

SADHUPATI NAGESWARA RAO

v.

STATE OF ANDHRA PRADESH  
(Criminal Appeal No. 1159 of 2012)

AUGUST 3, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

*PENAL CODE 1860:*

*s.409– Fair Price Shop dealer– Convicted and sentenced to six months RI for misappropriation of rice entrusted to him under Food for Work Scheme (FFWS)– Held: The evidence proves that there was entrustment of property of Government (rice under FFWS) to the accused agent and the same was disbursed without proper coupons – Accused had dishonest intention not to distribute the rice properly to the beneficiaries – He was rightly found guilty and convicted of the offence punishable u/s 409 – Evidence of hostile witness.*

*SENTENCE/SENTENCING.*

*Conviction and sentence of six months RI and a fine of Rs.1000/- awarded to Fair Price Shop dealer u/s 409 IPC – Held: Courts cannot take lenient view in awarding sentence on the ground of sympathy or delay, particularly, if it relates to distribution of essential commodities under any Scheme of the Government intended to benefit the public at large – There is no ground for reduction of sentence.*

**The appellant-accused, a Fair Price Shop dealer, was entrusted with the task of disbursement of rice free of cost under “Food for Work Scheme” (FFWS) to the workers on production of coupons. On a complaint regarding irregularities in distribution of essential**

A commodities, an inspection of the Shops of the appellant was carried out and it was found that he disposed of 67.65 quintals of rice intended for FFWS without any coupons. An FIR was registered against him for offences punishable u/ss 409 and 420 IPC. The trial court  
 B convicted the appellant-accused u/s 409 IPC and sentenced him to six months' RI and to pay a fine of Rs. 1000/-. His appeal and revision having been dismissed, he filed the appeal.

C Dismissing the appeal, the Court

HELD: 1.1. On 25.07.2002, PWs 2 and 3, along with PW-4 and some others, carried out an inspection of the Fair Price Shops of the appellant-accused. PW-3 stated that the appellant disposed of 67.65 quintals of rice worth  
 D around Rs.84,562/-in black market intended for FFWS. On the same day, i.e., on 25.07.2002, PW-2 recorded the statement of the appellant under Ext. P-7 wherein nowhere he denied the contents of the said statement. It is also clear from the prosecution evidence that the  
 E appellant was not in a position to show the correct details, particularly, the handing over of rice to the beneficiaries by securing coupons/ vouchers from them. [Para 9] [1150-G-H; 1151-A-B]

1.2. In addition to the official witnesses, viz., PWs 1-4, the prosecution also examined PW-5, who worked as an Attender in Cooperative Society and was the beneficiary. He deposed that he purchased essential commodities from the Fair Price Shop of the appellant even without having a ration card. He was the person  
 F who gave a report to the Mandal Revenue Officer (PW-1) under Ext. P1. He also admitted that he had no ration card at all. It is true that at a later point of time though PW-5 turned hostile, in his cross examination, he admitted that in Ext. P1 he mentioned that the appellant was not  
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distributing essential commodities properly to the beneficiaries. [para 8] [1150-C-E] A

1.3. The evidence proves that there was entrustment of property of the government to the appellant. He was charged with misappropriation of 67.65 quintals of rice. The materials placed by the prosecution show that the appellant had dishonest intention not to distribute the rice properly to the beneficiaries and an offence of criminal breach of trust could be made out. All these aspects have been rightly considered by the trial court and it has found the appellant guilty of the offence punishable u/s 409 IPC. The appellate and revisional courts, on appreciation of the materials placed by the prosecution and defence, rightly confirmed the same. [para 9-10] [1151-G-H; 1152-A-B] B  
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2. Section 409 enables the court to award imprisonment for life or imprisonment up to ten years alongwith fine. Considering the fact that the appellant was awarded imprisonment for 6 months alongwith a fine of Rs.1,000/- only, the same is not excessive. On the other hand, the courts cannot take lenient view in awarding sentence on the ground of sympathy or delay, particularly, if it relates to distribution of essential commodities under any Scheme of the Government intended to benefit the public at large. There is no ground for reduction of sentence. [para 11] [1152-C-F] E  
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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1159 of 2012.

From the Judgment & Order dated 8.4.2011 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Revision No. 295 of 2005. G

V. Giri, Shree Pal Singh, K. Sita Rama Rao, Rahul Singh, Sadiq for the Appellant. H

A Mayur Shah, D. Mahesh Babu, Suchitra H., Amit Nain,  
Bala Shivulu for the Respondent.

The Judgment of the Court was delivered by

**P. SATHASIVAM, J.** 1. Leave granted.

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2. This appeal is filed against the impugned order dated 08.04.2011 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Revision Case No. 295 of 2005 whereby the High Court dismissed the Revision filed by  
C the appellant herein and confirmed the conviction and sentence imposed upon him under Section 409 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") by the trial Court.

3. Brief facts:

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(a) The appellant was the Fair Price Shop dealer of Stuartpuram village and also in-charge dealer of Fair Price Shop at Chinabethapudi. He was entrusted with the task of distribution of rice at free of cost under "Food For Work Scheme" (FFWS) to the workers on production of coupons, to  
E maintain proper accounts and to handover the said coupons to the Mandal Revenue Office to that effect.

