner. The two courts below did not examine the evidence on known and settled principle of appreciation of evidence and simply drew inferences from the facts that the petitioner had been working as a patwari and in his that capacity he might have naturally received the questioned amount from the witnesses. Where a fact is required to be specifically proved by direct evidence oral or documentary such fact must be proved with such evidence, if available. In the instant case the issuance of the relevant receipt by the petitioner in his handwriting could have been proved by the evidence of the handwriting expert or some such persons who might have been acquainted with the handwriting of the petitioner but that unfortunately was not done in the present case and evidence of general character and unsatisfactory degree was relied upon for his conviction. It may be pointed out that at the time the petitioner was ruled he had probably retired from Govt. Service as on the date of his examination he was aged about 61 or 62 years. He was thus in no position to interfere with the evidence led by the prosecution against him.

12. Entrustment of any property or dominion over the property to a person in his capacity of a public servant is an essential ingredient of the offence punishable Under Section 409 IPC. If this essential ingredient of the offence Under Section 409 IPC is not proved by the prosecution with clear, cogent and reliable evidence, conviction of the accused for that offence cannot be sustained. I find the same position of the evidence produced by the prosecution in this case and, therefore, think it proper to extend the benefit of doubt to him and accordingly acquit him of the offence Under Section 409 IPC.

13. 2. Criminal Revision No. 42/93 (Trial Courts No. 27/79):

The charge framed against the petitioner in this case reads as under:

fnukad 10-1-75 dks] iVokjh] iVokj eaM+y la[k 26 ekStk fldjkSnk ehuk ds in ij tulsod dh gSfl;r ls yxku dh jkf'k dqy :lk;s 1070-78 jkT; ljdkj esa fu;ekuqlkj tek u djokdj] bl

jde dks cnfu;fr ls fe,izksfiz,V dj fdzfeuy czhp vk WQ VLV dfeV fd;k A bl rjg ls vius /kkjk 409 vkbZ0 ih0 lh0 ds rgr n.M+uh; vijk/k fd;k A

14. In order to prove the above charge against the petitioner the prosecution examined 13 witnesses in all. These thirteen witnesses include PW. 1 Baboo Lal Verma patwari, PW. 4 Kedar Nath ASI, PW. 5 Vijay Kumar Tehsildar, PW. 6 Brij Bhushan Auditor, PW. 8 Buniyad Ali ASI, PW. 10 Baboo Lal Girdawar and Kirori Lal TRA whose evidence has been discussed above in Cr. Rev. Pet. No. 41/93. They have led almost the same evidence in this case. The main difference is that a carbon copy of the statement of PW. 1 Baboo Lal Verma Patwari, as recorded in Cr. Case. No. 26/79 (Cr. Rev. Pet. No. 41/93), was placed on the record of this case. His statement recorded in Cr. Case No. 26/79 cannot, therefore, be read as evidence in this case. For reasons recorded in Cr. Rev. Pet. No. 41/93 above the evidence led by the above named police and Department's witnesses fail to prove the entrustment of the amount of Rs. 843.24/- to the petitioner.

15. Of the village witnesses, PW2 Ram Khilari has stated that he had paid a sum of Rs. 191/- to the petitioner in Samvat Year 2032 against Receipt Ex.P. 9 issued by the petitioner and which receipt was taken from him by the police officer. Both the lower courts appear to have heavily relied upon the testimony of this witness for the reason that no cross-examination was conducted on him. It is true that where the testimony of a witness goes uncrossed such testimony should be accepted by the courts. But the merits of the testimony is to be judged with reference to the possibility of the existence of the facts stated by the witnesses. If the existence of the relevant facts stated by the witness stands contradicted by other relevant and reliable evidence on the record of the case then the testimony of the witness is not to be accepted only for the reason that such testimony had remained un-crossed or unrebutted. If any doubt in the truthful character of the uncrossed or unrebutted testimony of the witness is found on examination of the other relevant, reliable and admissible evidence on the record of the case, the uncrossed and unrebutted testimony of the witness may be considered as of doubtful character and the benefit of doubt may be given to the accused.

