

Presented on : 01-04-2017
Registered on : 01-04-2017
Decided on : 02-04-2026
Duration : 9Y-0M-1D

IN THE COURT OF PRINCIPAL CIVIL JUDGE AND J.M.F.C.
AT: LODHIKA, RAJKOT.

C.C. No. 60 OF 2017

Exhibit No. _____

The State of Gujarat : : : Complainant

VERSUS

KSHITIJSINH SATUBHA THAKOR

Aged: 55 years; Occupation: Service

Address - Plot No. 61/1, KishaNagar, Sector 26, Gandhinagar,
Gujarat. : : : Accused

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Appearances:-

Mr. D.K. Morabiya, Learned APP for Complainant State.

Mr. G.K. Dobaraya Learned Advocate for Accused

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Offences Punishable under:-

Sections 409 of Indian Penal Code, 1860.

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: : : J U D G E M E N T : : :

1. The factual matrix that arises for consideration can
briefly be stated as follows:-

a. The complainant is working as deputy Engineer in
G.E.B. at Jasdan since one year and has charge of
Lodhika Taluka since 7 months from the date of
complaint. The list of duty which the complainant
needs to perform is entire administration in the
sub-division. The technical details, revenue
details. The work is divided between Lodhika and

Jasdan equally in the entire week. There are total three cashiers in the entire sub-division. The cash counter at Lodhika is held by Mr. V.P. Trivedi. Mr. Trivedi has to look after the work of raiding, connections pertaining to non-agricultural land, other connections. If any customer wants to pay the amount for their bill then Mr. Trivedi is also given a receipt book. That the cashier has to take the said receipt book from the senior assistant who is working in Cash department and the entry for taking such receipt book is to be entered in register. The no. of receipts given is to be accounted and an entry pertaining to the same is to be maintained. Such an account of receipt is to be given to senior officer and then such receipt book is to be returned. Shri R.P. Kotak is working as such senior.

- b. Similarly, other cashiers who are working as electricity bill collectors are Mr. K.B. Parmar and Mr. S.P. Patel. Their work includes collecting cash from the village on the date that village's name is written. Such cash is to be collected from village in lieu of G.E.B.'s bill. In that case also, these cash collectors have to take the receipt book and enter in the register. Thereafter, the no. of receipts which are used are to be deposited along with the cash received for such receipts.
- c. Similarly, in complainant's office other junior assistant clerk Shri K.S. Thakur has been working since past 4 years. His duty is to maintain ledger accounts. All the meter readers who read the bills in the village and made bills of customers and came back. The bills are to be ascertained by the junior assistant clerk Shri Thakur and deposited and this Thakurbhai will check the written amount in bill and actual physical cash. After checking the same will be rectified in the computer, if needed, then forwarded. That the meter readers have their function to check and issue new bill book. This is how every officer at GEB is allotted their work functionality.

- d. In spite of this if any officer who is allotted the duty of cash collection is on leave then this Thakur bhai goes and collects cash. For which there is no official written order passed but orally for temporary basis such work was allotted to Mr. Thakur.
- e. Similarly on 16.04.2003, as there was no cashier as all cashiers were on leave, this Mr. Thakur was sent to the rural area to collect cash at Khambha village. Similarly, on 23.04.2003, 24.04.2003, 28.04.2003, 09.06.2003, 19.06.2003 as well as on 17.07.2003 and other dates also which the complainant does not recollect. The accused was sent as and when it was necessary. Every time Mr. Thakur used to deposit the receipts along with the cash collected. But Mr. Thakur used to do correction in every duplicate book with respect to the amount written in the cash book.
- f. On 27.08.2003, khodabhai came to the office of GEB and informed that he has paid the amount of bill on 19.07.2003 i.e. Rs. 9405/-. But on looking to the bill book, there are hand made corrections and the amount of Rs. 9405 is cancelled and amount of Rs. 4905 is written. It is shown that an amount of Rs. 5000 is left to be paid.
- g. The accused has made such correction in the receipt book from date 16.04.2003 till 17.04.2003 and has mis-appropriated an amount of Rs. 14,503/- in total. Therefore, complainant had no option but to file a complaint with **Metoda Police Station** for offences under Sections 409 of Indian Penal Code, 1860 hereinafter referred to as "the Code", having registered with FIR No. I - 30/2003.