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(b) During the 17th Janma Bhoomi programme, on 03.06.2002, one Nadendla Jakraiah filed a complaint against the appellant to the Mandal Revenue Officer (MRO), Bapatla regarding the irregularities committed in the distribution of essential commodities to the public and requested to take necessary action in the matter. The MRO, Bapatla forwarded the said complaint to the Deputy Tahsildar of Civil Supplies, Bapatla to inspect the fair price shop of the appellant and to  
G take necessary action.

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(c) On 25.07.2002, the Deputy Tahsildar along with other Revenue officials visited the Fair Price Shop of the appellant at Chinabethapudi and also at Stuartpuram Village. On inspection of the Fair Price Shop at Chinabethapudi, the

Revenue officials found the goods/stocks lying therein tallied with the records/Stock Register. In the similar manner, when the fair price shop at Stuartpuram was inspected, the Revenue officials could not find the records/Stock Registers, pursuant to the same, they made inventory of the goods lying in the shop and seized the same. According to the appellant, in the evening, he went to the Mandal Revenue Office along with the records/registers and coupons but the revenue officials refused to look into the same and informed him that action had been initiated against him. Thereafter, the appellant sent a FAX/Telegram to the Joint Collector, Mandal Revenue Office.

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(d) On 27.07.2002, the Revenue Officials (Civil Supplies) visited his Fair Price Shop at Chinabethapudi and took inventory of the stock in the shop and asked the appellant to sign the papers which were already prepared by them.

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(e) On 31.07.2002, the MRO lodged a complaint with the S.H.O., P.S. Vedulaipalli which was registered as FIR in Crime No. 22 of 2002 under Sections 409 and 420 of IPC. After investigation, the police arrested the appellant on 30.09.2002.

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(f) After considering the evidence, the II Addl. Jr. Civil Judge-cum-Judicial First Class Magistrate, Bapatla, by judgment dated 22.05.2004 in C.C. No. 7/2003, found the appellant guilty for the offence punishable under Section 409 IPC and not guilty under Section 420 IPC and, accordingly, convicted and sentenced him to suffer simple imprisonment for 6 months and also to pay a fine of Rs.1,000/-, in default, to further undergo simple imprisonment for 1 month.

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(g) Aggrieved by the said judgment, the appellant preferred an appeal being Criminal Appeal No. 210 of 2004 before the Ist Addl. Sessions Judge, Guntur. The Sessions Judge, by order dated 08.02.2005, dismissed his appeal and confirmed the order passed by the IIInd Addl. Jr. Civil Judge-cum-Judicial First Class Magistrate dated 22.05.2004.

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A (h) Against the said order, the appellant filed Criminal Revision No. 295 of 2005 before the High Court of Andhra Pradesh. By impugned order dated 08.04.2011, the High Court dismissed the Revision filed by the appellant and confirmed the judgment passed by the Addl. Sessions Judge, Guntur.

B (i) Challenging the said order of the High Court, the appellant has preferred this appeal by way of special leave before this Court.

C 4. Heard Mr. V. Giri, learned senior counsel for the appellant and Mr. Mayur Shah, learned counsel for the respondent-State.

D 5. Mr. V. Giri, learned senior counsel for the appellant, after taking us through the necessary ingredients of Section 409 of IPC and the evidence led in, submitted that there was no acceptable material to establish that the appellant dishonestly misappropriated the foodgrain which was meant for workers under FFWS. He also pointed out that the prosecution failed to prove the fraudulent dishonest intention on the part of the appellant. He finally submitted that inasmuch as the prosecution witnesses being Nos. 2, 3, 4 and 6 are official witnesses and not independent witnesses, their evidence without corroboration with the independent witness, casts a reasonable doubt on the veracity of the prosecution allegation.

F 6. On the other hand, Mr. Mayur Shah, learned counsel for the State, after taking us through the entire materials placed by the prosecution and reasonings of the Courts below, pleaded for confirmation of the conviction and sentence imposed on the appellant.

G 7. In order to appreciate the above contentions, it is useful to refer the definition and punishment of criminal breach of trust and related provision provided under Sections 405, 406 and 409 IPC which read as under:-

H "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 willfully suffers any other person so to do, commits "criminal breach of trust".

*406. Punishment for criminal breach of trust.*- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*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."

In order to prove the offence of criminal breach of trust which attracts the provision of Section 409 IPC, the prosecution must prove that one who is, in any manner, entrusted with the property, in this case as a dealer of fair price shop, dishonestly misappropriates the property, commits criminal breach of trust in respect of that property. In other words, in order to sustain conviction under Section 409 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 requirement to bring home the accusations under Section 405 are the

A requirements to prove conjointly i) entrustment and ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.