16. Now apart from the fact that Ex.P.9 is not proved to be in the handwriting of the petitioner so as to charge him with criminal liability it is noticed to have been interfered with and manipulated on relevant figures. The figures in the first and second entries have been over written and the total of the three entries which earlier was 196.27 was made to read as 191.00. It is not proved that the overwriting was made in the handwriting of the petitioner. Moreover, no reference of this receipt and/or of the amount mentioned in this receipt was made in the charge framed against the petitioner. It is unfortunate that the two courts below paid no attention to the worth and value of this piece of evidence in this use. In view of this state of affairs the uncrossed and unrebutted testimony of PW.2 Ram Khilari fails to connect the petitioner with the crime.

. 17. PW.3 Ravti stated to have paid a sum of Rs. 70/- to the petitioner, and delivered the receipt, given to him by the petitioner, to the police. The testimony of this witness too has gone uncrossed. Neither the receipt allegedly handed over to the police by this witness was proved at the trial nor was that and the amount of such receipt mentioned in the charge framed against the petitioner. Nor the receipt brought on the record of the case mentions the figure of Rs. 70/- as stated by the witness. The testimony of this witness too was thus of no help to the prosecution.

18. PW.11 Prasadi stated to have paid Rs. 27/- to the petitioner but neither the relevant receipt was got exhibited and proved nor was such amount mentioned in the charge. PW. 12 Dhundi was declared hostile and he proved no fact. He even denied to be knowing the petitioner.

19. It is thus evident that the evidence produced in this case too fell much short of proving the charge against the petitioner. For the reasons recorded for case No. 26/79 (Cr. Rev. Pet. No. 41/93) the petitioner is entitled to the benefit of reasonable doubt in this case also.

20. Cr. Rev. Pet. No. 43/93 (Trial Court Case No. 29/79):

The charge framed in this case reads as under:

fnukad 1-2-76 ls 1-6-76 rd dh vof/k es iVokjh] iVokj eaMy la[k; 26 ekStk fldjkSnk ehuk ds in ij tulsod dh gSfl;r ls fnukad 1-2-76 dsk :lk;s 228-74] 4-2-76 dks :lk;s 308-64 ,oa 1-6-75 dsk :lk;s 305-86 bl rjg ls dqy jkf'k :lk;s 843-24] olwyh dh jkf'k dks] cnuh;fr ls felizksfiz,V dk fdzfeuy czhp czhp vk WQ VLV dfeV fd;k A bl rjg ls vius /kkjk 409 vkbZ0 ih0 lh0 ds rgr n.M+uh; vijk/k fd;k A

21. The figure of Rs. 1070.78/- mentioned in the charge framed suggests that it related to one transaction without mentioning the fact as to who had entrusted that much of amount to the petitioner. In the course of investigation as many as ten Revenue receipts appear to have been obtained from the cultivators and seized. Only one of them, Ex. P. 26, mentioning the figure of Rs. 77.28/-, has been exhibited at the trial. Any way, in order to prove the charge against the petitioner prosecution examined as many as 21 witnesses. Of these 21 witnesses, PW. 1 Babu Lal Patwari, PW. 2 Kedar Nath ASI, PW.3 Vijay Kumar Tehsildar, P/w. 5 Brij Bhushan Sharma, PW. 6 Buniyad Ali ASI, PW. 7 Baboo Lal Girdawar, and PW. 17 Kirori Lal TRA are the very same witnesses whose evidence has been discussed in Cr. Rev. Pet. No. 41/93 above and has been found insufficient to hold the petitioner guilty of the offence Under Section 409 IPC. In this case too their evidence is almost to the same effect and therefore, for the reasons recorded supra the same is held to be insufficient and un-satisfactory to fasten the criminal liability on the petitioner for the said offence.

22. Of the remaining witnesses, PW. 4 Dwarka Prasad is a witness to the arrest of the petitioner, PW. 8 Hazari, PW. 9 Dharam Singh, PW. 11 Mohan, P/W. 12 Shankar, PW. 13 Chotey Lal, PW. 15 Ram Khilari and PW. 16 Jamni Lal are the witnesses to the seizure memos of some receipts stated to have been obtained by the Investigating Officer from the persons concerned in the presence of these witnesses. Many of these witnesses have turned hostile and did not support that fact even.