2. Thereafter, upon cognizance of the offence, summons was issued to accused and he appeared through learned advocate and was furnished with the copy of the police papers under **Section 207 of Cr.P.C.** on which prosecution was placing reliance against accused

persons. Thereafter, charge was framed vide Exhibit - 4 and accused has pleaded not guilty vide Ex - 5 hence, present case was kept on evidence of prosecution.

3. The prosecution has placed reliance on below evidence, they have produced:-

: : : ORAL EVIDENCE : : :

SrNo	Name	Witness	Exh.
1		Complainant	
2	Jorubhai Bhikhubhai Jatavda	Panch	22
4	Rajendra Changanlal Mehta	Panch	43
5	Ramanlal Popatlal	PW	58
6	Kishorbhai Bachubhai Parmar	PW	59
7	Maganbhai Vallabhbhai Nakhpapra	PW Expired	62
8	Chanabhai Savabhai Bhawad	PW Expired	63
9	Muljibhai Jerambhai Raiyani	PW Expired	64
10	Bachubhai Bhagwanbhai Sakhiya	PW Expired	65
11	Chandrasinh Ramsinh Jadeja	PW	66
12	Jerambhai Mavjibhai Sakhiya	PW	67
13	KaramshibhaiAmbabhaiRaiyani	PW	69
14	Pravinsinh Nanbha Jethwa	I.O.	71

: : : DOCUMENTARY EVIDENCE : : :

Sr.No.	Description	Exhibit
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1	FIR	73
2	Panchnama	23
3	charge-sheet	72

4. After the completion of the prosecution evidence, further statement of accused was not recorded as the accused did not remain present.

5. **POINT FOR DETERMINATION:-**

(i) Whether prosecution proves beyond reasonable doubt that the accused namely; **Kshitijsinh Satubha Thakor committed the offence under Section 409 of the Indian Penal Code, 1860?** by causing criminal breach of trust and misappropriating an amount of Rs. 14,503/- by taking advantage of the post of junior assistant clerk at GEB and causing wrongful loss to customers of GEB?

(ii) What order?

: : : FINDINGS : : :

6. My findings for the above issues are as under:-

- (i) In Negative
- (ii) As per final order.

EVALUATION AND APPRECIATION OF EVIDENCE:-

7. In a criminal trial, the burden to prove the guilt against the accused generally lies on the prosecution and the accused is considered to be innocent until proven guilty.

8. The Ld. Advocate for accused has appeared for

cross-examining the Panch witnesses and thereafter the accused and his Ld. Advocate both did not appear. The accused has been issued non-bailable warrant and a non-bailable warrant was issued against his surety also to which the surety appeared and has paid the amount of his sum and has left his plea as being surety for the accused. Therefore, as there seemed no probability of the accused appearing before the Court, an order below Section 299 of Cr.P.C. was passed on 20.06.2024.

9. Further, if we consider evidence led by prosecution. On 18.03.2004, summons was issued but the complainant was out of town and couldn't receive. Thereafter, the complainant is summoned to appear before the Court 27.07.2005 and the same is served yet he has not appeared. The complainant has filed the case and was well aware that such a case was pending before this Court, yet no effort has been made to appear and give deposition before the Court. This behaviour clearly shows that the complainant himself is not interested in prosecuting the matter further. The complainant did not even see the interest of the

institution in which he has served for all these years. Therefore, FIR was registered in presence of I.O. and he has identified the signature of the complainant. Therefore, the FIR is exhibited in deposition of I.O.

10. Chief Examination of Ramanlal Popatlal - Exhibit 58 (Senior Clerk of GEB); Kishorbhai Bachubhai Parmar - Exhibit - 59 (Junior Clerk);

- Has reiterated the contents of FIR and his statement under section 161.
- The said officer has alleged that one customer named Khodabhai Javiya came to the office of GEB and has complained that he has made full payment yet Rs. 5000 is shown as "left to be paid". Therefore, the same was checked in the original receipt book; it showed Rs. 9405/- is already paid and the duplicate receipt book showed cancellations made and Rs. 5000/- left to be paid. Such cancellations were seen in the receipts of total 16 customers on the dates when Mr. Thakor i.e. present accused went for cash collection.

