

KAGD010017332021



**IN THE COURT OF ADDL. DISTRICT AND SESSIONS JUDGE,
GADAG**

Dated this the 1st day of July, 2026

Ms. GEETA SHINDHE

B.A.LL.B. (Hons), LL.M.

Addl. District and Sessions Judge, Gadag

CRIMINAL APPEAL No.24/2021

Appellant :

Nagappa S/o Bheemappa Hugar,
Age : 52 years, Occ : Agri., / Post master
R/o Hole Hadagli, Tq: Ron, Dist: Gadag.

(By Sri. I.A.B. Adv.,)

Vs.

Respondent :

The State of Karnataka,
Represented by learned public prosecutor
Gadag.

J U D G M E N T

This is an appeal filed by the accused Nagappa S/o. Beemappa Hugar, challenging the judgment of conviction and sentence in CC No. 246/2019 dated 10.11.2021 passed by the Additional Civil Judge and JMFC, Ron, whereby the accused was convicted for the offence punishable under Section 409 of the Indian Penal Code and sentenced to pay fine amount of ₹ 2,500 and in default of payment of the said fine amount simple imprisonment of one month.

2. The appellant was accused, respondent was complainant before the trial Court. For the sake of convenience, the parties herein are referred to as per the rank before the trial Court.

3. The brief facts : The accused was working as Postmaster at Hole-Hadagali Branch Post Office. During his service in capacity of the Postmaster between 01.05.2007 to 31.03.2008, the accused misappropriated the sum of ₹ 100 per month deposited by 1) CW4 Sangayya S/o Shankarayya Vastrad to his RD No. 30377 to the tune of ₹ 1,100, between 26.05.2007 to 31.03.2008 and sum of ₹ 100 per month deposited by 2) CW5 Muniyayya S/o Shankarayya Vastrad to his RD account bearing number 30437 to the tune of ₹ 1,100 between 26.05.2007 to 31.03.2008 and sum of ₹ 100 per month deposited by 3) CW6 Thakappa S/o Mallappa Jondi to his RD account bearing No. 30282 to the tune of ₹ 1,000 between 29.06.2007 to 31.03.2008 and sum of ₹ 100 deposited by 4) CW7, Mallappa S/o. Adivappa @ Sannadiveppa Jondi to his RD account bearing number 30297 to the tune of ₹ 1,000. Total sum of ₹ 4,200 on different dates. The accused has made an entry in the concerned passbooks of the depositors and also has affixed his signature with the seal of the

post office. However, the said amounts have not been credited to the account of the post office and has used the same for his own use. Thereby has committed offence punishable under Section 409 of IPC.

4. After taking cognizance of the offence, the trial Court secured the presence of the accused. He has appeared through counsel. Copies of the charge sheet was furnished. He was on bail, represented through counsel. The accusation was recorded. The accused pleaded not guilty and claimed to be tried.

5. The prosecution examined PW1 to PW9 witnesses. Exhibit P1 to Exhibit P19 are marked. The statement under Section 313 was recorded. The incriminating material evidence of the accused denied has appeared against him. However, he has not chosen to lead evidence.

6. After hearing arguments perusing the records, the trial Court convicted the accused and imposed sentence of fine for the offences.

7. Being aggrieved by the impugned judgment of the trial Court, the accused filed a appeal on following grounds that:

- The impugned judgment of conviction is contrary to the land evidence of the case.



- The trial Court has committed the grave error in law in not appreciating the arguments and evidence in the proper perspective.
- The Trial Court has totally ignored the inconsistencies and the contradictions in the evidence of the complainant and Being aggrieved by the impugned judgment of the trial Court, the accused filed a appeal on following grounds that has given undue weight to the insufficient adduced evidence by the complainant.
- The Trial Court has not properly considered the admissions given by the complainant and other witnesses in their cross examinations.
- The prosecution has not proved his case beyond all reasonable doubts before the Trial Court. the prosecution has not proved the alleged illegal act of the appellant/accused. the Trial Court has wrongly passed the conviction order against the appellant/accused.
- The trial Court has not considered the evidence of the depositors. CW4 to CW6/ PW4 to PW6 have withdrawn the deposited amount.
- The trial court also failed to consider that PW2 and PW3 are the mahazar witnesses to Exhibit P18. Spot mahazar have not supported the case of the prosecution and contradictory have deposed they don't know the contents of Exhibit P18.
- The trial Court has not considered the admissions given by PW4 to PW6, who have clearly stated that they had



deposited the above-referred installments and withdrawn the matured amount.

