



2026:KER:31007

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 7TH DAY OF APRIL 2026 / 17TH CHAITHRA, 1948

CRL.A NO. 1252 OF 2018

CRIME NO.VC/01/2008/KTM/2008 OF VACB, KOTTAYAM

AGAINST THE JUDGMENT DATED 29.09.2018 IN C.C. NO.1 OF 2011 ON THE
FILES OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOTTAYAM

APPELLANT/ACCUSED:

A.P.BENOY
AGED 48 YEARS
AMMANKUZHAYIL HOUSE, CHOTTIKKARA, MUNDAKKAYAM

BY ADVS.
SRI.SOORAJ T.ELENJICKAL
SMT.HELEN P.A.
SMT.STEPHANIE SHARON
SHRI.ATHUL ROY

RESPONDENT/COMPLAINANT:

STATE OF KERALA
THROUGH THE DEPUTY SUPERINTENDENT OF POLICE, VACB,
KOTTAYAM REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

SPL PP - RAJESH.A, SR PP - REKHA.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26.03.2026,
THE COURT ON 07.04.2026 DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT****Dated this the 7th day of April, 2026**

The sole accused in C.C. No.1/2011 on the files of the Court of the Enquiry Commissioner and Special Judge, Kottayam, has filed this appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 [hereinafter referred as ‘Cr.P.C.’ for short], challenging the conviction and sentence imposed by the Special Judge, against him as per the judgment dated 29.09.2018. The State of Kerala, represented by the Special Public Prosecutor is arrayed as the respondent herein.

2. Heard the learned counsel for the appellant and the learned Special Public Prosecutor, in detail. Perused the verdict under challenge and the records of the Special Court.

3. Parties in this appeal shall be referred as ‘accused’ and ‘prosecution’, hereafter.

4. The prosecution case is that, the accused, while working as the cashier of K.S.E.B. Section Office at Manimala in Kottayam District, during the period from 1-3-2007 to 2-5-



2007, dishonestly and fraudulently misappropriated a total amount of Rs.1,74,979/-, which was collected by him from the consumers. Further, the accused has falsified records for misappropriating the above amount. Thus, the accused by illegal means and by abusing his position as public servant, obtained pecuniary advantage to the extent of said amount. On this premise, the prosecution alleges commission of offences punishable under Sections 13(1)(c) and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 [hereinafter referred as 'P.C. Act, 1988' for short] and under Sections 406, 420 and 477A of Indian Penal Code [hereinafter referred as 'IPC' for short], by the accused.

5. After framing charge for the offences punishable under Sections 13(1)(c) and 13(1)(d) read with 13(2) of the P.C. Act, 1988 and under Sections 409 and 477A of IPC, the Special Court recorded evidence and completed trial. During trial, PWs 1 to 24 were examined and Exts.P1 to P81 were marked on the side of the prosecution. Exts.D1 to D7(a) were marked on the side of the defence, out of which, Exts.D1 to D4 were the contradictions recorded as that of PW4, PW5 and PW14.



6. On appreciation of evidence, the Special Court found that the accused was guilty for the offences punishable under Sections 13(1)(c) and 13(1)(d) read with 13(2) of the P.C. Act, 1988 and under Sections 409 and 477A of IPC. Accordingly, the accused was convicted for the said offences and sentenced as under:

“Considering all these facts and circumstances, I sentence the accused to undergo Rigorous Imprisonment for three years each and to pay a fine of ₹25,000/- (Rupees twenty five thousand only) each for the offence under Secs.13(1)(c) and 13(1)(d) r/w Sec.13(2) of the Prevention of Corruption Act, 1988 and Secs.409 and 477A of IPC, in default of payment of fine the accused has to undergo Simple Imprisonment for a period of six months each. The substantive sentences shall run concurrently. The set off for the period of detention which the accused had undergone in the jail during the investigation is allowed under Sec.428 Cr.P.C.”