11. Witness no. 15 named Chandrasinh Ramsinh Jadeja, who is examined at exhibit - 66, states that he does

not know the accused personally but knows because of a staff. Thakorbhai i.e. accused has worked with him for four years. He states that the present accused has confessed about the said offence in front of him and that he is ready to pay the amount of Rs. 5,000/- for Khodabhai's bill so they went to the GEB office to which the office refused as the report of Khodabhai was forwarded and now they will have to visit the D.E. office. That, as the father of Chandrasinh was working with Khodabhai, the accused and this deponent went to give the amount to Khodabhai but as the report was forwarded there was no chance that anything could be done.

12. Witness no. 19 named Jerambhai Mavjibhai Sakhiya examined at exhibit - 67 states that his father named Nanjibhai had bill connection no. 33422/00271/5. That a bill of Rs. 2010/- was generated and the same was paid on 16.04.2003. That no bill payment is left as of today.

13. Witness no. 18 namely Karamshibhai Ambabhai Raiyani is examined vide exhibit - 69, who has stated that he is not aware about the case and he has not

given any statement to police officers. He has turned hostile.

14. Witness no. 24 namely Pravinsinh Nanbha Jethwa is examined vide exhibit - 71 - I.O. has stated that he filed charge-sheet after recording statements of witnesses and arresting accused but he is not cross-examined.

Arguments by Ld. Public Prosecutor for Prosecution

15. Ld. Public Prosecutor has stated that evidence of witnesses who identify the accused before the Court of Law has more substantial value and can completely be relied upon. Furthermore, the Ld. Public Prosecutor has emphasised that in the present case not only one but many witnesses have worked with accused and therefore can easily identify accused person.

16. There are no arguments for the accused persons as the accused and his advocate has not appeared at the stage of final arguments.

REASONS

17. First and Foremost this Court has to look upon the credibility of the witnesses which are examined. All

the witnesses who have identified the accused persons in court are not eye-witnesses. They are colleagues of complainant. They have not seen whether accused person has conducted the said offence or not. All other witnesses are hear-say witnesses. They have merely reiterated the version of the complainant.

18. Coming to the issues that are framed by this Court. First one being whether the offence under the said provisions of law is made out or not. If we consider the ingredients of Section 409 of IPC-

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.

19. The ingredients as laid down in the said provision clearly states that entrustment of property with the accused. Second, essential ingredient is such person should have dominion over such property being a

banker, merchant, factor, broker, attorney or agent has misappropriated such property. Thus, the prosecution has not proved that the accused was banker, merchant, factor, broker, attorney or agent of complainant. The prosecution has not shown or there is no document in the charge-sheet which shows that the present accused was an employee in GEB and was working as a junior assistant clerk. The prosecution has failed to show that any authority or sanction or committee of GEB has approved to initiate such criminal proceedings against accused person.

20. Ingredients of Section 409 IPC

- Entrustment of valuable security or property.
- And such a person who has entrusted has used it for own personal use and gain wrongfully causing wrongful loss to this another person.
- Such a person is a banker, merchant or clerk.

21. The prosecution has not proved that the accused was a junior clerk at GEB. No appointment letter is annexed to show that accused was officially working for GEB.

22. It is admitted in FIR and has been reiterated in chief examination that instructions to collect cash were given orally to accused. Therefore, there was no written order to prove that accused was entrusted with duty to collect cash on behalf of senior officers.

23. Whether the legal department of GEB passed orders to start prosecution against the accused? The complainant has filed the present FIR in which capacity is not disclosed. In personal capacity or as an authorised person appointed to file the present case on behalf of GEB?

24. The prosecution has failed to prove the cancellation marks on duplicate receipt book was the handwriting of accused. The prosecution has failed to prove i.e. no eye witness or no bank statement is produced which proves that the accused has taken this amount dishonestly in cash or has deposited the said amount. The fact that the accused has used this amount for personal use is not proved.

25. The bills in the FIR which are alleged to be cancelled and over-written by the accused are also

not produced to show that such cancellation is done by accused and those cancelled bills are not part of the charge-sheet.

26. The fact that independent witness like that of panchas have turned hostile. The customers whose bills were cancelled, have not made any complaint before police authorities or in GEB. One customer named Khodabhai had filed a written application because of which the present complaint is filed and case is registered, a copy of that application given by Khodabhai is not attached along with papers of charger-sheet and is not part of investigation.