23. PW. 10 Bakhta stated that he had paid Rs. 6/- and some paisas on his own account and Rs. 80/- or Rs. 85/- on account of his father to the petitioner who had issued receipts to him. No such receipts were proved and exhibited at the trial. PW. 14 Dodi declined to remember whether he paid any amount to the petitioner.

PW. 18 Jokha Ram stated that his brother had paid Rs. 100/- to the petitioner but could not tell the exact amount as he himself had paid nothing to the petitioner. The witness was declared hostile. PW. 19 Mool Chand declined to remember if he had ever paid any amount to the petitioner. He was also declared hostile.

24. PW. 20 Kishan Lal stated that he had paid Rs. 77.28/- to the petitioner who had issued receipt Ex. P. 26 to him. In cross examination he stated that he made no other payment at any other occasion either to the petitioner or any other patwari. He could not tell the period of the posting of the petitioner in his village. He could not even tell the name of the persons in whose presence did he make the alleged payment.

25. PW. 21 Jaiphool is the uncle of PW.20 Kishan Lal. He has stated that he had paid Rs. 88.96 to the petitioner who had issued a receipt to him. He further stated that the receipt had been taken from him by the police. No such receipt was proved and exhibited at the trial of the petitioner. On being cross-examined he stated that PW.20 Kishan was a student at that time though he was master now. He could not remember any other occasion when he had paid any amount either to the petitioner or any other patwari.

26. It may be noted that of the village-witnesses PW. 20 Kishan and PW. 21 Jaiphool appear to be somewhat incriminating the petitioner but their testimonies too cannot be taken on face value so as to hold the petitioner guilty Under Section 409 IPC. It is true that the prosecution is not required to prove the mode and manner of. mis-appropriation of the amount or property entrusted to the accused. But in a case for offence Under Section 409 IPC the prosecution has to prove that the amount or property entrusted to the accused was mis-appropriated by him. In the instant case it does not stand proved that the amounts allegedly paid by PW. 20 Kishan vide Receipt Ex. P. 26 and by PW. 21 Jaiphool make part of the allegedly mis-appropriated amount of Rs. 1070.78 mentioned in the charge. Viewed thus the petitioner cannot be held guilty of the offence Under Section 409 IPC in this case too without reasonable doubt.

27. It was urged on behalf of the prosecution that the various receipts, some of which were exhibited at the trial and some not, and the entries made in the cash

book as also the report of the Auditor were relevant and admissible per se Under Section 35 of the Evidence Act. It was submitted that in view of the nature of these documents as public documents those are required to be read in evidence against the petitioner without the formal proof from oral evidence. There is certainly some point in this argument but not of that standard and degree which is required to fasten a criminal liability on a person.

28. Section 35 of the Evidence Act provides that an entry in public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by law of the country in which such book, register or record is kept, is itself a relevant fact. The principle Under Section 35 of the Evidence Act is that the law reposes a confidence in public officers that they will discharge the trust reposed in them with accuracy and fidelity raising thereby a presumption of the discharge of the trust by them with that sense of responsibility. The very wordings of this section convey the idea that a duty has been imposed upon the maker of the entry by law or his official position to record the information he possesses or has gathered in an official documents of the nature described in this section. In order to render a document admissible under this section, three conditions must be satisfied, viz., (1) the entry sought to be relied upon must be in any public or other official book, register or record, (2) it must be an entry stating a fact in issue or a relevant fact and (3) it must be made by a public servant in the discharge of his official duty or any other person in performance of a duty specially enjoined by the law of the country. If these three conditions are satisfied the entries made in the document would be relevant and admissible Under Section 35 of the Evidence Act.

29. But admissibility of a document is one thing and its probative value quite another. These two aspects in relation to a document sought to be relied upon as relevant and admissible Under Section 35 of the Evidence Act should not be combined and should be considered separately and independently of each other. A document may be admissible and may yet not carry any conviction or weight or probative value. A document prepared by a subordinate public servant in the discharge of his duty to carry out some administrative instruction or order of his

superior officer cannot carry the same weight or probative value as a document prepared either under a Statute. Ordinance or an Act can. The weight and probative value to be given to a particular public document shall therefore, depend on individual fact and accordingly the same cannot be combined with the admissibility of that document.