- The trial Court has not given benefit of doubt to the accused and also has not adopted the criminal theory properly.
- The trial Court has not considered the admissions and contradictions of the witnesses.
- The judgment of the trial Court has resulted in miscarriage of justice.
- The trial Court has not considered the fact that no show cause notice is issued to the appellant prior to filing of the complaint.

8. Notice on appeal is duly served to the respondent/complainant. Complainant/respondent appeared through learned public prosecutor.

9. Trial Court records are called for reference in this case. Carefully perused the trial Court records.

10. Heard arguments.

11. Now, following are points that arising for consideration:

1. Whether the prosecution proves beyond all reasonable doubt that in between 01.05.2007 to 31.03.2008, the accused being the Public Servant working in the Postal Department at Hole-Hadagali office, had committed criminal breach of trust by mis-utilising the sum of R. 100/- per month



deposited by 1) CW4 Sangayya S/o Shankarayya Vastrad to his RD No. 30377 to the tune of ₹ 1,100, between 26.05.2007 to 31.03.2008 and sum of ₹ 100 per month deposited by 2) CW5 Muniyayya S/o Shankarayya Vastrad to his RD account bearing number 30437 to the tune of ₹ 1,100 between 26.05.2007 to 31.03.2008 and sum of ₹ 100 per month deposited by 3) CW6 Thakappa S/o Mallappa Jondi to his RD account bearing No. 30282 to the tune of ₹ 1,000 between 29.06.2007 to 31.03.2008 and sum of ₹ 100 deposited by 4) CW7, Mallappa S/o. Adivappa @ Sannadiveppa Jondi to his RD account bearing number 30297 to the tune of ₹ 1,000 between 29.06.2007 to 31.03.2008. Total sum of ₹ 4,200 on different dates and thereby committed offence punishable under section 409 of IPC ?

2. Whether interference of this court is necessitated?

3. What Order?

12. It is answered for the aforesaid points as under:-

Point No.1: In the Affirmative

Point No.2: In the Negative

Point No.3: As per final order below,
for the following:-

REASONS

13. **POINTS No.1 & 2:-** These two points are taken together for common discussions.

14. The appellant has submitted during the course of argument that there is no misappropriation of fund proved by the

prosecution. The amount deposited by the RD account holders have received the entire mature sum and they have not alleged commission of any offence by the accused. The pancha witnesses have not supported the case of the prosecution. Hence prays to acquit the accused.

15. The learned Public Prosecutor for respondent has argued that the prosecution has proved beyond reasonable doubt that accused has committed offence punishable under Section 409 of the Indian Penal Code. The accused has not disputed entrustment. His signatures are found on the RD account passbooks. The said fact is not disputed by the accused. The accused has collected the monthly deposit from the account holders, but has not remitted the same to the bank. The bank account books, registers does not tally with the entries that are made in the RD passbook. Hence the Prosecution has proved the misappropriation by the accused. Hence prays to confirm the judgment of the trial Court.

16. After considering the submissions of both sides, it is necessary to appreciate the evidence of witnesses in detail. As this court being the first appellate court, the appeal has to be decided by appreciating the evidence as well as on law.



