



2025:CGHC:38279-DB



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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 182 of 2021

B. Mahar S/o Mithu Lal Mahar Aged About 49 Years, Subedar (Ministerial), Presently Posted At Office Of Superintendent Of Police, Bilaspur, District Bilaspur Chhattisgarh

--- **Petitioner**

versus

1 - State Of Chhattisgarh Through Secretary (Home), Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh

2 - Director General Of Police Head Quarters, Atal Nagar, Raipur, District Raipur Chhattisgarh

3 - Superintendent Of Police, Bilaspur, District Bilaspur Chhattisgarh

4 - SHO Police Station Civil Lines, Bilaspur, District Bilaspur Chhattisgarh

--- **Respondents**

CRMP No. 332 of 2021

Sanjay Singh S/o Late Basant Singh, Aged About 58 Years Presently Posted And Working As Sub-Inspector (Ministerial) Office Of Superintendent Of Police, Mungeil, R/o Jarhabhatha, Near Shailendra Apartment, Bilaspur, District Bilaspur Chhattisgarh

---**Petitioner**

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Civil Lines, Bilaspur, District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

... **Respondent**



For Petitioner-B.Mahar	:	Mr. Abhishek Sinha, Senior Advocate assisted by Mr. Ghanshyam Patel, Advocate in CRMP No.182/2021
For Petitioner-Sanjay Singh	:	Ms. Priyanka Rai, Advocate holding the brief of Mr.Abhishek Thakur, Advocate in CRMP No.332/2021
For Respondents	:	Mr. Sakib Ahmed , Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

4.8.2025

1. Heard Mr. Abhishek Sinha, learned Senior Advocate, assisted by Mr. Ghanshyam Patel, learned counsel for the petitioner in CRMP No.182/2021, Ms.Priyanka Rai, learned counsel holding the brief of Mr.Abhishek Thakur, learned counsel for the petitioner in CRMP No.332/2021. Also heard Mr.Sakib Ahmed, learned Panel Lawyer, appearing for respondent/State.

2. Since the above two petitions are arising out of same crime number and same offence, they are being heard and decided by this common order.

3. By way of CRMP No.182/2021, petitioner- B. Mahar has prayed for following relief:-

"It is therefore, prayed that this Hon'ble Court may kindly be pleased to quash the FIR (Annexure P/1) against the petitioner for alleged offence under Section 409, 34 of IPC including all the consequential



proceedings, Or any other order as this Hon'ble Court deem fit and proper be passed in the interest of justice."

4. By way of CRMP No.332/2021, petitioner-Sanjay Singh, has prayed for following relief:-

"It is therefore most humbly prayed that this Hon'ble Court may kindly be pleased to quash the First Information Report registered vide Crime No. 103/2021 under Section 409 read with Section 34 of I.P.C. in Police Station Civil Lines Bilaspur and the subsequent proceedings thereto with respect to the petitioner, in the interest of justice."

5. Brief facts of the case are that petitioner -B. Mahar was posted as Subedar (Ministerial) in the office of Superintendent of Police, Bilaspur on 21.10.2013 and petitioner-Sanjay Singh, posted as Sub-Inspector (Ministerial) in the Office of Superintendent of Police, Mungeli. Before the date of the petitioners posting and joining, Constable No.494 Balarao Dankey had already retired on 31.07.2013 and his salary was not discontinued by his predecessor. On 3.8.2017, a complaint was made allegedly by an Ex-Constable Raj Kumar Yadav against the petitioners alleging corruption and misappropriation on multiple counts, such as disbursement of pension and salary of Retired Constable, misappropriation of TA, grant of House Rent Allowance to a Lady Constable while she was living in a Government accommodation and wrong fixation of the pay of an Inspector. The complaint being in relation to disbursement of Government funds and corruption, misappropriation



and illegal benefits etc., the Inspector General of Police directed the Superintendent of Police, Bilaspur to get the complaint investigated and submit the report within 15 days, on which the Superintendent of Police ordered for a preliminary inquiry to ascertain the fact by an officer of the rank of Additional Superintendent of Police. The Additional Superintendent of Police thoroughly investigated the complaint, recorded statement of the concerned persons and collected documents and thereafter submitted a report on 8.2.2018. On due investigation and inquiry, it was concluded that though Constable 494 Balarao Dankey superannuated on 31.07.2013 on completing the age of 60 years and paid anticipatory pension, but still he was also disbursed salary through his bank account, as the pay was not stopped by the then Salary Branch In-charge ASI(M) Sanjay Singh and thereafter his successor petitioner. It was found to be a negligent act resulting in payment of salary even in spite of retirement. It is a clear finding that the said act on part of the petitioners establishes negligence towards duty and no dishonesty, misappropriation, corruption on the part of the petitioners were found by the Additional Superintendent of Police.