7. The learned counsel for the appellant/accused argued that, the prosecution broadly divided the alleged misappropriation under two heads viz. ‘shortage in the cash chest’ to the tune of Rs.78,520/- and ‘broken collection’ amounting to Rs.96,459/-. Thus, the total amount alleged to



be misappropriated by the accused would come to Rs.1,47,979/-. According to the learned counsel for the accused, regarding the allegation as to shortage of amount in the cash chest, the evidence relied on by the prosecution is that of PWs 1 to 3, 15 and 16 as well as Ext.P5 chest inspection mahazar. Apart from that, Exts.P1 and P1(a) cash remittance slips as well as Exts.P3(a) and P14, the SOP-10 document proved to be prepared by the accused were also relied on by the prosecution. But, the prosecution miserably failed to produce the receipts showing the split up collection of the amount by the accused. According to him, Exts.P1, P1(a), P3 and P14 supported by the evidence of PWs 1 to 3, 15 and 16 could not be sufficient to prove that the accused collected Rs.78,520/- and failed to remit the same. The learned counsel for the accused pointed out further that, Ext.P66 letter issued by the accused to the Deputy Chief Engineer, Electrical Circle, Kottayam dated 16.10.2007, for which the prosecution has given much emphasis, in no way would show categoric admission that Rs.78,520/- or Rs.1,52,228/- shown therein were misappropriated by the accused. Therefore, no credence can be given to the same



and he has pointed out relevant portions of the evidence of PW1, PW13, PW15 and PW16 in this regard.

8. Regarding the allegation as to misappropriation of broken collection amounting to Rs.96,459/-, the contention raised by the learned counsel for the accused is that, as per Exts.P11, P12, P18, P28 series, P30 series, P34, P34(a), P38, P40, P40(a), P42, P43 and P44, the collected amounts has been deposited by the accused in the bank and according to him, Ext.P25 remittance showing surplus amount would substantiate the same. Therefore, in the absence of evidence adduced by the prosecution to show that there was failure to remit the amount collected by the accused as per Exts.P11, P12, P18, P28 series, P30 series, P34, P34(a), P38, P40, P40(a), P42, P43 and P44 and in view of remittance made as per Ext.P25, the prosecution failed to establish that the amount collected as per Exts.P11, P12, P18, P28 series, P30 series, P34, P34(a), P38, P40, P40(a), P42, P43 and P44 was misappropriated by the accused. It is pointed out by the learned counsel for the accused further that, it is the duty of the prosecution to prove the prosecution case beyond reasonable doubt and any sort of doubt in the prosecution



case would give benefit to the accused. It is also pointed out that, Ext.P66 could not be considered as an admission at the instance of the accused, within the ambit of either under Section 17 or Section 21 of the Indian Evidence Act, since the same would not suggest any inference as to the relevant facts of this case. The learned counsel for the accused also attacked Ext.P48 prosecution sanction proved by examining PW18, on the ground that the authority failed to look into the prosecution records, while granting sanction. Therefore, the sanction itself is vitiated and the same also to be adjudged in favour of the accused. Thus, the learned counsel for the accused pressed for interference in the impugned verdict.

9. Repelling the contentions raised by the learned counsel for the accused, the specific points argued by the learned Special Public Prosecutor are that, in this case, inspection of cash chest was conducted by PW2, the Assistant Engineer on 02.05.2007 in the presence of PW1, the Assistant Executive Engineer, PW3, the Overseer, PW4, the Lineman, PW5, the Worker, PW15, the Cashier and PW16, the Senior Assistant. As a result of the inspection, a mahazar was prepared as Ext.P5 by PW2 and the same would show



shortage of Rs.78,520/-. According to the learned Special Public Prosecutor, the prosecution case is that, as on 30.04.2007, the total amount collected by the accused was Rs.87,825/-, out of which, during inspection by PW2 for preparing Ext.P5 mahazar, only Rs.9,305/- was found in the chest and the remaining amount was misappropriated by the accused. The same is fortified by the evidence as that of Exts.P1, P1(a), P3(a) to P3(g) and P14, supported by Ext.P31 audit report prepared by PW14. Therefore, though the prosecution did not produce individual receipts showing the said collection, the above documents itself would show that the total amount collected by the accused was Rs.87,825/-, out of which Rs.78,520/- failed to be deposited. In addition to that, Ext.P66 letter issued by the accused to the Deputy Chief Engineer, Electrical Circle, Kottayam, would fortify the said misappropriation. Therefore, the misappropriation under the head 'shortage in cash chest' has been substantially proved by the prosecution.

