

**HIGH COURT OF MADHYA PRADESH,  
BENCH AT GWALIOR.**

**SB : Hon'ble Shri Justice Sushil Kumar Gupta**

**Criminal Revision No.595 of 2010**

Arvind Chandil

vs.

State of M.P. & Anr.

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Shri Sanjay Bahirani, Advocate for the petitioner.  
Shri B.P.S.Chauhan, Public Prosecutor for respondent No.1/State.  
None for respondent No.2.

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**ORDER**  
**(28/08/2015)**

Being aggrieved by the order dated 2.7.2010 passed by the Second ASJ (Fast Track), Datia, in Spl. S.T. No.37/2010, whereby charge under Section 409 of IPC was framed, this revision petition has been filed by the petitioner under Section 397/401 of Cr.P.C.

2. The facts of the case in brief are that a written report was made by Mushtak Ahmad, Manager of the Committee, to the effect that Assistant Manager of the Committee Shri Arvind Kumar has committed embezzlement of Rs. 6,03,559.50. Several notices were issued to him, but neither he filed any reply nor deposited the aforesaid amount. On the aforesaid report, Crime No.20/10 was registered for the offence punishable under Sections 420 and 409 of IPC at police Station Basai, Distt. Datia against the petitioner and one Usman Khan. After investigation, charge-sheet was filed. Thereafter, learned Second ASJ vide impugned judgment discharged the co-accused Usman from the charges under Sections 420 and 409 of IPC, however, framed the charge under Section 409 of IPC against the petitioner, hence, this revision.

3. Learned counsel for the petitioner submitted that petitioner is not a public servant, hence, charge under Section 409 of IPC cannot be framed against him. He further submitted that learned trial Court did not consider this aspect that at the time of framing of charge the petitioner is not a public servant, hence, before filing the Challan sanction was to be taken by police from the competent authority because the petitioner is an employee of the Cooperative Society as per Section 87 of the Cooperative Societies Act. It is also submitted that petitioner is only a Samiti Sevak of the Cooperative Society and for framing the charge under Section 409 of IPC, he should be a public servant under Section 21 of the IPC. But petitioner does not come within the purview of public servant as defined under Section 21 of IPC. In this view of the matter, impugned order is liable to be set aside. In continuation, learned counsel for the petitioner also submitted that learned trial Court has discharged co-accused Usman Ahmad who is said to be peon of the Fair Price Shop and learned trial Court has found that no case is made out against him, but on the similar set of evidence charge under Section 409 of IPC has been framed against the petitioner and this fact has not been considered by the learned trial Court. On the aforesaid grounds, learned counsel for the petitioner prays for discharge of the petitioner.

4. Per contra, learned Public Prosecutor for respondent No.1/State opposed the submission advanced by the learned counsel for the petitioner and submitted that there are sufficient evidence available against the petitioner for framing the charge under Section 409 of IPC and prays for dismissal of the petition.

5. The main contention of the learned counsel for the petitioner on

which this petition has been filed for discharging the accused from the charge under Section 409 of IPC is that petitioner is not a public servant within the purview of Section 21 of the IPC.

6. Before dealing with the factual aspect of the case, I would like to reproduce the relevant provisions of law. Public servant has been defined under Section 21 of the IPC as under :-

**“21. “Public servant”.**—The words “public servant” denote a person falling under any of the descriptions hereinafter following; namely:—

[\*\*\*]

Second.- Every Commissioned Officer in the Military, [Naval or Air] Forces of India];

Third— Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

Fourth- Every officer of a Court of Justice [(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth— Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth — Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh— Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth— Every officer of [the Government] whose duty it is, as such officer, to prevent offences, to

give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth— Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of [the Government], or to make any survey, assessment or contract on behalf of [the Government], or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of [the Government], or to make, authenticate or keep any document relating to the pecuniary interests of [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of [the Government] [\*\*\*];

Tenth— Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh— Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

Twelfth— Every person—  
 (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;  
 (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

7. Criminal breach of trust has been defined under Section 405 of IPC and Sections 406 and 409 of IPC are the provisions of punishment of criminal breach of trust which reads as under :

**“405. Criminal breach of trust.**—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or

converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

**406. Punishment for criminal breach of trust.—**Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**409. Criminal breach of trust by public servant, or by banker, merchant or agent.—**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."

8. From the bare perusal of the aforesaid provisions of the criminal breach of trust, it is clear that when a criminal breach of trust is committed by a public servant or a banker, merchant or agent, it is punishable under Section 409 of IPC and if criminal breach of trust is committed by other person, then it is punishable under Section 406 of IPC.

9. I have considered the submissions of learned counsel for the parties and perused the record.

10. It is undisputed that petitioner is a Samiti Sevak of Seva Sahkari Sansthan, Basai, which is a Cooperative Society registered under the provisions of M.P. Cooperative Societies Act, 1960. So far as the definition of public servant is concerned, after going through the definition of public servant in Section 21 of IPC, it is clear that petitioner does not come within any of the clauses of Section 21 of the IPC.

Learned counsel for the petitioner has also placed reliance on the following unreported judgments of this Court :-

- (i) M.Cr.C. No.2967/2008 (**Mahesh Chourasiya Vs. State of M.P. & Ors.**)
- (ii) M.Cr.C.No.2646/2005 (**Smt. Uma Mehra Vs. State of M.P.**)

In the aforesaid unreported judgments, it is observed that Salesman or employee of the Cooperative Society of the Government Fair Price Shop, does not come within the purview of Section 21 of the IPC.

**11.** So far as criminal breach of trust is concerned, after perusal of the entire record, it appears that wheat and kerosene have been entrusted to the petitioner for distribution to the consumers. *Prima facie* it also appears from the record that after distribution and sales of the kerosene and wheat, the amount which was received has been misappropriated by the petitioner and he did not deposit the same in the society. Therefore, prima facie offence of criminal breach of trust has been committed by the petitioner.

**12.** Although the offence of criminal breach of trust as defined under Section 405 of IPC has been committed by the petitioner, but he is not a public servant, therefore, he cannot be charged under Section 409 of IPC, but he may be charged under Section 406 of IPC.

**13.** In this view of the matter, impugned order framing charge under Section 409 of IPC against the petitioner by the learned trial Court cannot be sustained and liable to be quashed and is hereby quashed, but so far as charge under Section 406 of IPC is concerned, that may be framed keeping in view the available record.

**14.** For the foregoing reasons, this revision is partly allowed with regard to charge under Section 409 of IPC, but the matter is remanded

back to the learned trial Court to hear learned counsel for the parties for framing the charge under Section 406 of IPC and thereafter proceed in accordance with law.

**(Sushil Kumar Gupta)**  
**Judge**

**ms/-**