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**(2010) 05 UK CK 0020**  
**In the Uttarakhand High Court**

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|-------------------------------------------------|------------|
| Girja Shankar Pathak and Jagdish Chandra Sharma | APPELLANT  |
| Vs                                              |            |
| State of Uttarakhand                            | RESPONDENT |

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**Date of Decision :** 24-05-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 409, 420

**Citation :** (2010) 05 UK CK 0020

**Hon'ble Judges :** Prafulla C. Pant, J

**Bench :** Single Bench

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## Judgement

Prafulla C. Pant, J.—Both these revisions are directed against the judgment and order dated 10.06.2009, passed by Addl. Sessions Judge/First F.T.C., Haldwani, District Nainital, in Criminal Appeal No. 12 of 2007 and Criminal Appeal No. 13 of 2007, whereby said court has dismissed the two appeals and affirmed the conviction and sentence of both the revisionists, relating to offences punishable u/s 409 and 420 of I.P.C. The trial court (Chief Judicial Magistrate, Nainital) vide its judgment and order dated 22.03.2007, had convicted the revisionists Girja Shankar Pathak and Jagdish Chandra Sharma u/s 409 and 420 of I.P.C., and sentenced each one of them to rigorous imprisonment for a period of six months, and also directed to pay fine of Rs. 2,000/-, on each count.

2. Heard and perused the record.

3. Prosecution story, in brief, is that on 10.04.1996, the Sr. Superintendent of Police, Nainital, sent a report (Ext. A -11) to Police Station Tallital, wherein it was mentioned that after receiving the enquiry report from Circle Officer, Bhowali, it was found that on 17.10.1995, a refund bill for an amount of Rs. 12,867.65 was got prepared for withdrawal of the amount by Accountant Girja Shankar Pathak (revisionist), Constable Jagdish Chandra Sharma (revisionist) and one Madan Singh Adhikari. In said bill amount of Rs. 4,538/- relating to one Contable Ram Dutt (who had already been transferred from Nainital to Pithoragarh), and an amount of Rs. 3,072/- relating to one Constable Mahendra Singh (who had

already died) was included. As such out of Rs. 12,867.65, total amount of Rs. 7,610/- was withdrawn and shown distributed without their being anyone to receive said amount. Revisionist Girja Shankar Pathak was the Accountant, another co-accused Madan Singh Adhikari (not charge sheeted) was Assistant Accountant, and Constable Jagdish Chandra Sharma was the helping hand with them in the office of the Sr. Superintendent of Police, Nainital. After Crime No. 107 of 1996 registered on the basis of the report sent by the Sr. Superintendent of Police, Nainital, the matter was investigated and charge sheet was filed against the revisionists Girja Shankar Pathak and Jagdish Chandra Sharma.

4. The trial court after giving necessary copies to the accused, appears to have framed charge relating to offences punishable u/s 409 and 420 of I.P.C. against the aforesaid two accused. They pleaded not guilty and claimed to be tried. Later, one Shyam Sundar was also summoned as an accused. However, he (Shyam Sundar) was acquitted of the charge. After the two accused/revisionists pleaded not guilty, on 07.10.1999 the prosecution got examined P.W. 1 Head Constable Pani Ram, P.W. 2 Madan Singh Adhikari, P.W. 3 Prakash Chandra (Accountant), P.W. 4 Head Constable Shyam Sundar, P.W. 5 Tej Pal Singh, P.W. 6 Vimla Gunjal (Circle Officer, Bhowali), P.W. 7 Sub Inspector Ram Dutt Joshi, and P.W. 8 Beer Singh Ahlawat (Investigating Officer). The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., to which they replied that the same was false. On behalf of defence, D.W. 1 K.G. Bhardwaj (In-charge Accountant) and D.W. 2 Shyam Bihari (Asstt. Accountant) were produced. The trial court after hearing the parties found both the accused/revisionists guilty of offences punishable u/s 409 and 420 of I.P.C. After hearing them on sentence, each one of the convicts was sentenced to rigorous imprisonment for a period of six months and directed to pay fine of Rs. 2,000/- on each count. On this, accused/revisionist Jagdish Chandra Sharma filed Criminal Appeal No. 12 of 2007, and accused/revisionist Girja Shankar Pathak filed Criminal Appeal No. 13 of 2007. Both the appeals were heard together by the lower appellate court (Addl. Sessions Judge/First F.T.C., Haldwani), and the same were dismissed vide impugned order dated 10.06.2009, affirming the judgment and order dated 22.03.2007, passed in Criminal Case No. 304 of 2001, by the Chief Judicial Magistrate, Nainital. Hence, these revisions.