10. It is pointed out by the learned Special Public Prosecutor that, as far as the allegation of misappropriation by the accused under the head 'broken collection' coming to



the tune of Rs.96,459/- is concerned, the amount bifurcated as per Exts.P11, P12, P18, P28 series, P30 series, P34, P34(a), P38, P40, P40(a), P42, P43 and P44 are extracted as under:

Sl. No.	Exhibits	Amount	Date
1	P11	6,212/-	05.03.2007
2	P12	7,306/-	05.03.2007
3	P18	5,107/-	01.03.2007
4	P28	20,267/-	11.04.2007
5	P30	20,267/-	14.03.2007
6	P34	3,617/-	02.03.2007
7	P34(a)	2,679/-	07.03.2007
8	P38	1,838/-	27.03.2007
9	P40	1,159/-	29.03.2007
10	P40(a)	1,287/-	29.03.2007
11	P42	67/-	07.04.2007
12	P43	76/-	07.04.2007
13	P44	17,490/-	07.04.2007
Total		Rs.96,456/-	

11. It is also pointed that, in addition to that as per Exts.D6 and D7 pay slips, as on 04.05.2007 i.e. after registration of this crime on 03.05.2007, as evident from Ext.P66, the accused remitted Rs.78,520/- and requested permission to remit the balance amount of Rs.1,52,228/- to clear the audit objection. It is pointed that, even though in



Ext.P55, excess amount than the amount covered by Exts.P11, P12, P18, P28 series, P30 series, P34, P34(a), P38, P40, P40(a), P42, P43 and P44 were shown, the same would not include the amount collected by the accused and the amount so remitted was the amount collected and deposited by other cashiers and not by the accused. This aspect would be found from Ext.P31 audit report, supported by Exts.P66 and P67.

12. Apart from that, the learned Special Public Prosecutor submitted that, from the oral evidence of PW2, it is revealed that the accused was given the work to collect the cash from day code 3A-1 to 25, 3B-1 to 25, 1A-13 to 25, 1B-13 to 25 and street light charges, LT-V and division cash. To prove the above aspect prosecution relied on Ext.P2(a) office order. Ext.P2(a) office order is seen made in page No.100 of Ext.P2 Work Allocation register. In page No.101 of Ext.P2 Register the work allocated to the other cashier, PW15 is also seen stated i.e, PW15 was given the work to collect the cash from the Day code 2A-1 to 25, 2B-1 to 25, 1A-1 to 12, 1B-1 to 12, LT-IV and 10KW. PW15, the other cashier has not disputed Exts.P2(a) and P2(b) work allocation



order of the cashiers at Manimala Section office. Exts.P2(a) and P2(b) work allocation orders are seen made and signed by PW2. The oral evidence of PWs 2 and 14 reveals that by issuing Exts.P11 and P12 receipts, the accused had collected Rs.6,212/- and Rs.7,306/- from PW7, owner of Hotel Paradise at Manimala and that the said amount had not been remitted in the bank. The said amount did not find a place in Exhibit P6 Consumer Personal Ledger as well. PW16, the Senior Assistant stated that the handwriting in Exhibits P11 and 12 are that of the accused.

