

*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.*

## [Case Brief] Jiwan Dass, Mittar Pal Yadav Vs. State of Haryana

**Case name:** Jiwan Dass, Mittar Pal Yadav Vs. State of Haryana

**Case number:** (1999) 1 SCR 922

**Court:** The Supreme Court of India

**Bench:** G.B. Pattanaik, J  
M.B. Shah, J

**Decided on:** 26/02/1999

**Relevant Act/Sections:** Section 409 of the Indian Penal Code

### ➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. The accused persons were posted in the office of Government Heat Treatment Centre at Bahadurgarh and on 23.2.82, they were authorized to bring 10,000 liters of light diesel oil from the Indian Oil Corporation, Delhi. For that purpose, the letter of authority as well as the bank draft to the tune of Rs. 28,275.83 were given to them. The said two accused persons deposited the bank draft with Indian Oil Corporation and took delivery of 10,000 liters of light diesel oil but ultimately the quantity of diesel was found to be less by 4300 liters, the value of which was Rs. 12,160/-. It is the prosecution case that both the accused persons committed the embezzlement of oil in question.
2. The Learned Sub Divisional Judicial Magistrate, held that the prosecution has been able to

establish the charges beyond reasonable doubt against both the accused persons and accordingly convicted them under Section 409 IPC and sentenced them to undergo rigorous imprisonment for three years and imposed a fine of Rs.3000/-, in default to further undergo imprisonment for three months.

3. The accused persons appealed before the Sessions Judge and the learned Sessions Judge affirmed the conviction and sentence passed by the learned Magistrate and dismissed the appeal. The matter was then carried to High Court in revision and the High Court by the impugned Judgment having dismissed the said revision, the present appeals have been preferred.

➤ **ISSUE BEFORE THE COURT:**

1. Whether both the accused persons or any one of them committed the offence under Section 409 IPC.

➤ **RATIO OF THE COURT**

1. Court laid down that 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. The necessary elements constituted in the offence must be strictly proved by the prosecution. It is true that prosecution need not prove the actual mode of misappropriation and once entrustment of or dominion over the property is established, then it would be for the accused to explain as to how the property was dealt with.
2. It has been elicited from the evidence of PW-1, Senior Technical Officer at Bahadurgarh the conclusion is irresistible that delivery of diesel oil had been given to accused Mittar Pal Yadav, who in token thereof, had signed not only on the cash memo but also on the register itself. In the absence of any other material produced by the prosecution it is difficult for us to hold that either there was any entrustment of the diesel to accused Jiwan Dass or he had any dominion over the same.
3. The gravamen of the charge being misappropriation of 4300 liters of diesel oil which was found to be in shortage while measuring the diesel that had been brought and the said diesel having been delivered to Mittar Pal Yadav, who had signed the relevant documents in token thereof, the entrustment to or dominion over the diesel by Jiwan Dass has not been established and as

such the prosecution has not been able to establish the charge under Section 409 IPC beyond reasonable doubt as against accused Jiwan Dass in respect of the shortage of diesel to the tune of 4300 litres.

4. With the oral and documentary evidence, it is established that delivery of diesel oil had been given to accused Mittar Pal Yadav, who in token thereof, had signed not only on the cash memo but also on the register itself. Jiwan Dass being a senior officer may only be responsible for dereliction of his duty in not taking delivery of the diesel himself.

➤ **DECISION HELD BY COURT:**

1. The conviction of Jiwan Dass under Section 409 IPC cannot be sustained and court accordingly set aside the conviction and sentence against the accused Jiwan Dass and acquit him of the charge levelled against and Criminal Appeal No. 990 of 1995 was accordingly allowed and his bail bonds stand discharged.
2. Court did not find an justification in interfering with the conviction and sentence passed against the accused Mittar Pal Yadav and consequently, Criminal Appeal No. 991 of 1995 stands dismissed. His bail bonds also stand cancelled and he must surrender to serve the balance period of sentence.