27. In the case of **N. Raghavender v/s State of Andhra Pradesh in Criminal Appeal No. 05 of 2010**, a three judge bench of the Hon'ble Supreme Court laid down:-

Para 66 - Having given our anxious thought to these facts, we are of the considered opinion that the Prosecution has failed to establish the charge of criminal breach of trust against the Appellant beyond a reasonable doubt. We are inclined to agree with the learned Senior Counsel for the Appellant that the non-examination of B. Satyajit Reddy has been materially fatal to the case of the prosecution. Furthermore, it appears that B. Satyajit Reddy was deliberately not examined as he would have deposed against the prosecution. Undoubtedly, some of the proven facts, like deposit of interest amount from the account of the appellant to that of B. Satyajit Reddy, do create a strong suspicion against the Appellant, but as held by this Court time and again, suspicion cannot take the place of proof, howsoever, strong it may be. We are, therefore, of the firm belief that in the absence of cogent and unimpeachable evidence to prove that the Appellant has misappropriated the funds of the Bank and/or of B. Satyajit Reddy, it would not be safe to convict him under the provisions of Section 409 IPC.

Para 70 to 72 - We are also constrained to observe that in this case the CBI has either adopted a casual and callous approach or there was some

hidden pressure to derail a fair investigation. The resultant effect is that though there is a strong suspicion of criminal breach of trust, cheating and/or fabrication of the Bank records against the Appellant, but such suspicion falls short of a conclusive proof to hold him guilty of the criminal charges. The best evidence having been withheld by the prosecution, the benefit of doubt must be extended to the Appellant, for no conviction can be sustained on the basis of conjectures and surmises. Non-production of the records of the Bank also adversely comments on the fairness and independence of the investigation conducted in the instant case.

71. To sum-up the above-stated discussion, the following incontrovertible factors have emerged in the present appeal: First, no financial loss was caused to the Bank. Second, the record before us does not indicate that any pecuniary loss was caused to B. Satyajit Reddy or to any other customer of the Bank. Third, the material before us does not disclose any conspiracy between the accused persons. In the absence of any reliable evidence that could unfold a prior meeting of minds, the High Court erred in holding that Appellant and other accused orchestrated the transactions in question to extend an undue benefit to Accused No.3. Fourth, the Appellant committed gross misconduct by misusing his position as the Branch Manager. Notwithstanding the final outcome, the Appellant's abuse of powers clearly put the Bank at the risk of financial loss. Fifth, despite dereliction of his duties, none of the acts proved against the Appellant constitute 'criminal misconduct' or fall under the ambit of Sections 409, 420 and 477-A IPC.

CONCLUSION:

72. We face no difficulty in holding that the prosecution has failed to prove the charges under Sections 409, 420 and 477A IPC against the Appellant beyond reasonable doubt. As a necessary corollary thereto, his conviction under Section 13(2) read with Section 13(1)(d) of the PC Act can also not be sustained. However, the benefit of doubt being extended to him on account of a thin margin between 'strong suspicion' and 'conclusive proof', shall not entitle him to initiate a second round of lis to seek his reinstatement or to claim other service benefits from the Bank. We have already held that the Appellant is deemed to be guilty of gross departmental misconduct, for which the punishment of dismissal from service has been adequately awarded. It requires no repetition that standard of proof to establish a misconduct in a domestic enquiry i.e. even preponderance of evidence, is drastically different to those of proving a 'criminal charge' beyond any reasonable doubt. The Appeal is accordingly disposed of in the above terms. Bail bonds, if any, furnished by the Appellant stand discharged.

28. As after perusing the evidence on record, there is a sleek probability for convicting the present accused person and therefore Judgement is pronounced

in absence of accused as per Section 353(6) of Criminal Procedure Code, 1973.

29. Hence, in the backdrop of the above discussion, I answer the Issue No.3 as below:-

: : : O R D E R : : :

- The accused namely, **KSHITIJBHAI SATUBHA THAKOR**, is hereby **acquitted** under **Section 248(1) of the Cr.P.C., 1973** for the charge under **Sections 409** of Indian Penal Code, 1860.
- Muddamal confiscated during investigation to be destroyed after completion of appeal period or handed over to the owner after proper verification.

Signed & pronounced in open Court on **April 2nd, 2026**.

Date: 02.04.2026

Place: Lodhika, Rajkot

[Samta Godiwala]
Principal Civil Judge and J.M.F.C,
Lodhika, Rajkot
(Judge Code: GJ01653)