13. According to the learned Special Public Prosecutor, Exhibit P33 is the Demand Collection Register. Demand for Rs.5,107/- can be seen in Page 75 of Exhibit P33, which was marked as Exhibit P33(a). But collection of the amount is not entered in Exhibit P33(a). Both the entry regarding Exhibit P18 and P33 (a) did not enter in Exhibit P9 Consumer Personal Ledger. The relevant page is marked as Exhibit P9(a). PW16 Senior Assistant stated that the hand writing in Exhibit P18 is that of the appellant. Exhibit P28 series and P30 series receipts are seen issued to Manimala Grama Panchayath as electricity charge of the street lights. PW13,



U.D.Clerk, Manimala Panchayath has given oral evidence regarding the remittance of Rs.20,267/- each at K.S.E.B Manimala Electrical Section Office as per Exhibits P27 and P29 contingent bills. PWs.2 and 14 have stated that the accused had not remitted the amount in the bank which he collected by issuing Exbt.P28 series and P30 series receipts. The evidence of the above witnesses that the said amounts had not been remitted in bank is seen amply corroborated by Ext. P15 Remittance Register and Ext. P25 Bank statement.

14. In Exhibits P34 and P34(a), PW14 it is stated that P34 and P34(a) receipts are issued from P35 receipt book. The amounts as per Exhibit P34 and P34(a) did not find a place in the carbon copy of Exhibit P35(a) receipt book. The amounts as per Exhibits P34 and 34(a) have not been entered in Exhibit P9 Consumer Personal Ledger. In short, though Exhibits P34 and 34(a) receipts are issued to consumer No.2137, the amounts are not entered in Exhibit P9. PW16, Senior Assistant stated that the handwriting in P34 and P34(a) is that of the accused. Exhibits P38 receipt was issued to Consumer No.5494. Exhibit P17 is receipt book No.42873. Pink and carbon copies of Exhibit P38 receipt are



marked as Exhibit P17(a) and P17(b) respectively. The amount as per Exhibit P38 receipt was not entered in Exhibit P7 Consumer Personal Ledger. PW16, Junior Assistant stated that the handwriting in Exhibit P38 is that of the accused. Exhibit P40 receipt is issued to consumer No.5217. Exhibit P40(a) is issued to Consumer No.7768. The pink and carbon copies of Exhibits P40 and P40(a) receipts are issued from Exhibit P41 receipt book. The amount as per Exhibit P40 is entered in Exhibit P8 Consumer Personal Ledger only on 14.11.2007, though it was received on 29.3.2007. The amount as per Exhibit P40(a) is not at all entered in Exhibit P8 Consumer Personal Ledger. PW16, Senior Assistant stated that the handwriting in Exhibit P40 and P40(a) are that of the accused.

15. According to the learned Special Public Prosecutor, the amount as per Exhibit P42 is Rs.67/- (Receipt No. 125. Book No.42857). The amount as per Exhibit P43 receipt is Rs.76/- (Receipt No. 124, Book No.42,857/-). The amount as per Exhibit P44 is Rs.17,490/- (Consumer No. 1269 receipt No. 123 Book No.42857). The bill book containing Exhibits P42, 43 and 44 are marked as Exhibit P45. The pink and



carbon copies of Exhibit P45 are marked as P45(a) and P45(b). Exhibits P42 to P44 receipts are issued while remitting electricity charges for street lights. The amounts as per Exhibit P42 to P44 were not entered in Exhibit P39 demand collection register. The relevant page for the month of April in Exhibit P39 is marked as P39(a). So also the said amounts are not entered In Exhibit P10 Consumer Personal Ledger. The relevant page in Exhibit P10 is marked as Exhibit P10(a). In SOP 10, page No.15 dated 7.4.2007 (Exhibit P3), there also the amounts as per Exhibits P42 to P44 are not stated. The relevant page in Exhibit P3 is marked as Exhibit P3(a). Exhibit P46 is the bill book intended for electricity charges for street lights. There the amount as per Exhibits P42 to 44 are not stated as well. PW16, Senior Assistant stated that handwriting in Exhibits P42 to 44 are that of the accused.

16. It is submitted by the learned Special Public Prosecutor that, in view of clear voluntary admission on the part of the accused regarding the misappropriation as evident from Ext.P66 letter to the Executive Engineer informing the remittance of shortage in the cash chest and



requesting time for the payment of the broken collection found in Ext.P31 audit report, the misappropriation alleged was admitted by the accused. Thereafter, pursuant to Ext.P68 letter of the Executive Engineer, the accused had remitted a total amount of Rs.1,67,514/- vide Ext.D5 receipt dated 14-11-2007. The above payment was made by the accused as his liability fixed in Ext.P31 Audit report. The act of the accused in paying the above amount, amounts to admission as defined under Section 17 of the Indian Evidence Act and the same is admissible under Section 21 of the said Act.

