A NARENDRA PRATAP NARAIN SINGH AND ANR.

v.

STATE OF U.P.

APRIL 3, 1991

B [S. RATNAVEL PANDIAN AND K. JAYACHANDRA REDDY JJ.]

Constitution of India, 1950: Article 136—Concurrent findings of fact—interference only in exceptional circumstances—Findings perverse, preiermitting manifest errors and glaring infirmities—Interfe-
C *rence—Justified.*

Indian Penal Code, 1860: Sections 405, 409 467 and 471—Criminal breach of trust and misappropriation—Government seed store—Established practice of credit sales to village level workers—Government circulars prohibiting such sales—Issued from time to
D *time—Yet practice continued—Persons in charge followed the established practice—Whether committed any offence and liable to be punished.*

During 1964-65 the first appellant was incharge of a seed store attached to a Block Development Office. The seed store was catering to the needs
E **of cultivators. The first appellant was charged with an offence of breach of trust, punishable under Section 409 IPC on the allegation that he prepared forged bills to the tune of Rs.1591.04 in the names of some village level workers as if they were supplied certain articles on credit in disregard of the Government's instructions prohibiting credit sale.**

F **Later, the second appellant took charge of the seed store relieving the first appellant. He was also charged with the offence of breach of trust under Section 409 IPC in respect of certain articles and misappropriation of a sum Rs.450.28.**

In addition to the charges under section 409 IPC, both the appel-
G **lants were also charged with offences punishable under sections 467 and 471 IPC.**

Before the Trial Court, the first appellant pleaded that the bills were genuine and that the materials were actually supplied to the village level workers on credit. He denied the charges of defalcation and also
H **making bogus entries in the records. The second appellant disputed the**

charge of misappropriation and stated that he received part payment in respect of the bill in question and had deposited the said amount in Government treasury. A

The Trial Court convicted both the appellants and sentenced them to undergo various terms of imprisonment for offences under Sections 467 and 471 IPC as also a fine of Rs.500 for the offence under section 409 IPC. B

On appeal, the High Court set aside the conviction of the appellants under sections 467 and 471 IPC, and upheld the conviction under section 409 IPC; but reduced the fine to Rs.250. The Respondent-State has not preferred any appeal. C

In the present appeals, the appellants challenged the legality of their conviction under section 409 IPC.

The first appellant contended that the long established practice of credit sale was continuing till 1969-70 despite Government circulars to stop the practice and so in 1965, he was not at fault in making credit sales. It was also contended that there was no motive on his part to misappropriate the goods. The second appellant contended that he issued only receipts and realised the money and in the absence of any conspiracy having been proved, he was not guilty of any misappropriation of money. D E

Allowing the appeals, this Court,

HELD: 1. The long established practice of credit sale of seeds, fertilisers, pesticides etc. from the Government Agriculture Seed Stores continued for some time, at least till the last circular issued on 26.7.68. The repeated issuance of the circulars indicate that inspite of these circulars, the practice of credit sale was in vogue. A close scrutiny of the evidence and records show that the superior officers, inspite of the circulars, did not take a very serious view of the credit sale to the cultivators. In fact, by circular dated 2.8.67, the Director of Agriculture while impressing the prohibition of credit sale, gave only a warning that the erring officials would be held 'personally responsible to pay the outstanding amount'. The appellants could not be mulcted with the criminality of breach of trust for following the established practice of credit sale through village level workers. [100G-H; 101A-B] F G

2. Since the High Court has set aside the conviction of the appel- H

A lants under Sections 467 and 471 IPC, the prosecution case of forging the bills and receipts and using them as genuine, is 'not true'. Also the fact that the State has not filed any appeal necessarily follows that the explanation given in defence of the appellants that the bills and cash receipts were not bogus but genuine has been accepted by the High Court. As such the prosecution did not satisfactorily prove even the B temporary misappropriation of the amount in dispute. [101B-D]

3. Admittedly the first appellant handed over the charge to the second appellant on 2.9.65 and till then the first appellant was incharge of both the seed stores. The first appellant submitted his compliance report on 3.9.65. Hence the second appellant who had not taken charge of the seed store till 2.9.65 could not be held liable for an offence under C Section 409 IPC in respect of the amount covered by the bills in question which were all prepared between 29.7.65 to 12.8.65 i.e. earlier to the second appellant's taking over charge. The finding of the Trial Court that both the appllants have committed breach of trust by preparing false bills has to be rejected and the resultant conclusion based on such D finding is liable to be set aside. [101G-H; 102A-B]

