

Order No.50. dt.30.08.2022:

Today is fixed for passing order.

The record is taken up for order.

By filing the petition, Ld. Counsel for the accused person has prayed for sending the record to Ld. C.J.M. Howrah or any J.M. for trial on the ground that - The case is not maintainable under Sections 406/409 I.P.C. as the accused person is not a Government employee and, therefore, this Section is not attracted.

After considering both the Sections 406/409 I.P.C., I am of the opinion that Section 406 is not applicable to any Government Employee while the Section 409 I.P.C. is applicable to a public servant, a banker, a merchant, a broker, an attorney or an agent. Thus both the Sections read together are applicable to the breach of trust as defined under Section 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".

[Explanation [1]- A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

[Explanation 2- A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the

amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]”

Section 406 I.P.C. is applicable to any person not even a person of above capacity which is a Magistrate triable one. Section 409 I.P.C. on the other hand is a Sessions triable case prescribing for punishment for life and in this case the accused person is merchant and the statutory custodian of the subscription deducted statutorily, from the salary of the employees in the concerned factory. Thus the accused person being the factory owner, merchant and custodian of the statutory fund deducted from the employees concerned are within the purview of this Section.

The petition thus stands to be without any basis and devoid of merit as well.

The petition stands rejected.

Fix 17.11.2022 for hearing on charge.

Addl. Sessions Judge, 1st Court, Howrah-
cum-Judge, Special Court, Howrah