6. Based on the information collected in the inquiry by the Additional Superintendent of Police, since no dishonest intention or misappropriation was disclosed to have been committed by the petitioners, but only dereliction in duty and lack of diligence being found, a departmental inquiry under the Service Rules was initiated. The department conducted a full-fledged inquiry in which complainant and other witnesses were explained and Inquiry Officer concluded that the present petitioners B. Mahar and Sanjay Singh have not discharged their



duties diligently which resulted in payment of salary to the retired Constable 494 Balarao. The petitioners took a specific plea before the Disciplinary Authority that the said act was committed by a mistake. However, the disciplinary authority did not take into consideration the said fact and made the petitioners liable for gross negligence in performing the official duties. The Disciplinary Authority agreeing with the finding of the Inquiry Officer, imposed a major penalty of reduction of one stage in pay to a lower stage in the time scale of pay for a period of one year without cumulative effect. The defence of the petitioners that they did not have knowledge of computer and his subordinate used to operate and therefore they could not detect the superannuation order of Constable 494, which was not accepted by the Inquiry Officer or the disciplinary authority stating it to be a deliberate dereliction of duty, negligence and suspicious conduct and consequentially it was recommended to recover the excess paid amount from the delinquent. The petitioners who were posted at the relevant time as Subedar (Ministerial) in the Salary Branch was not the authority under the rules entrusted and authorized to order disbursement or payment of salary to any employee. The role of the petitioners in the capacity of In-charge, Salary Branch, was to collect the data information from his subordinate Clerk of Pay Bill Section and place it before the competent authority, i.e. the Drawing & Disbursement Officer entrusted with the dominion to order disbursement of pay to the Treasury.

7. As per the Treasury Code enacted under the powers conferred under Article 283(2) of the Constitution of India, Sub-rule 290 & 291, empowers and obligates the Drawing & Disbursing Officer to order for disbursement of any bill, including salary bill, and to ensure and supervise



all the books of accounts, etc. It is in exercise of this power that the Drawing & Disbursing Officer had ordered payment of salary over which he exercised dominion. The undisputed position emerging from the evidence collected during inquiry and the Treasury Code is that there was no entrustment of any property to the petitioners, nor petitioners had dominion over sanction of the salary bill/voucher. The authority vested with the drawing and disbursing officer, who was DSP Head Quarters and only he had dominion over payment of salary or pension was with the Drawing & Disbursing Officer appointed under the statutory rules, which was Dy. Superintendent of Police, HQs Office of Superintendent of Police, Bilaspur. All of a sudden without there being any material, much less dishonest intention any or evidence to suggest any misappropriation on part of the petitioners found, respondent No. 2 directed respondent No.3 to register an offence under Section 409 of the IPC against the petitioners, consequent to which respondent No.3 directed respondent No.4 vide letter dated 1.1.2021 to register an offence under Section 409 of the IPC and submit a report for onward submission to respondent No.2. It is consequent to the direction of respondent No.2 & 3 that the respondent No.4 registered an FIR for the alleged offence under Section 409 & 34 IPC against the petitioners which does not disclose a prima facie case under Section 409, 34 of the IPC against the petitioners. It would also be relevant to mention that the pension of the retired Constable 494 was not dealt by the petitioners section, i.e. the Salary & Accounts, but was dealt by a separate pension section. The State Government had also enhanced the age of superannuation from 60 to 62 years w.e.f. 1.8.2013 and the petitioners joined the post on 21.10.2013



before which date salary payment was continued after retirement and in absence of any communication made to the petitioners, it was a sheer mistake to have continued the payment which was in vogue.