4. Both the appellants cannot be jointly charged on the allegation that on 4.7.64 they being the public servants of the seed store committed breach of trust, since admittedly they were working at different places and not at the same seed store. Also the prosecution has not satisfacto- E rily established the main ingredient of 'dishonesty' against either of the appellants, even though at the worst, it may be said that the first appellant was guilty of dereliction of his duty in not collecting the outstanding amount by taking appropriate steps. When the conviction recorded by the Trial Court under Section 467 IPC is set aside by the High Court as against which no appeal is preferred by the State, the second appellant F cannot in any way be fastened with the criminality of misappropriation for issuing the cash receipts in question. A close examination of the entire evidence and documents do not reveal any material worth mentioning for jointly fastening both the appellants with the offence of criminal breach of trust punishable under Section 409 IPC. There is also no evidence that there was any conspiracy, pre-concert or concert G of minds of the appellants or any pre-arranged plan between the two appellants to commit the offence or offences complained of. [103B-D]

5. Though this Court normally does not interfere with the concurrent findings of fact except in exceptional circumstances, this is a fit case for interference since both the Courts below instead of dealing with H the intrinsic merits of the evidence of the witnesses, have acted pre-

versely by summarily disposing of the case, pretermitting the manifest errors and glaring infirmities appearing in these cases. [103E-F] A

[Having regard to the undertaking of the appellants not to claim back wages, the Court observed that in case the appellants, pursuant to their acquittal, are reinstated in service by the State Government they will not be having any claim for back wages from the date of suspension upto the date of their reinstatement.] B

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 664 & 665 of 1979.

From the Judgment and Order dated 8.5.1979 of the Allahabad High Court in Criminal Appeal Nos. 158 & 157 of 1977. C

R.K. Garg and M.M. Kashtriya for the Appellants.

Dalveer Bhandari for the Respondent.

D

The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J. These two criminal appeals are preferred by the appellants, namely-Narendra Pratap Narain Singh and Puran Singh who were arrayed as accused Nos. 1 and 2 before the Trial Court, against the judgments dated 8.5.1979 rendered in Criminal Appeal Nos. 158 and 157 of 1977 on the file of Allahabad High Court, Lucknow arising out of Sessions Trial Nos. A-210 and 228 of 1974 whereby the High Court by a common judgment and order set aside the convictions and sentence under Sections 467 and 471 IPC but, however, upheld their conviction under Section 409 IPC and reduced the substantive sentence of imprisonment to the period already undergone and the sentence of fine from Rs.500 to Rs.250 and in default to undergo rigorous imprisonment for six months in each of the cases. E F

The material facts as unfolded from the records can be stated thus: G

There was a Block Development Office in the district of Sultanpur known as Dhanpatganj Block to which a seed store known as Semrauna seed store was attached. The seed store was to cater the needs and requirements of the cultivators for seeds and fertilisers etc. During 1964-65, the first appellant was incharge of that seed store. On H

2.9.65, he was relieved by the second appellant on transfer from Kurebhar.

According to the prosecution, the first appellant in his official capacity was entrusted with fertilisers, pesticides, seeds etc. which were meant to cater the needs of the cultivators within Semrauna area. In 1965, there were several village level workers. It is said that on 29.7.65, the first appellant prepared forged bills in the names of some village level workers (hereinafter referred to as VLWs) bearing bill Nos. 57, 59, 60, 61, 62 and 64 of book No. 7767 as if the VLWs were supplied with articles of Agricultural Department on credit, the total amount of which being Rs.1591.04 and thereby committed breach of trust, punishable under Section 409 IPC. The indictment against the second appellant is that he being a public servant of the said Agriculture Department committed breach of trust of the articles mentioned in bill Nos. 11, 17 and 18 of book No. 7767 and misappropriated a sum of Rs. 450.26. Apart from the above charges levelled against each of them, they were individually and collectively charged for offences punishable under Section 467 and 471 IPC.