30. In the instant case the various Revenue receipts obtained by the Investigation Officer in the course of investigation from the persons concerned or from other persons whether exhibited or not at the trial but tendered in evidence by the prosecution, make relevant document Under Section 35 of the Evidence Act. Since such receipts were and are to be prepared by a public servant in the discharge of his official duties as a patwari, those would be admissible in evidence without formal proof. Mere non-exhibition thereof at the trial would not take away that character of theirs. Same is the position with the entries made in the cash book. Some value shall have also to be attached to the report of the Auditor tendered in these cases as such report was also prepared by a public servant in the discharge of his Official duties as a public servant, whether he was qualified to work as an 'auditor of accounts' or not. The statement made by Sh. Brij Bhushan Sharma, the witness examined as an auditor in these cases without telling his knowledge of and experience in that branch of knowledge shall, however, to be placed on a better pedestal than that of the statement made in a mere official correspondence which has no finality and hence inadmissible would attach to them in the absence of the statement of the person making such statement. Taking all such documents on their face value and before acting upon their probative value it is required to be kept in mind that the petitioner denied to have made them and the prosecution witnesses examined to prove them to be in the handwriting of the petitioner failed to prove that fact. In appreciating the evidence on the point it is also to be kept in mind that the receipts and the cash books were not seized from the possession of the petitioner and were taken from a box lying in the custody and control of Mohd. Rafi Girdawar whose statement was not completely recorded in court and the petitioner had no opportunity to cross-examine him. Above all Kirori Lal TRA failed to tally the relevant entries in the receipts and in the cash book with the corresponding entries in the record in his possession. The overwriting and manipulation made in the Receipt, referred to

above, cannot be overlooked in considering the probative value thereof. All these facts materially diminish the probative value of all these documents which have a relevance to the ingredient of 'entrustment' required to prove an offence punishable Under Section 409 IPC and consequently upon the guilt of the petitioner.

31. It was also urged that the defects in the charges, as noticed and pointed out above, stand cured by the provisions contained in Section 464 Cr.P.C. and should not be attached much importance. The argument is correct but at the same time the cumulative effect of the proceedings conducted in these cases can also not be over looked. As stated above Baboo Lal Patwari was examined in two cases only but a carbon copy of his statement recorded in one case was read in evidence in the other case. Similarly the statements of the defence witnesses viz., DW. 1 Nawab Khan and DW. 2 Anwar Ali Patwari were recorded in one case but the carbon copies of such statements were placed on the record of the other case or cases. In framing the charges the provisions contained in Section 219 Cr.P.C. were not kept in mind and the offence of the same kind exceeding three in number were so mixed that it became almost too difficult to tally the figure of misappropriated amounts which was alleged to have been entrusted to the petitioner and stated to have been misappropriated by him or in respect of which criminal breach of trust was allegedly committed by him. All these facts taken together may not possibly rule out the complaint of prejudice to the petitioner allegedly occasioned to him in his trials.

32. In view of the above discussion I am inclined to hold that neither the entrustment of Government property nor breach of trust in relation to such money by him was proved against the petitioner beyond reasonable doubt in any of the three cases. His conviction and sentences, as recorded and passed against him in the three cases, have, therefore, to be set aside and he has to be acquitted of the offence Under Section 409 IPC in all the three cases giving rise to these petitions. I order accordingly.

33. In the result the judgments and orders of the courts below holding the petitioner guilty of the offence Under Section 409 IPC, convicting him as such and

sentencing him to six months R.I. and a fine of Rs. 500/- in each of the three cases are hereby set aside and the petitioner acquitted of that offence in all the three cases. He is on bail. He need not surrender as his bail bonds in all the three cases are cancelled. Consequently all the three petitions being Cr. Rev. Petition Nos. 41, 42 and 43 of 1993, Mool Singh v. State of Rajasthan are allowed.

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