17. Considering the admission made by the accused in Exhibit P66 letter, nothing is on record to disbelieve Ext.P2(a) work allocation to the accused. It is evident from the oral evidence of PW1, the Assistant Executive Engineer and PW14, Auditor that the accused, by issuing the aforesaid receipts, collected a total amount of Rs.96,459/- from the consumers and the same had been misappropriated by him without remitting in the bank and not furnishing the carbon copies of the said receipts to PW16, Senior Assistant for making entries in Exts.P6 to P9 Consumers Personal Ledgers.



Thus, according to the learned Special Public Prosecutor, the prosecution case is proved beyond reasonable doubt and the impugned verdict does not require any interference.

18. In view of the rival submissions, the points arise for consideration are:

1. Whether the Special Court is justified in finding that the accused committed the offence punishable under Section 13(1)(c) read with 13(2) of the P.C. Act, 1988?

2. Whether the Special Court is justified in finding that the accused committed the offence punishable under Section 13(1)(d) read with 13(2) of the P.C. Act, 1988?

3. Whether the Special Court is justified in finding that the accused committed the offence punishable under Section 409 of IPC?

4. Whether the Special Court is justified in finding that the accused committed the offence punishable under Section 477A of IPC?

5. Whether the verdict of the Special Court would require interference?

6. Order to be passed?

19. Point Nos.1 to 4:- Adverting to the rival submissions, when addressing the question as to whether the accused got entrustment of Rs.78,520/- as the alleged



shortage in the cash chest and also Rs.96,459/- as broken collection, the learned Special Judge has given much emphasis to the evidence of PWs 1 to 5 and 14 to 16. Apart from that, Exts.P1, P1(a), P3(a), P14, P5 mahazar prepared by PW2 as well as Ext.P31 audit report prepared by PW14 and the evidence of PW15, the Cashier and PW16, the Senior Assistant were also relied on by the learned Special Judge.

20. It is discernible from Exts.P1 and P1(a) cash remittance slips prepared for remitting Rs.20/- as Division cash and Rs.87,845/- as current charge in the account of Revenue that the above documents were prepared by the accused bearing date 02.05.2007 for remitting the said amounts in the bank. Ext.P14 is the receipt book prepared by the accused and Ext.P3(a) is its carbon copy, as per which, the total collection on 30.04.2007 is shown as Rs.87,825/- as current charge and Ext.P4(a) SOP-6 was prepared showing collection of Rs.20/- as Division cash on 30.04.2007. In addition to that, PW2, who prepared Ext.P5 stated in the report that, as the amount collected from the consumers during the month April, 2007 was found less than the amount collected in the previous months, a list of the



consumers, who defaulted in paying the electricity charge, was prepared with the help of S.O.P.13 consumer personal ledger in the custody of Senior Assistant and the same was given to PW4, the lineman for disconnection. When PW4, lineman and PW5, worker went for disconnecting the defaulters' electric supply, it was informed that some of the consumers had paid the current charge, the Overseer had gone there and obtained the receipts from such consumers and verified them with Exts.P6 to P9 Consumers Personal Ledgers and found that the amounts covered under these receipts have not been entered in the said ledgers. So, he informed the matter to the Executive Engineer and as per the direction of the Executive Engineer he conducted inspection of the cash chest on 02-5-2007. Apart from that, the learned Special Judge given much emphasis to Ext.P5, supported by Ext.P57 Expert report that would suggest that Ext.P14 SOP-10 was written by the accused and the same is proved through PW19 as well as from the handwriting in Ext.P14 SOP-10, supported by Ext.P10.