The defence of the first appellant was that all those bills were not fictitious and bogus but were genuine and that the materials were supplied to the VLWs as reflected in the concerned bills. He denied the charge of defalcation and also making bogus entries in the records. He further stated that on transfer, he relieved the second appellant at Kurebhar but was holding dual charge of both Semrauna and Kurebhar simultaneously till the second appellant took charge of Semrauna area and that he used to supply fertilisers, seeds etc. to the village workers on credit on the basis of the long established practice and under the orders of the superiors. The defence of the second appellant was that he received the part payment relating to bill No. 11 and deposited the said amount in Government treasury and that he had not misappropriated any amount. The Trial Court, repelling their defence, convicted both the appellants under all the charges and sentenced them to various terms of imprisonment with the direction that all the substantive sentences shall run concurrently. In addition to the sentence of imprisonment, a fine of Rs.500 was imposed for the conviction under Section 409 IPC.

As the High Court has now set aside the conviction of the appellants under Sections 467 and 471 IPC and as the State has not preferred any appeal as against that acquittal, we are not called upon to deal with the case relating to those two charges. Hence, this appeal is

confined only with regard to the legality of the conviction of these two appellants under Section 409 IPC.

The learned Judge of the High Court has disposed of the appeals in a very summary manner confirming the conviction of the appellants under Section 409 IPC stating thus:

> "..... I have been taken through the evidence on record. All the village level workers concerned were examined by the prosecution and their statements show that criminally misappropriated amounts were recovered from them by the appellants but no fertiliser was issued to them. There is no infirmity in the statements of these witnesses. Their statements satisfactorily make out an offence under Section 409 IPC against two appellants in both the cases ..... I am, therefore, of the opinion that the conviction of the two appellants ordered by the Trial Court under Section 409 IPC is justified."

By these two appeals, the appellants challenge the correctness of their conviction. Mr. R.K. Garg, the learned senior counsel appearing on behalf of the appellants contended, *inter alia*, stating that though the Government had instructed that credit sales from the seed stores be discontinued, yet the long established practice was continued and in fact the Government was also well aware of this position and that it was the reason why as late as 2.8.67, the Government had been repeatedly issuing circulars inviting the attention of the employees concerned to stop the practice of credit sales and warning that any official or officer issuing will be held responsible to pay the outstanding amount and, therefore, in such circumstances there could not be any case of misappropriation in any form since from the very beginning, the first appellant had been stating that credit sales had been made. According to the learned counsel, there could not be any motive to misappropriate these goods belonging to the Agricultural Department when such goods were available in the open market at cheaper rates and that when the first appellant had no land in District Sultanpur. It has been further urged that it is amply proved from the evidence of the prosecution witnesses that credit sales had continued till 1969-70 and that the village level workers used to take goods from the seed stores on credit after giving receipts and used to distribute the same to the farmers according to their needs and necessity and the money was to be realised later on.

A The handing over the charge by the first appellant, it is said, could not be done before 2.9.65 because he was asked to take charge at Kurebhar without he being relieved at Semrauna and hence he had to work at both the seed stores from 18.6.65 to 2.9.65.

Coming to the case of the second appellant, it was contended by B the learned counsel that the second appellant issued only receipts and realised money and hence in the absence of any conspiracy having been proved, he could not be guilty of any misappropriation of money.

Lastly, it has been submitted that at the worst, the first appellant if at all found guilty would be guilty of breach of Government instructions which breach would not in any way fasten him with criminal C liability and that the High Court without discussing the evidence in the proper perspective has disposed of both the appeals on mere speculation, conjectures and surmises and as such the judgments are liable to be set aside.

D The fact that there had been a practice of credit sales of seeds, fertilisers, pesticides etc. from the Government Agricultural Seed Stores is not in dispute. While it was the practice, a circular letter No. IA-4390/Dues-129 dated 2.8.67 was issued by Director, Agriculture, Uttar Pradesh, Lucknow to all Drawing and Disbursing Officers in the Agriculture Department with copies endorsed to all Zonal Deputy E Directors of Agriculture, Project Officer, Aligarh, Functional Deputy Directors of Agriculture and Horticulture, the Development Officer, Lucknow and all sections of the Directorate of Agriculture, U.P. which letter reads thus:

> "From the progress report of recovery of 'Current' dues, it F has been observed that the seed store dues are mounting year to year it goes to mean that the commodities purchased from 95-Capital outlay are still sold and credit otherwise the dues should not increase in this office circular letter No. IA-7250/Dues-129 dated 21.10.1964 and circular No. 4934/Dues 29.7.1965 it was made clear that the G practice of credit sales should be stopped and on your visits to seed stores you should see that there was no credit sales and take suitable action against official and officer responsible for such sales. It appears that these instructions have not been followed vigorously. Government has taken serious exception to the practice of credit sales despite their H orders stopping this practice.

