

**Mahammad Ali Vs. the State**

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**Court :** Kolkata

**Decided On :** Apr-17-1953

**Reported in :** AIR1953Cal681,57CWN678

**Judge :** Mitter and ;S.K. Sen, JJ.

**Acts :** [Prevention of Corruption Act, 1947](#) - Section 5(1) and 5(4); ;West Bengal Criminal Law Amendment Special Courts Act, 1949 - Section 4; ;West Bengal Criminal Law Amendment Special Courts (Amendment) Act, 1952; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 268; ;[Indian Penal Code \(IPC\), 1860](#) - Section 409

**Appeal No. :** Criminal Revn. Case No. 39 of 1953

**Appellant :** Mahammad Ali

**Respondent :** The State

**Advocate for Def. :** Jnanendra Nath Bakshi, Adv.

**Advocate for Pet/Ap. :** Bireswar Chatterjee, Adv.

**Judgement :**

**Mitter, J.**

1. This is a petition for quashing certain proceedings under Section 409, Penal Code which are now pending against the petitioner in the Court of the Special Judge of Bankura. The petitioner, who is a postal peon, has been charged with criminal breach of trust in respect of Rs. 30/-.

2. The prosecution case against the petitioner is as follows. On 14-8-1951, one Kanai Krishna Sircar of 157, Netaji Subhas Road, Calcutta, remitted a sum of Rs. 30/- by a postal Money Order addressed to his wife Shrimati Shibarani Sircar who was then residing at a village called Sahaspur in the district of Bankura. As she did not receive the money, she wrote a postcard to her husband enquiring about it. This postcard never reached her husband. On 27-8-1951, the petitioner saw the said Kanai Krishna Sircar at his Calcutta residence and confessed that he had misappropriated the money by forging the signature of the addressee of the Money Order in the acknowledgment portion of the Money Order. The petitioner refunded the money to Kanai & asked his forgiveness. Kanai, however, reported the petitioner to the Postal Authorities. Thereafter, the petitioner was sent up to stand his trial before the said Special Judge who, after having examined a number of witnesses, framed a charge against the petitioner under Section 409, Penal Code. On 2-1-1953, an application on the petitioner's behalf was made to the learned Judge questioning the legality of the said charge. By his order of the same date, the learned Judge adjourned the case to enable the petitioner to move the High Court and observed that the contention raised on the accused's behalf was not altogether without foundation. Later the same day, the Public Prosecutor asked for cancellation of the accused's bail, on the ground that the accused might take advantage of the adjournment to abscond. The learned Judge thereupon cancelled the petitioner's bail and remanded him to 'hajat',

3. The question for decision is whether, in view of the provisions of the [Prevention of Corruption Act, 1947](#) (Act 2 of 1947), a charge under Section 409, Penal Code, is maintainable. Section 5(1)(c) of Act 2 of 1947 speaks of a category of misconduct which would include criminal breach of trust on the part of a public servant. Therefore, a public servant, when accused of criminal breach of trust, could also be accused of an offence under Section 5(1)(c) of Act 2 of 1947. Mr. Bireswar Chatterjee appearing on behalf of the petitioner contends, on the

authority of the unreported case -- 'Hemanta Kumar Das v. The State', which I decided, that the petitioner should be tried under Act 2 of 1947 and not under the Penal Code. This application originally came up before Chunder, J. who came to the conclusion that the petitioner could be tried either under S 409, Penal Code or under Section 5(1)(c) of Act 2 of 1947. The learned Judge expressed his disagreement with my decision, which was of a single Judge, and referred this application to a Division Bench.

4. For the purpose of disposing of this application, it does not appear to us to be necessary to go into the reasons for my decision in -- 'Hemanta Kumar Das v. The State', nor into these which appealed to the learned Judge of the Punjab High Court who decided the case of -- 'State v. Guru Charan Singh', (A), which I followed, for, since' my decision, Section 5 of Act 2 of 1947 has been amended by Act 59 of 1952 by the substitution, for sub-s. (4), of the following sub-section:

'(4) The provisions of this section shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceedings which might, apart from this section, be instituted against him.'

In face of this amendment, it cannot be argued that the operation of Act 2 of 1947 would, in the case of a public servant, exclude the operation of Section 409, Penal Code. It is true that the Special Act provides for certain rights to which an accused is not otherwise entitled. But the amendment quoted above makes it clear that the prosecution can elect to charge a public servant either under Section 409, Penal Code or under Section 5 (1)(c) of Act 2 of 1947. Any doubt which may have existed in this regard has been resolved by the amendment concerned. That being so, the petitioner's trial before a Special Judge under Section 409, Penal Code, must be held valid. Mr. Chatterjee argues that the facts alleged' against his client disclose an offence under Section 471, Penal Code, which is triable by a Court of Session, and that, accordingly, the petitioner cannot be tried by a Special Judge. This argument is entirely beside the point, because the petitioner has only been charged with an offence under Section 409, Penal Code. It appears, moreover,, that if a public servant is charged with an offence which is triable by a Special

Judge along with an offence which is ordinarily triable by a Court of Session, both the charges could be tried by a Special Court under the provisions of Section 4 of West Bengal Act 21 of 1949, as amended by West Bengal Act 12 of 1952.

5. In the result, this application fails and the Rule is discharged. There is no prayer for bail, but it seems to us that the order for cancellation of bail was unduly harsh. It would, therefore, be open to the petitioner to apply for bail.

**Sen, J.**

6. I agree.

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