21. It is true that, individual receipts showing collection of total amount of Rs.96,459/- not produced by



the prosecution and this is the basis on which, the learned counsel for the accused argued that the prosecution failed to prove the alleged collection of Rs.78,520/- by the accused. On reading the evidence available, it could be seen that the accused prepared Ext.P14 SOP-10 showing total collection as Rs.87,545/-, but he had kept only Rs.9,305/- in the chest. He also prepared Exts.P1 and P1(a) cash remittance slips with date 02.05.2007 to remit the total sum of Rs.96,459/-. It is relevant to note that, on 03.05.2007, the shortage in the amount was detected and on the basis of which, crime was registered on 03.05.2007 and as per Exts.D6 and D7, the original and duplicate pay-in-slips, an amount of Rs.78,500/- and Rs.20/- remitted by the accused on 04.05.2007.

22. It is evident that, the collected amount should have been remitted in the bank immediately on the next day i.e. on 02.05.2007. In the instant case, it is for the said purpose the accused prepared Exts.P1 and P1(a) cash remittance slips. But, while preparing Ext.P5 mahazar, PW2 could not find the entire amount of Rs.87,545/- and he could find only Rs.9,305/- and accordingly, shortage of Rs.78,520/- was found, which admittedly remitted by the



accused as per Exts.D6 and D7 on 04.05.2007. In this connection, Ext.P66 letter issued by the accused to the Deputy Chief Engineer, which is an admitted document by the accused, assumes significance. As per which, it was stated that an amount of Rs.78,520/- shown as shortage in the cash chest has been remitted by the accused on 04.05.2007 and the copy of the pay-in-slip submitted to the Assistant Engineer, Electrical Sector, Manimala on the same day. As per Ext.P66, the accused also requested to grant permission to remit the balance amount of Rs.1,52,228/- to clear the audit liability.

23. Going by the evidence tendered supported by Ext.P66, there is no reason to hold that misappropriation of Rs.78,520/- as alleged by the prosecution failed to be proved by the prosecution and the evidence available are substantially sufficient to prove that the accused had misappropriated Rs.78,520/- under the head 'shortage in the cash chest'.

24. Coming to the alleged misappropriation of an amount of Rs.96,459/- under the head 'broken collection', in the table showing collection and remittance in the bank



account, in the reply note placed by the learned Special Public Prosecutor, it has been stated as under:

Sl.No. as per the table in PP's note	Exhibits amounts with	Date of Receipt/collection	Remittances in P25 (amount in rupees)	Date of credit in P25
1 & 2	P11 - 6,212 P12 - 7,306	05.03.2007	26,005 & 16,624	06.03.2007
3	P18 - 5,107	01.03.2007	55,595 & 15,797	02.03.2007
4	P28 series - 20,267	11.04.2007	21,038 & 16,153	12.04.2007
5	P30 series - 20,267	14.03.2007	22,354 16,055 & 10,976	15.03.2007
6 & 7	P34 - 3,617 P34(a) - 2,679	02.03.2007	16,879 & 8,213	03.03.2007
8	P38 - 1,838	27.03.2007	30252 & 10,901	28.03.2007
9 & 10	P40 - 1159 P40(a) - 1,287	29.03.2007	22,474 & 9,550	30.03.2007
11, 12 & 13	P42 - 67 P43 - 76 P44 - 17,490	07.04.2007	11,538 & 10,446	09.04.2007

25. Regarding these amounts also, PW14, who prepared Ext.P31 audit report has deposed that, during the audit, it was found that some amounts collected from consumers as per receipts failed to be noted in the personal ledger and use of multiple receipt books simultaneously by



the accused were found and therefore, he had prepared Ext.P31. In Ext.P31, the accused, Sri.A.P. Binoy is shown as Cashier from 02.11.1998 to 30.04.2007 i.e. during the period of the audit. Based on the audit report as per Ext.P68 'Notice for remittance of liability amount' issued by the Executive Engineer, the accused was directed to remit Rs.2,46,034/- found due from him and it was remitted as per Ext.D5 on 14.11.2007 as stated in Ext.P66. Even though, the prosecution did not adduce evidence to show that the collection made by the accused as per Exts.P11, P12, P18, P28 series, P30 series, P34, P34(a), P38, P40, P40(a), P42, P43 and P44 failed to be remitted and Ext.P25 would show some excess remittance, according to the prosecution, the same were amounts collected by other cashiers. Exts.P66 would show that the accused voluntarily got permission to remit the balance amount as per the audit report and he should not have remitted the same unless he had not misappropriated the same.