It is therefore, impressed again that credit sales of articles from the Government Agricultural seed stores is strictly prohibited and any official or officer issuing stores or authority sign their issue on credit be held personally responsible to pay the outstanding amount. At the time of handing over charge, all credit sales be a seed store Incharge should be treated as shortage and recovery effected from him. Suitable action including assessment of monetary responsibility, should also be taken against supervising officials and officers who do not report credit sales detected on their visits to seed stores to higher authorities or who fail to recover the amounts from these who sold commodities on credit at their own. A list of credit sales, if any should invariably be attached to the charge certificates to be sent to the higher officer(s) for examination, record and taking action.

It may be once again emphasized that serious action will be taken against those who permit or over look credit sales in defiance of Government Orders.

OFFICER OF THE DISTRICT AGRICULTURE OFFICER FAIZABAD. No. 1478/IV-Herti. General 67-68 Dated Sept. 29,1967."

A Copy of this letter was forwarded with an endorsement, reading "to all Block Development Officers and Seed store Incharges of Faizabad District Officers with the remark that contents of above circular letter may please be brought to the notice of all the field staff of yours block working under you for strict observance. These instructions should be adhered in all respect in regard to sale and supplies of Horticultural Commodities viz. plants, seeds etc. and the orders should be noted by all concerned".

Thereafter, the Directorate of Agriculture, U.P. issued another circular No. IA 3762/Dues-129(ii) dated 26th July 1968 pointing out that the orders issued under various circulars viz Nos. IA-7259/Dues-129 dated 31.10.1964, No. IA-4934/Dues dated 29.7.1965 and No. 1A-4390/Dues-120 dated 2.8.1967 should be followed carefully, which circular of 1968 reads thus;

"3. It is again emphasized that credit sale of articles from all Agricultural institutions if strictly prohibited. In case

A any credit sale is made from the Agricultural seed store/ Horticulture institutions, this is a very serious irregularity that needs prompt and severe action. Since inspite of orders such irregularities are being committed, it is necessary to keep a watch over them, A quarterly list of such credit sales, showing full details together with the name of person responsible for the irregularity should invariably be sent to this office with your own comments regarding punishment. If any item of credit sale is omitted from the quarterly list and the same is detected later an entry on account of such omission will be made in the Character Roll of the Supervisory Officer concerned. All inspecting officers on visits to seed stores and buffer godown and other institutions should examine the store ledgers and bill books to ensure that no credit sales have been made and in case some such sales have been made take action as indicated above.

4. It may please be kept in view that the receipts and recoveries under the head 95 Capital outlay should equal to the expenditure incurred thereunder. In case the receipts and recoveries fall short in comparison to the expenditure, the future allotments of funds will be reduced accordingly and the drawing and disbursing officer responsible for drawing funds from 95 capital outlay called upon to explain the irregularity and short fall in recovery.

5. The above instructions should be brought to the notice of all concerned under a registered cover for strict compliance and the quarterly report for the quarter ending June 1968 submitted by 15.8.68.

Please acknowledge receipt of this letter.

Sd/-
R.R. Agarwal,
Director"

The copy of the above circular was forwarded to all Functional Deputy Directors of Agriculture and Horticulture and Jute Development Officer, Lucknow and District Agriculture Officers and Superintendent Govt. Gardens for information and necessary action.

A cursory reading of both the circulars shows that inspite of the circulars directing the practice of credit sales to be stopped, in reality the long established practice of credit sales was continued. Even after the circular dated 2.8.67, the circulars were not strictly adhered to and this necessitated the issue of circular dated 26.7.68. It seems that due to the practice of credit sales, the seed store dues were mounting year by year and that the Government took a very serious view of the continuance of credit sales and issued the circular dated 27.6.68. As we have pointed out albeit, the case of the first appellant is that the old practice of credit sales was continued and that he in fact sold the articles to the VLWs and that none of the bills was bogus and they were not dishonestly used as genuine. Similarly, the second appellant has denied the charges. Now the High Court has set aside the convictions of the appellants under Sections 467 and 471 IPC and the State has not preferred any appeal against this part of judgment acquitting the appellants of these two charges and, therefore, it has to be concluded that the charges of forging valuable security and using them as genuine have to be held not proved.