B 8. In the light of the above broad principles, let us examine the materials relied on by the prosecution. To prove the above offence, the prosecution examined PWs 1-6, viz., Mandal Revenue Officer (PW-1), Deputy Tahsildar (Civil Supplies) (PW-2), Revenue Inspector (PW-3), Village Secretary (PW-4). In order to prove the offence of criminal breach of trust, the prosecution must prove that the accused was, in any manner, entrusted with the property of the Government. In addition to the official witnesses, viz., PWs 1-4, the prosecution also examined Nadendla Jakraiah (PW-5), who worked as an Attender in Cooperative Society, Bethapudi and the beneficiary along with the appellant. In his examination, he deposed that he purchased the essential commodities from the Fair Price Shop of the appellant even without having a ration card. He was the person who gave a report to the MRO, PW-1 under Exh. P1. He also admitted that he had no ration card at all. It is true that at a later point of time though PW-5 turned hostile, in his cross examination, he admitted that in Exh. P1 he mentioned that the appellant accused was not distributing essential commodities properly to the beneficiaries. The Magistrate has rightly observed that how is it possible that PW-5 was receiving essential commodities from the shop of the accused without having a ration card.

G 9. Though PWs 2 to 4 are Government Officials, PW-5 is the beneficiary of the fair price shop of the accused and PW-6 is the I.O. All of them stated that the accused was running Fair Price Shop at Stuartpuram and also in-charge of Fair Price Shop at Chinabethapudi. As per the orders of PW-1, on 25.07.2002, PWs 2 and 3, along with PW-4 and some others, carried out an inspection over the Fair Price Shops of the appellant-accused at Chinabethapudi and Stuartpuram and submitted a Report. PW-3 stated that the appellant-accused

disposed of 67.65 quintals of rice in black market intended for A  
FFWS. According to these witnesses, the value of foodgrain  
was around Rs. 84,562/-. On the same day, i.e., on 25.07.2002,  
PW-2 recorded the statement of the appellant-accused under  
Exh. P-7 wherein nowhere he denied the contents of the said  
statement. It is also clear from the prosecution evidence that B  
the appellant was not in a position to show the correct details,  
particularly, the handing over of rice to the beneficiaries by  
securing coupons/vouchers from them. Though it was stated by  
the appellant that all those coupons/vouchers were with his  
father, it was demonstrated that his father failed to turn up even C  
after twelve noon on 25.07.2002. There is no dispute that the  
appellant was entrusted with 13.8 quintals of rice, 387 litres of  
kerosene in respect of Chinabethapudi Fair Price Shop in the  
month of June, 2002 and he was also entrusted with 6.88  
quintals of rice and 213 litres of kerosene in respect of D  
Stuartpuram Fair Price Shop. It is also clear from the evidence  
led in by the prosecution that the appellant had failed to submit  
the coupons for the deficiency found by the inspecting officers.  
Though the appellant has pleaded that in the same evening, he  
went and met the officers concerned along with the coupons, it E  
has come on record that those coupons does not belong to the  
persons alleged to the above mentioned Fair Price Shop. The  
materials placed by the prosecution show that the appellant-  
accused had dishonest intention not to distribute the rice  
properly to the beneficiaries and an offence of criminal breach  
of trust could be made out. As observed earlier, the coupons F  
filed by the appellant-accused belong to Ramnagar and not to  
Stuartpuram village. The fact remains that on the date of  
inspection, the rice was disbursed without proper coupons.

10. The trial Court, after considering all the materials, came G  
to the conclusion that the evidence of PWs 1 to 6 is reliable  
and trustworthy in relation to the offence in proving entrustment  
of property of the Government to the accused. In the case on  
hand, the appellant, an agent entrusted with the distribution of  
rice under the "Food for Work Scheme" (FFWS) to the workers H

A on production of coupons, was charged with misappropriation of 67.65 quintals of rice. The evidence also proves that there was entrustment of property to the accused. All these aspects have been rightly considered by the trial Court and found the appellant guilty of the offence punishable under Section 409  
 B IPC. The appellate and revisional court, on appreciation of the materials placed by the prosecution and defence, confirmed the same. We are in entire agreement with the said conclusion.

C 11. Mr. Giri, learned senior counsel for the appellant submitted that inasmuch as the alleged occurrence took place in 2002, some leniency may be shown on the sentence imposed. We are unable to accept the said contention. Section 409 enables the Court to award imprisonment for life or imprisonment up to ten years alongwith fine. Considering the  
 D fact that the appellant was awarded imprisonment for 6 months alongwith a fine of Rs. 1,000/- only, we feel that the same is not excessive. On the other hand, we are of the view that persons dealing with the property of the Government and entrusted with the task of distribution under FFWS, it is but proper on their part to maintain true accounts, handover  
 E coupons to the Mandal Revenue Office and to execute the same fully and without any lapse. Such recourse has not been followed by the appellant. The courts cannot take lenient view in awarding sentence on the ground of sympathy or delay, particularly, if it relates to distribution of essential commodities  
 F under any Scheme of the Government intended to benefit the public at large. Accordingly, while rejecting the request of the learned senior counsel for the appellant, we hold that there is no ground for reduction of sentence.

G 12. Under these circumstances, we find no merit in the appeal. Consequently, the same is dismissed. In view of the dismissal of the appeal, the order granting exemption from surrender is revoked and the appellant has to surrender within four weeks and serve out the remaining period of sentence.

H R.P.

Appeal dismissed.