26. In this connection, it is necessary to refer the ingredients to attract offence under Section 409 of IPC. Section 409 of IPC is extracted as hereunder:



“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.”

27. Section 409 is *pari materia* to Section 316(5) of the Bharatiya Nyaya Sanhita, 2023 (`BNS' for short) and Section 316(5) of BNS reads as under:

“316: Criminal breach of trust: *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.”*

28. Analysing the ingredients to attract offence under Section 409 of IPC, its applicability is as held by the Apex



Court in [(2012) 8 SCC 547 : AIR 2012 SC 3242],
Sadhupati Nageswara Rao v. State of Andhra Pradesh.

29. In ***Sadhupati Nageswara Rao v. State of Andhra Pradesh***'s case (supra), the Apex Court, while upholding the conviction held that, where the appellant, an agent entrusted with the distribution of the rice under the "Food for Work Scheme" to the workers on production of coupons, was charged with misappropriation of 67.65 quintals of rice, the evidence proves that there was entrustment of property to the accused.

30. In order to sustain a conviction under section 409 of the IPC, two ingredients are to be proved; namely, (i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty bound to account for; and (ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under Section 405 IPC. The basic requirements to bring home the accusation under Section 405 IPC are to prove conjointly; (i) entrustment and (ii) whether the accused was actuated by a dishonest intention or not, misappropriated it or converted it



to his own use or to the detriment of the persons who entrusted it, as held by the Apex Court in the decision reported in ***Sadhupati Nageswara Ra v. State of Andhra Pradesh***'s case (supra).

31. The gravamen of the offence under Section 409 of IPC is dishonest intention on the part of the accused but to establish the dishonest intention, it is not necessary that the prosecution should establish an intention to retain permanently, the property misappropriated. An intention, wrongfully to deprive the owner of the use of the property for a time and to secure the use of that property for his own benefit for a time would be sufficient. Section 409 of IPC cannot be construed as implying that any head of an office, who is negligent in seeing that the rules about remitting money to the treasury are observed, is *ipso facto*, guilty of criminal breach of trust; but something more than that is required to bring home the dishonest intention.

32. Tracing the ingredients of the offence punishable under Section 477A of IPC, Section 477A provides as under:

“Section 477A - Falsification of Accounts:

“Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer



or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in any such book, electronic record, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

33. Section 344 of BNS is corresponding to Section 477A of IPC. The same reads as under:

"344. Falsification of accounts:- Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book,



electronic record, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

34. The three ingredients to prove the offences are:

(i) That at the relevant point of time, the accused should be a clerk or officer or servant or acting in that capacity ;

(ii) That he should destroy, alter, mutilate or falsify any book, electronic record, paper, writing, valuable security or account, which belongs to or was in the possession of his employer and

(iii) The act should have been done willfully and with an intention to defraud. To convict a person under section 477A of the IPC, the prosecution has to prove that there was a willful act, which had been made with an intent to defraud and while proving "Intention to defraud", the prosecution has to further prove the two elements that the act was an act of deceit and it had caused an injury. In the present case, there may be an injury, but there is no deceit.

35. For the offence under Section 477A of IPC, what has got to be proved is twofold viz., that the person who



commits the offence is a clerk, officer or servant, and secondly, that there was intent to defraud. It is sufficient, to satisfy the words of the section, to prove that the person charged under this section is one who undertakes to perform and does perform the duties of a clerk or servant whether in fact he is a clerk or servant or not, and though he is under no obligation to perform such duties and receives no remuneration. The emphasis is upon the words "in the capacity of a clerk, officer or servant".