The first charge in Criminal Appeal No. 664 of 1979 arising out of STA No. A-210 of 1974 reads that these appellants on or about 29th July 1965 and 12th August 1965 committed breach of trust of articles mentioned in bill Nos. 57, 59, 60, 61, 62, and 64 of book No. 7767. The following table will give the particular amount relating to each bill, said to have been misappropriated:

Date	*No. of bills*	*Amount*
29.7.65 and 12.8.65	57	138.00
" "	59	318.86
" "	60	495.94
" "	61	357.48
" "	62	155.26
" "	64	125.50
		1591.04

Thus, the total amount alleged to have been misappropriated by the appellants under the first charge is Rs. 1591.04. This amount admit-

tedly have been deposited by the first appellant, NPN Singh. The Trial Court in its judgment in Sessions Trial No. A-210 of 1974 has pointed out in more than one place about the repayment of the amount by deposit by the first appellant towards the six bills in question based on the evidence of Add. DAO (Ag.) examined as PW-5 as follows:

> "He conceded that the money of these six bills in question; 57, 59, 60, 61, 62 and 64 has been deposited before the C.I.D. Investigation commenced."

In yet another portion of the judgment, it is stated thus:

> "In this case, no bill is outstanding as all payments were made before investigation by the C.I.D. This accused N.P.N. Singh himself admitted to have deposited moneys for these bills nos. 57, 59 to 62 and 64."

As borne out from the records, the payments with regard to the questionable bills made between 1.9.65 to 29.6.66 were as follows:

S. No.	*Bill No.*	*Amount*	*Date and*	*Amount paid*
1.	57	138.00	19.12.65	Rs. 96.40
29.7.65/12.8.65			14.2.66	Rs. 41.40
				Rs.138.00
2.	59	318.86	19.12.65	Rs.282.06
			29.6.66	Rs. 36.80
				Rs.318.86
3.	60	495.94	19.12.65	Rs.495.94
4.	61	357.48	19.12.65	Rs.185.48
			6.1.66	Rs.172.00
				Rs.357.48

5.	62	155.26	18.12.65	Rs.155.26
6.	63	125.50	1.9.65	Rs.125.50

The above payments clearly establish that there is no outstanding amount towards any one of the bills by 29.6.66. PWs 1 to 3 (VLWs) have unanimously testified that they did not purchase anything from the first appellant on credit and also did not receive these bills in question and have further deposed that they did not make payments as shown in the cash receipts prepared by the second appellant. On the contrary, the specific case of the appellant is that none of the bills or cash receipts is either false, fictitious or bogus and they are all genuine bills and receipts.

In this connection, it may be noted that the Block Pramukh, i.e. PW-6 made the complaint Exh. Ka 16 dated 23.3.66 against the District Agriculture Officer to the Director of Vigilance complaining of the irregularities and illegalities as having been committed by the then Agriculture Officer, Sultanpur, The Vigilance Chairman referred the matter to the Government and thereupon the CID was directed to make an enquiry into the matter. PW-8, the Deputy Superintendent, Anti-Corruption, CID who was the then Inspector, CID made the enquiry under the orders of the State Government and commenced his investigation on 13.7.67. By the time the investigation started as shown earlier, the entire amount covered by the questionable bills had been paid and there was no outstanding. A question may arise as to whether there was any temporary misappropriation of the amount from 29.6.65 till the amount was repaid on 29.6.66 and whether the bills in question were forged by the first appellant with a view to screen himself from his misdeeds.

One of the factors which weighed with the Trial Court for holding that these bills were bogus, was the absence of the signature of any of the VLWs in any of the bills. The first appellant has attempted to show that the practice of credit sale to the VLWs was in prevalence and the amount subsequently recovered from the cultivators would be adjusted. The appellants under the first charge are indicted with an offence of criminal breach of trust under Section 409 IPC. Section 405 defines 'criminal breach of trust'. The essential ingredients of Section 405 are:

(1) The accused must be entrusted with property or dominion over property:

A (2) The person so entrusted must use that property or

(b) dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation

(i) of any direction of law prescribing the mode in which such
B trust is to be discharged, or

(ii) of any legal contract made touching the discharge of such trust.