5. On behalf of the revisionists it is argued that there was no entrustment of amount of Rs. 7,610/- to the revisionists, as such, the ingredients of offence punishable u/s 409 of I.P.C., are not made out. It is further pleaded that the accused had no role in commission of the offence alleged as there was no dishonest intention on their part which is necessary for the purposes of constituting offence punishable u/s 420 of I.P.C.

6. On perusal of the lower court record, this Court finds that there is sufficient evidence adduced by the prosecution witnesses that the bill in question was prepared by accused/revisionist Jagdish Chandra Sharma. The plea taken by accused/revisionist Jagdish Chandra Sharma before the trial court was that he

had prepared the bill under the instructions of Assistant Accountant, as such, he cannot be held liable for the offence. After going through the evidence on record, this Court is in agreement with the courts below that there is ample evidence that the bill in question was prepared by accused/revisionist Jagdish Chandra Sharma. It is not the plea of any of the accused/revisionists that when the bill was prepared, by then Constable Ram Dutt had not been transferred to Pithoragarh or Constable Mahendra Singh had not died. The evidence of prosecution on this point remains un-rebutted. As such, the question arises where the amount of Rs. 4,538/- drawn in the name of Constable Ram Dutt (transferred), and amount of Rs. 3,072/- drawn in the name of Constable Mahendra Singh (deceased), had gone. There is clear embezzlement of said amount of Rs. 7,610/-. Both the courts below have discussed the role of the Accountant (accused/revisionist Girja Shankar Pathak) and the helping hand accused/revisionist Jagdish Chandra Sharma in getting the bill drawn and misappropriating the same. Had the accused been innocent, the amount even if drawn mistakenly, should have been shown in the balance in the cash, but the same was shown on the records as "Nil". That being so, this Court does not find sufficient reasons to interfere with the impugned orders passed by the courts below so far it relates to the question of their conviction u/s 409 and 420 of I.P.C.

7. On behalf of accused/revisionists it is also pointed out that the original bills were not placed on the record. Since, admittedly, the bill was prepared by the accused Jagdish Chandra Sharma, and it is nobody's case that the disputed amount was not withdrawn, merely for the reason that original bill is not on the record, makes no difference particularly when the copy of the bill was proved by the prosecution witnesses examined by the trial court.

8. However, on the point of sentence this Court is of the view that since the accused/revisionist Jagdish Chandra Sharma has lost his job, and already undergone 25 days in jail and also deposited the fine directed to be paid by him, the sentence of imprisonment deserves to be reduced to the period already undergone by him in jail. Similarly, as to the accused/revisionist Girja Shankar Pathak, he has also spent about more than 45 days in jail during the pendency of this revision, and is 73 years old man, in the circumstances, his sentence is also reduced to 30 days imprisonment and 15 days imprisonment in default of payment of fine. Since, the revisionist Girja Shankar Pathak has undergone more than 45 days in jail, he shall be set at liberty if not required to be detained in connection with any other crime. Revisionist Jagdish Chandra Sharma is on bail. His bail bonds are cancelled and sureties discharged. He need not to surrender. With above modification in sentence, both the revisions stand disposed of. Lower court record be sent back.