36. To attract section 477A, the-employee concerned must destroy, alter, mutilate or falsify book or accounts etc, of the employer, *inter alia*, with intent to defraud. The term "intend to defraud" has already been explained in Section 25 of IPC. It contains two elements, viz., deceit and injury. A person is said to deceive another when by practising *suggestio falsi* or *suppressio veri* or both, he intentionally induces another to believe a thing to be true. "Injury" defined in Section 44 of IPC means any harm whatever illegally caused to any person in body, mind, reputation and property. In the decision reported in [1976 CrLJ 913 (SC) : 1976 Cr LR (SC) 178 : (1976) 2 SCC 819 : AIR 1976 SC 2140],



Harman Singh v. Delhi Administration, the Apex Court held that whenever the words "fraud" or "intent to defraud" or "fraudulently" occur in the definition of a crime, two elements at least are essential to the commission of the crime; namely, firstly, deceit or an intention to deceive or in some cases mere secrecy; and, secondly, either actual injury or possible injury or an intent to expose some person either to actual injury to a risk of possible injury by means of that deceit or secrecy. Where the accused prepared a false travelling allowance bill, presented it to a sub-treasury and withdrew the amount, it meant securing an advantage by deceitful act and causing corresponding loss to the State. The offence will fall under section 477A and the fact that the accused subsequently paid over the entire amount is not a matter to be considered.

37. As per Sections 13(1)(c) and (d) of the P.C. Act, 1988, a public servant is said to come under the offence of 'criminal misconduct', if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or if he,— (i) by



corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

38. In view of the legal position and as discernible from the evidence adduced, the contentions raised by the learned counsel for the accused that the prosecution failed to adduce sufficient evidence to prove the misappropriation under the two separate heads found to be not acceptable.

39. Coming to the challenge against the prosecution sanction, the sanction order produced as Ext.P48, supported by the evidence of PW18, who had issued the sanction, it is discernible that while issuing sanction, PW18 had gone through the prosecution records and was satisfied with the necessity to prosecute the accused. Therefore, the challenge against the prosecution sanction is found to be untenable and the same also is set at rest.

40. On re-appreciation of evidence, this Court is of the



firm view that, the ingredients to attract offences punishable under Sections 13(1)(c) and 13(1)(d) read with 13(2) of the P.C. Act, 1988 and under Sections 409 and 477A of IPC, have been proved by the prosecution, without any reasonable doubts. Therefore, the finding of the learned Special Judge that the accused committed the above offences is only to be justified. In consequence thereof, the conviction entered into by the learned Special Judge is liable to sustain.

41. Coming to the sentence, I am of the view that some leniency in the matter of sentence can be considered, in the interest of justice.

42. Point Nos.5 and 6:- In the result, this appeal stands allowed in part. The conviction imposed by the learned Special Judge is confirmed. In the interest of justice, the sentence imposed against the accused for the offences punishable under Sections 13(1)(c) and 13(1)(d) read with 13(2) of the P.C. Act, 1988 and under Sections 409 and 477A of IPC, is modified as under:

i. The accused is sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.50,000/- and in default to undergo rigorous imprisonment for



three months, for the offence under Section 13(1)(c) read with Section 13(2) of the P.C. Act, 1988.

ii. The accused is sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.50,000/- and in default to undergo rigorous imprisonment for three months, for the offence under Section 13(1)(d) read with Section 13(2) of the P.C. Act, 1988.

iii. The accused is sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.50,000/- and in default to undergo rigorous imprisonment for three months, for the offence under Section 409 of IPC.

iv. The accused is also sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.50,000/- and in default to undergo rigorous imprisonment for three months, for the offence under Section 477A of IPC.

v. The substantive sentence shall run concurrently and the default sentence shall run separately, after the substantive sentence.

vi. The period of detention undergone by the accused in this case will be set off



against the substantive sentence of imprisonment.

43. The order suspending sentence and granting bail to the accused stands vacated, with direction to the accused to appear before the Special Court, forthwith, to undergo the modified sentence, failing which, the Special Court is directed to execute the sentence, without fail.

Registry is directed to forward a copy of this judgment to the Special Court, forthwith, for information and further steps.

**Sd/-
A. BADHARUDEEN
JUDGE**

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