Vide *Om Prakash Gupta* v. *State of U.P,* [1957] SCR 423 and
C *C.M. Narayan* v. *State of Travancore-Cochin*, AIR 1953 SC 479. We do not like to swell this judgment by citing all the decisions on this aspect.

In the present case, the entrustment or dominion over the property of the seed stores was not in dispute indeed there could be none.
D The essential questions that follow are; first, whether the first appellant had dishonestly misappropriated or converted the property entrusted to him to his own use or dishonestly used or disposed of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged; secondly whether the second appellant was also a privy to the alleged misappropriation; thirdly
E whether both the appellants forged false bills and cash receipts and then fraudulently or dishonestly used such documents as genuine; and fourthly whether the appellants in their capacity of public servants dishonestly misappropriated or converted that property to their own use or willfully suffered the Department by doing any act in violation of the directions, thereby making themselves liable to be punished for
F the aggravated form of criminal breach of trust under Section 409 IPC. The expression 'dishonestly' is defined under Section 24 of the Indian Penal Code. It is true that the series of circulars issued by the Directorate of Agriculture have laid down certain directions prescribing the mode in which such trust was to be discharged.

G Notwithstanding such circulars, it appears that the long established practice of credit sale of seeds, fertilisers, pesticides etc. from the Government Agriculture Seed Stores continued for some time, at least till the last circular issued on 26.7.68. The repeated issuance of the circulars indicate that inspite of these circulars, the practice of credit sale was in vogue. A close scrutiny of the evidence and records
H show that the superior officers inspite of the circulars did not take a

very serious view of the credit sale to the cultivators. In fact, by circular dated 2.8.67, the Director of Agriculture, U.P. while impressing the prohibition of credit sale, gave only a warning that the erring officials would be held 'personally responsible to pay the outstanding amount'. We, in the above circumstances, feel that the appellants could not be mulcted with the criminality of breach of trust for following the established practice of credit sale through VLWs. Since the High Court has set aside the conviction of the appellants under Sections 467 and 471 IPC, holding "There is nothing on record to show that any such document was forged by the appellants.

..... No such using of any forged documents was done by the appellants ..... their conviction under Section 467 and 471, IPC is not justified", the prosecution case of forging the bills and receipts and using them as genuine, is to be held to have been found to be 'not true'. As stated supra, the State has also not filed any appeal against the order of acquittal under charges 467 and 471 IPC. It necessarily follows that the explanation given in defence of the appellants that the six bills in question and cash receipts were not bogus but genuine has been accepted by the High Court. Under these circumstances, the prosecution cannot be said to have satisfactorily proved even the temporary misappropriation of the amount in dispute. In fact, before the Trial Court, it was contended that there has not been any dishonest misappropriation of the property entrusted to the appellant, but that contention was repelled by the Trial Court for the reasons shown in its judgment which reasons, in our considered opinion, are not convincing in view of the peculiar facts and circumstances of this case. The High Court has not at all discussed the legal question of dishonest misappropriation as contemplated under Section 405 IPC but has summarily disposed of the case without deeply going into the question of facts or law.

The charge under Section 409 is levelled against both the appellants. In our view, this charge against both the appellants cannot be sustained for the reasons to be presently mentioned.

The then D.A.O. Sultanpur passed the transfer order of certain officials inclusive of these two appellants by his order dated 9.5.65 whereunder the first appellant was transferred from Semrauna to block Kurebhar vice Puran Singh (second appellant) and the latter from Kurebhar to Semrauna vice N.P.N. Singh, the first appellant. It is not in dispute that the first appellant handed over the charge to the second appellant on 2.9.65 and till then the first appellant was incharge

A of both the seed stores situated in Semrauna and Kurebhar. The first appellant submitted his compliance report on 3.9.65 which is Exh. Ka-15. If it is so, how the second appellant who had not taken charge of seed store of Semrauna till 2.9.65 could be held to be liable for an offence under Sec. 409 in respect of the amount covered by the bills in question i.e. bill Nos. 57, 59 to 62 and 64 which were all prepared B between 29.7.65 to 12.8.65 i.e. earlier to the second appellant joining the block of Semrauna. Hence the finding of the Trial Court that both the appellants have committed breach of trust by preparing false bills has to be rejected and the resultant conclusion made on such finding is liable to be set aside.