17. PW1 has deposed that in 2011 February on oral order she has visited the post office and inspected the ledger copies, RD general and account books and she found that 4 accounts were closed and they had taken the maturity amount. The amount from the four account holders were collected by the accused, he had signed and put the seal on their RD Passbook. However, the said receipt of the amount was not entered in the RD General Register. It was found that with respect to Sangayya S/o Shankarayya Vastrad, RD No. 30377, from 26.05.2007 to 29.11.2010, total 44 months amount i.e. ₹ 4,400 was not credited and entered in the office register or documents. With respect to Muniyayya S/o Shankarayya Vastrad, having RD No. 30437, from 26.05.2007 to 29.11.2010, for 44 months the amount deposited to the extent of ₹ 4,400 was not credited in the Account of the post office according to the office documents. With respect to Thakappa S/o Mallappa Jondi, bearing RD Account No. 30282, from 29.06.2007 to 11.12.2010, in total 43 months deposit i.e. ₹ 4,300 was not credited. With respect to Mallappa S/o. Adiveppa Jondi, bearing RD No. 30297, from 29.06.2007 to 11.12.2010, 43 months amount deposited was not credited. In this way in total ₹ 17,400 was received from the RD account holders and was not credited to

the office and was mis-utilized. She has further stated that on the written order of the higher officials, she has filed the complaint on 24.05.2012 and also stated that she has furnished the account books, RD Pass books. Further on 28.02.2011, the accused was Dismissed. The dismissal order is also marked by her. During the cross-examination, she has denied the suggestion of the accused.

18. PW2 and 3 are Pancha witnesses, they has not supported the case of prosecution. They have identified their signature on the panchanama.

19. PW 4, 5 and 6 are the RD Account holders. They have deposed that they have deposited money in their account every month. The Accused has received the said amount. They have further deposed that the they have received their matured sum.

20. PW 7 and 8 are the police witnesses they have deposed in accordance to the case of prosecution. PW 9 is the IO. He has spoken about the investigation carried. The counsel for accused has not elicited anything through these witness in favour of accused during the cross examination.

21. The Accused has not led the evidence. On perusal of the records, deposition, the accused has not disputed his signature on Ex. P13 to 16 which are the RD pass book. He has



not disputed that he has received the money from CW 4,5 and 6 RD account holders. Hence, the prosecution has proved entrustment of money with Accused.

22. In order to sustain conviction under Section 409 of IPC, two ingredients are to be proved, namely:

1. The accused, a public servant or a banker or agent, was entrusted with the property of which he is duty bound to account for.
2. The accused has committed criminal breach of trust.

What amounts to criminal breach of trust is provided under Section 405 of IPC. The basic requirement to bring home the accusation under Section 405 of IPC are the requirements to prove co-jointly 1. entrustment and 2. whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the person who entrusted it.

23. In *Jiwan Dass v. State of Haryana* (1999)2 SCC 530, the Hon'ble Supreme Court has held that

The prosecution need not prove the actual mode of misappropriation and the property once entrustment or dominion over is established, then it, would be for the accused to explain as to how the property was dealt with.



Thus the actual manner of misappropriation is not required to be proved by the prosecution, once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in view of Section 105 of IPC.

24. The Accused has not taken any defence in regard to the money received by him. The defence of the accused that as the depositors have received their sum, cannot sustained as the trial court has rightly observed that the offence is committed against the state. Thus, the prosecution has established the conviction for the offence under Section 409 of IPC. The trial court in detail has assessed the evidence of witnesses and has come to a right conclusion. There is no perversity or illegality in the conclusion arrived by the trial court in recording the conviction for the aforesaid offence. Therefore Point No.1 is answered in the affirmative and Point No.2 answered in the negative.

25. POINT No.3:- For the aforesaid reasons and discussions, following order is made.

ORDER

Appeal filed by the appellant/accused
U/s.374(3) of Cr.P.C. is dismissed.

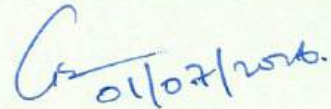


Consequently, impugned judgment of conviction and order of sentence dated 10.11.2021 passed in C.C.No.246/2019 on the file of Addl. Civil Judge and JMFC., Court, Ron, is confirmed.

Office is hereby directed to send back T.C.R. along with certified copy of this Judgment to the trial court.

Appellant/accused is hereby directed to appear before the Trial Court to deposit the fine amount if not deposited and to serve the sentence.

(Dictated to the Stenographer, computerized by her, corrected and then pronounced by me in the Open Court on this the 1st day of July 2026)



(Geeta Shindhe)

Addl. District & Sessions Judge,
Gadag.