6. Learned Senior Advocate appearing for the petitioner in CRMP No.182/2021 and learned counsel appearing for the petitioner in CRMP No.332/2021 would submit that for the alleged misconduct in performance of duty, the petitioners have already been subjected to departmental enquiry and after conducting the departmental enquiry, they have been punished on 23.08.2019 by imposing a major penalty of reduction of one stage in pay to a lower stage in the time scale of pay for a period of one year without cumulative effect, which they have already accepted and have not challenged. On the basis of the departmental proceedings, FIR has been lodged on 19.01.2021 for the offence punishable under Section 409/34 of IPC, which is ex facie illegal and without authority of law. They would further submit that the Disciplinary Authority has only recorded a finding that it is a case of dereliction in performance of duty and there is no allegation of embezzlement and any other criminal act alleged against the petitioner, which is nothing but to harass the petitioners. As such, the petitions deserve to be allowed and the FIR registered against the petitioners deserve to be quashed. He relies upon the judgment of the Supreme Court in the matter of **S.W.Palanitkar and others v. State of Bihar and another**, reported in **(2002) 1 SCC 241**, **Jethsur Surangbhai v. State of Gujarat**, reported in **1984(Supp) SCC 207** and the judgment of the Bombay High Court in the matter of **State of Maharashtra v. Mohan Radhakrishna Pednekar**, reported in **(1999) 2 MHLJ 459**.



7. On the other hand, learned State counsel opposes the submissions advanced by learned counsel for the petitioners and submits that the FIR discloses the prima facie offence against the petitioners. As such, the petitions deserve to be dismissed.

8. We have heard learned counsel for the parties, perused the documents appended with the petition.

9. The Supreme Court in the matter of **State of Haryana and others v. Bhajan Lal and others**, reported in **1992 Supp (1) SCC 335** laid down the principles of law relating to the exercise of inherent powers under Article 226 of the Constitution of India to quash the first information report and it has been held that such power can be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. In paragraph 102 of the report, the Supreme Court laid down the broad principles where such power under Article 226 of the Constitution/Section 482 of the CrPC should be exercised, which are as under: -

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad



kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.



(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. In the matter of **Jethsur Surangbhai** (supra) the Supreme Court has held as under:-

“9. Having gone through the judgment of the High Court we find ourselves unable to accept the argument of Mr. Phadke. The counsel for the appellant rightly argued with great force and vehemence that taking the findings of the High Court ex facie no case of defalcation of Items (2) to (4) has been made out. In our opinion, the contention raised by the counsel for the appellant is well-founded and must prevail. With due respect what the High Court seems to have missed is that in a case like this where there was serious defalcation of the properties of the Sangh, unless the prosecution proved that there was a close cohesion and collusion between all the accused which formed the subject matter of a conspiracy, it would be difficult to prove the dual charges particularly against the appellant (A-1). The charge of conspiracy having failed, the most material and integral part of the prosecution story against the appellant disappears. The only ground on the basis of which the High Court has convicted him is that as he was the chairman of the Managing Committee, he must be held to be vicariously liable for any order given or misappropriation committed by the other accused. The High Court,



however, has not referred to the concept of vicarious liability but the findings of the High Court seem to indicate that this was the central idea in the mind of the High Court for convicting the appellant. In a criminal case of such a serious nature mens rea cannot be excluded and once the charge of conspiracy failed the onus lay on the prosecution to prove affirmatively that the appellant was directly and personally connected with acts or omissions pertaining to items 2, 3 and 4. It is conceded by Mr Phadke that no such direct evidence is forthcoming and he tried to argue that as the appellant was chairman of the Sangh and used to sign papers and approve various tenders, even as a matter of routine he should have acted with care and caution and his negligence would be a positive proof of his intention to commit the offence. We are however unable to agree with this somewhat broad statement of the law. In the absence of a charge of conspiracy the mere fact that the appellant happened to be the Chairman of the Committee would not make him criminally liable in a vicarious sense for items 2 to 4. There is no evidence either direct or circumstantial to show that apart from approving the purchase of fertilisers he knew that the firms from which the fertilisers were purchased did not exist. Similar is the case with the other two items. Indeed, if the chairman was to be made liable then all members of the Committee, viz, Tehsildar and other nominated members, would be equally liable because all of them participated in the deliberations of the meetings of the Committee, a