C In Criminal Appeal No. 665 of 1979 arising out of Sessions Trial No. A-228 of 1974, the first charge reads that both the appellants on 4.7.64 in their capacity as public servants and being incharge of the seed store, Semrauna committed breach of trust of the goods shown in bill Nos. 11, 17 and 18 of book No. 7767 to the value of Rs.450.26. In that case also, there were charges under Section 467 IPC (three D counts). We are not concerned of the offence under Section 467 as the appellants now stand acquitted in this appeal also under those charges. The evidence now adduced by the prosecution discloses that the first appellant prepared the fictitious and bogus bill Nos. 11, 17 and 18 dated 4.7.64 for Rs. 186.71, Rs. 132.45 and Rs. 155.46 respectively—all totaling to Rs.480.26–which are the subject matter of the case under E Section 409 IPC, and that the said amount of Rs.480.26 was misappropriated by the first appellant and that when the matter came up to light, he started making payments by paying Rs.76 on 14.4.66 and Rs.27.60 on 7.8.66 towards bill No. 11, and left an outstanding amount of Rs.376.66 and that thereafter no payment was payment and the recoveries were made lateron on 2.12.69. It is further stated that the F second appellant after taking charge from the first appellant on 2.9.65 made the entries of payments said to have been made on 14.4.66 and 7.8.66. The second appellant had admitted that he received the payment towards bill No. 11 and deposited the same amount in Government treasury and that as he did not oblige the CID Inspector by making statement as per his choise, he is roped into this criminal G offence. The first appellant states in his defence that the 'gram sewaks' (i.e. VLWs) concerned made only part payment and the balance of Rs.376.58 was realized from his salary on 1.12.69 and the said amount was deposited in the State Bank of India, Faizabad on 2.12.69 under challan No. 99. The Trial Court has convicted the second appellant on the ground that the second appellant knowingly that the bills were H forged by the first appellant, received the payment and prepared the

receipts Exh. Ka 4 and Ka 5 for bill No. 11 of book No. 7767 and thereby made himself liable for the commission of breach of trust. This charge cannot be sustained both in law and facts for the reasons to be mentioned. Admittedly, the first appellant was incharge of the block at Semrauna till 2.9.65. According to this charge, the offence is said to have been committed on 4.7.64 when the second appellant was working in the block of Kurebhar and, therefore, both the appellants cannot be jointly charged on the allegation that on 4.7.64 they being the public servants of the seed store of Semrauna committed the breach of trust. Secondly, the prosecution has not satisfactorily established the main ingredient of 'dishonestly' against any of the appellants, even though at the worst, it may be said that the first appellant was guilty of dereliction of his duty in not collecting the outstanding amount by taking any appropriate steps in that regard. When the conviction recorded by the Trial Court under Section 467 is set aside by the High Court as against which no appeal is preferred by the State, the second appellant cannot in any way be fastened with the criminality of misappropriation by issuing the cash receipts in question. A close examination of the entire evidence and documents do not reveal any material, worth mentioning for jointly fastening both the appellants with the offence of criminal breach of trust punishable under section 409 IPC. Further, there is no evidence that there was any conspiracy, preconcert or concert of minds of the appellants or any pre-arranged plan between the two appellants to commit the offence or offences complained of.

Though this Court normally does not interfere with the concurrent findings of the fact except in exceptional circumstances, we for the discussion made above feel that this is a fit case for interference at the hands of this Court since both the Courts below instead of dealing with the intrinsic merits of the evidence of the witnesses, have acted perversely by summarily disposing of the case, pretermitting the manifest errors and glaring infirmities appearing in these cases.

In the result, both the appeals are allowed and the conviction and sentences awarded by the High Court are set aside and the appellants are acquitted.

Before parting with the judgment, we would like to observe that during the course of the hearing, it was submitted on behalf of the appellants that in case of acquittal and consequent re-instatement in service, the appellants would not claim their back wages. The appellants have now filed two separate affidavits stating that they would not

A claim back wages during the period they remained under suspension and later under termination from service.

Based on the undertakings of the appellants not to claim back wages and considering the facts and circumstances of the case, we would like to observe that in case the appellants, pursuant to their B acquittal, are reinstated in service by the State Government unless for some other reason, they, although ordinarily entitled for back wages, will not be having any claim for the back wages from the date of suspension upto the date of reinstatement.

G.N. Appeals allowed.