conclusion which has not even been suggested by the prosecution. As chairman of the Sangh the appellant had to deal with a large variety of matters and it would not be humanly possible for him to analyse and go into the details of every small matter in order to find out whether there has been any criminal breach of trust. In fact, the hero of the entire show seems to be A-3 who had so stage-managed the drama as to shield his guilt and bring the appellant in the forefront. But they by itself would not be conclusive evidence against the appellant. There is nothing to show that A-3 had either directly or indirectly informed the appellant regarding the illegal purchase of fertilisers or the missing of the five oil engines which came to light much later during the course of the audit. Far from proving the intention the prosecution has failed to prove that the appellant had any knowledge of defalcation of items 2 to 4. In fact, so far as item 3 is concerned, even Mr. Phadke conceded that there is no direct evidence to connect the appellant.”

11. The Supreme Court in the matter reported in **AIR 1965 SC 1433** **[Velji Raghavji Patel v. The State of Maharashtra]** dealing with the provisions of Sections 403 and 409 of the IPC has observed as under:-

“9. Mr Chatterjee finally contends that the act of the appellant will at least amount to dishonest misappropriation of property even though it may not amount to criminal breach of trust and, therefore, his conviction could be altered from one under Section



409 to that under Section 403. Section 403 runs thus:

“Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term, which may extend to two years, or with fine, or with both.”

It is obvious that an owner of property, in whichever way he uses his property and with whatever intention will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. As already stated, a partner has, undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. Mr Chatterjee's alternative contention must be rejected.’

[Emphasis Supplied]

12. Likewise, in the matter reported in **AIR 1999 SC 1301 [Jiwan Dass v. State of Haryana]**, the Supreme Court considering the application of Section 409 of the IPC has observed as under:-

“.... To bring home a charge under Section 409, what is necessary to be proved is that the accused is a public servant and in such capacity he was entrusted with the property in question or with dominion over it and that he committed criminal breach of trust in respect of it.....’



13. The Supreme Court in the matter reported in **(1996) 5 SCC 591**

[Central Bureau of Investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd., Calcutta] interpreting the requirement of Section 405 of the IPC has observed as under:-

“27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression “entrusted with property” or “with any dominion over property” has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression ‘entrusted’ appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression ‘trust’ in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such



goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed. In the facts and circumstances of the case, it, however, appears to us that the respondents moved the High Court only in 1991 although the first FIR was filed in 1987 and the second was filed in 1989. The CBI, therefore, got sufficient time to complete the investigation for the purpose of framing the charge.'

[Emphasis Supplied]

- 14.** The Supreme Court in the matter reported in **(2021) 18 SCC 70** **[N. Raghavender v. State of Andhra Pradesh, CBI]**, dealing with the applicability of Section 405 of the IPC has observed as under:-

“46. The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409 IPC. The expression “criminal breach of trust” is defined



under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405IPC, the following ingredients must be satisfied:

46.1. Entrusting any person with property or with any dominion over property.

46.2. That person has dishonestly misappropriated or converted that property to his own use.

46.3. Or that person is dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.”

- 15.** From perusal of the pleadings and documents, it transpires that for the alleged misconduct in performance of duty, the petitioners have already been subjected to departmental enquiry and after conducting the departmental enquiry, they have been punished on 23.08.2019 by imposing a major penalty of reduction of one stage in pay to a lower stage in the time scale of pay for a period of one year without cumulative effect. It further transpires that on the basis of the departmental proceedings, FIR has been lodged against the petitioners on 19.01.2021 for the offence punishable under Section



409/34 of IPC, which is ex facie illegal and without authority of law.

It also transpires that the Disciplinary Authority has only recorded a finding that it is a case of dereliction in performance of duty and there is no allegation of embezzlement.

- 16.** Considering the submissions advanced by learned counsel for the parties and in view of law laid down by the Supreme Court in the above-stated judgments (supra), we are of the considered opinion that the allegations made in the FIR are inherently improbable and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the petitioners herein.
- 17.** For the foregoing reasons, the impugned FIR registered in Crime No.0103/2021 on 19.01.2021 at Police Station Civil Lines, Bilaspur for offence under Section 409/34 of the IPC against the petitioners and all consequential proceedings are hereby quashed.
- 18.** The petitions under Section 482 CrPC are **allowed** to the extent indicated hereinabove.

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice