

Stereo. HCJDA 38  
JUDGMENT SHEET  
**LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

**Writ Petition No. 54567/2021**

**Mir Mobeen Ahmad**

**Vs.**

**Ex officio Justice of Peace and others**

**JUDGMENT**

<b>Date of hearing:</b>	<b>10.04.2025</b>
<b>For the Petitioner:</b>	Mr. Muhammad Haseeb Javaid, Advocate.
<b>For Respondents No. 1, 2, 4, &amp; 5:</b>	Mr. Sittar Sahil, Assistant Advocate General.
<b>For Respondent No.3:</b>	Mr. Mustansar Hayat, Advocate.
<b>Research assistance:</b>	Mr. Ejaz Ahmad Sipra, Research Officer, LHCRC.

**Tariq Saleem Sheikh, J.** – Respondent No.3, a Pakistani-born U.S. citizen and retired U.S. Army serviceman, returned to Pakistan and established a pharmaceutical marketing business under the name T.G. Pharma (“TGP”). According to him, on 01.07.2017, he employed the Petitioner, Mir Mobeen Ahmad, as Sales Manager, who brought in his own team. After some time, Respondent No.3 noticed a significant drop in sales. He drew the Petitioner’s attention to it, but he was evasive. Subsequently, Respondent No.3 had the business accounts audited, which allegedly revealed that the Petitioner had supplied medicines worth Rs. 5,513,180.85 to various pharmacies. He issued notices to them to recover the money. Many claimed to have already paid the Petitioner, while others denied purchasing any medicines. Respondent No.3 accused the Petitioner of misappropriating the funds and falsifying records to conceal the fraud. On 23.03.2021, he submitted a written application to the SHO, Police Station Mustafa Town, Lahore, requesting registration of an FIR against the Petitioner.

2. The SHO did not take any action on Respondent No.3's aforementioned complaint. Therefore, he approached the Ex officio Justice of Peace, Lahore ("JOP"), under section 22-A Cr.P.C. for intervention. However, on 31.05.2021, he withdrew his application to avail a remedy before the Punjab Overseas Pakistanis Commission (the "Commission"), reserving his right to make a fresh application under section 22-A Cr.P.C. on the subject, if required.

3. The Commission registered Respondent No.3's complaint (ID No.28249) and, vide Letter No.612 dated 11.06.2021, the Director (Police Matters) referred the matter to the DIG Operations, asking him to "redress the grievance of the complainant on priority in accordance with law and share progress within 07 days." This exercise was without fruition. Therefore, on 14.07.2021, Respondent No.3 approached the JOP under section 22-A Cr.P.C. seeking a direction to the SHO, Police Station Mustafa Town, for registration of FIR against the Petitioner. The JOP issued notice to the Petitioner but he did not appear.<sup>1</sup> The JOP accepted Respondent No.3's application by order dated 02.09.2021 (the "Impugned Order") and issued the requisite directive, observing that it disclosed commission of a cognizable offence.

4. The Petitioner has challenged the Impugned Order before this Court through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"). He contends that Respondent No.3 has obtained it through fraud, misrepresentation and concealment of facts. He denies having joined TGP as a Sales Manager and also the existence of a master-and-servant relationship between them. He asserts that he invested in TGP under an agreement dated 01.07.2017 (the "Agreement"), purchased 15% share and became a partner in the business which was previously owned and run by Respondent No.3 as a sole proprietor. He gave four cheques of different dates for an aggregate amount of Rs.1,950,000/- to Respondent No.3 in pursuance of the Agreement for the purchase of the aforementioned share in the business. The first cheque (No.2400104340 dated 03.10.2017) for Rs. 500,000/- was encashed upon which Respondent No.3 inducted the Petitioner into the business, and he

---

<sup>1</sup> See Paragraph 8 of the Impugned Order dated 02.09.2021.

started working. The Petitioner alleges that in July 2019, Respondent No.3 shifted TGP's office to his residence without the Petitioner's consent or notifying him, and verbally informed him that he had expelled him from the business. The Petitioner states that he asked Respondent No. 3 to settle the accounts so that the firm's profit and losses could be determined and he could recover his investment, along with the profit from the previous two years, but he refused. Instead, Respondent No.3 published a notice in the daily *Khabrain* dated 19.10.2019 stating that the Petitioner was his employee and had been dismissed from service due to misconduct. The Petitioner immediately responded and published a rebuttal in the daily *Jehan Pakistan* dated 23.11.2019, contradicting Respondent No.3's claim and to clarify his own position.

5. The Petitioner contends that Respondent No.3's claim is falsified by the Agreement (a copy whereof has been appended with the present petition). He submits that Respondent No.3 was obligated to file his appointment letter along with his application under section 22-A Cr.P.C. because he claimed that the Petitioner was his employee (Sales Manager). However, no such letter was produced. According to the Petitioner, the very foundation on which Respondent No.3 built his case is missing, so the Impugned Order is unsustainable.

6. The Petitioner further contends that one partner cannot invoke section 406 PPC against another partner. Since the Agreement establishes that the Petitioner and Respondent No.3 were partners in TGP, Respondent No.3 should seek remedy before the civil court. He cannot prosecute the Petitioner under section 406 PPC for breach of trust, if any.

7. It is important to highlight that this Court suspended the operation of the Impugned Order on 10.09.2021. Respondent No.3 filed C.M. No.4/2021 for vacation of the injunction, narrating facts substantially different from those stated in his application dated 23.03.2021 to the SHO, Police Station Mustafa Town, Lahore. His version in that application was that the Petitioner had lured him into signing the Agreement through false pretences. Shortly thereafter, he (Respondent No.3) went abroad for medical treatment, and during his absence, the Petitioner allegedly started selling "precious items" belonging to TGP, which his staff reported to him.

Thereupon, Respondent No.3 rushed back to Pakistan and confronted the Petitioner, but received no proper explanation. He issued notices to the vendees, who replied that they had paid the full amount to the Petitioner and owed nothing further. Respondent No.3 alleged that the Petitioner misappropriated the sale proceeds of TGP's assets. He admitted that he had received Rs. 500,000/- from the Petitioner through Cheque No.2400104340 dated 03.10.2017, but claimed that the remaining three cheques were not encashed for reasons attributable to the Petitioner. Hence, he asserted, no valid partnership was constituted.

8. Respondent No.3 has vehemently opposed this petition. He contends that his application to the Respondent SHO disclosed commission of a cognizable offence. As such, the JOP was justified in passing the Impugned Order. Respondent No.3 argues that "criminal breach of trust" as defined in section 405 PPC has a wide scope and sections 406 to 409 PPC prescribe the punishment for that offence committed by various individuals. None of these provisions prohibits the prosecution of one partner by another. The Petitioner's argument to the contrary is misconceived.

9. The Assistant Advocate General has argued only on the interpretation of sections 405 to 409 PPC and has supported Respondent No.3 on this score.

### *Opinion*

10. I must begin with section 405 PPC which defines the offence of "criminal breach of trust". It reads:

**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".<sup>2</sup>

---

<sup>2</sup> **Clarificatory Note:**

The provisions of section 405 of the Pakistan Penal Code, 1860 ("PPC") are identical to section 405 of the Indian Penal Code, 1860 ("IPC"). The pre-partition and post-partition Indian authorities cited in this judgment therefore remain relevant for interpretative guidance. For ease of reference, this judgment refers to section 405 PPC (or simply section 405 of the Penal Code), although the cited Indian cases use the IPC nomenclature.

11. The essential ingredients of criminal breach of trust under section 405 PPC are: (i) the accused must be entrusted with property or dominion over it; and (ii) he must have dishonestly misappropriated the property or converted it to his own use or disposed of it in violation of any trust or willfully suffered any other person to do so. The offence of criminal breach of trust resembles the offence of embezzlement under English law.<sup>3</sup> The punishment for ordinary cases is provided in section 406 PPC but there are also aggravated forms of the offence which are dealt with under sections 407 to 409 PPC. Both the aforementioned elements must be present simultaneously to constitute criminal breach of trust.<sup>4</sup>

12. The first condition mentions three important terms: entrustment, dominion, and property. “Entrustment” means handing over possession of something for some purpose without conferring the right of ownership<sup>5</sup> while “dominion” refers to “the right of control or possession over something, such as, dominion over the truck”.<sup>6</sup> The term “property” has been used without any qualification, so it must be understood in the wider sense. There is no reason to restrict its meaning to movable property.<sup>7</sup> A trust contemplated by section 405 PPC would arise only when the property belongs to someone other than the accused.

13. In *Jaswantrai Manilal Akhaney v. State of Bombay* [1956] SCR 483, 498-500 : AIR 1956 SC 575, the Supreme Court of India (SCI) held that “entrustment” under section 405 of the Penal Code does not require the creation of a trust with all the technicalities of trust law. Rather, it envisages a relationship in which the owner of property delivers it to another to be retained by him until a specified contingency arises or to be disposed of upon the happening of a defined event. The transferor continues as the legal owner of the property, while the person in whose favour possession is transferred acquires only custody for the benefit of the transferor. At the most, he obtains a special interest, such as a claim for

<sup>3</sup> Ratanlal & Dhirajlal, *The Indian Penal Code*, 33rd Edition, p. 2763.

<sup>4</sup> *Abdul Rashid Nasir and others v. The State* (2009 SCMR 517), *Ali Raza v. The State and others* (2022 SCMR 1223), *Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another* (2025 SCMR 1130).

<sup>5</sup> *N.N. Burjorjee v. Emperor* (AIR 1935 Rangoon 453).

<sup>6</sup> <https://definitions.uslegal.com>

<sup>7</sup> *R.K. Dalmia and others v. The Delhi Administration* (AIR 1962 SC 1821).

money advanced, expenses incurred for safekeeping, or other incidental charges. Similarly, in *The State of Gujarat v. Jaswantlal Nathalal* (AIR 1968 SC 700), the SCI held that before there can be entrustment, there must be a trust, that is, an obligation attached to ownership of property coupled with confidence reposed in and accepted by the recipient, either for the benefit of another alone or for both the owner and the recipient. However, such entrustment need not conform to the technicalities of trust law. The term “entrustment” implies that the person handing over property, or on whose behalf it is handed over, continues to be its legal owner. Furthermore, the delivery must be accompanied by confidence in the recipient sufficient to create a fiduciary relationship.

14. The Supreme Court of Pakistan has adopted the same approach. In *Muhammad Amjad Naeem v. The State and another* (2025 SCMR 1130), it held that the term “entrustment” in section 405 PPC refers to a transaction in which a person gives property to another as a trust (*Amanat*), reposing confidence in the recipient. The latter is under a legal obligation to return the property to the entrustor. This obligation implies that ownership of the property remains with the entrustor and is not transferred to the recipient, who merely holds temporary possession or custody for a specific purpose. The recipient must return the same property and may not use or dispose of it in any other manner or for any purpose other than that specified by the entrustor. In this way, entrustment creates a fiduciary relationship between the entrustor and the recipient. However, the judgment clarifies that this does not mean that such entrustment must conform to the technical requirements of trust law.

15. Given the above, the concept of entrustment under section 405 PPC does not ordinarily extend to transactions such as investments, loans, sales, promises of profit, or breaches of mere contractual promises.<sup>8</sup>

16. The second condition to constitute criminal breach of trust under section 405 PPC is dishonesty. Section 24 PPC defines “dishonestly” as “Whoever does anything with the intention of causing wrongful gain to

---

<sup>8</sup> *Ayesha Tayyab v. Station House Officer, Police Station Cantt. District Sialkot and others* (2025 SCMR 1117). Also see: *Shahid Imran v. The State and others* (2011 SCMR 1614), *Muhammad Ali v. Samina Qasim Tarar and others* (2022 SCMR 2001), and *Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another* (2025 SCMR 1130).

one person or wrongful loss to another person is said to do that thing “dishonestly”. In *Ivey v. Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67, the Supreme Court observed that dishonesty is distinct from negligence and approved the following test set out by Lord Nicholls in *Royal Brunei Airlines Sdn Bhd v. Tan*<sup>9</sup> and by Lord Hoffmann in *Barlow Clowes International Ltd v. Eurotrust International Ltd.*<sup>10</sup> Lord Hoffmann, at pp 1479-1480, stated:

“Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant’s mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law, and their Lordships agree.”

The Supreme Court further stated:

“When dishonesty is in question, the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

17. Dishonest misappropriation may sometimes be inferred from the circumstances if there is no direct evidence.<sup>11</sup> This second condition is satisfied by any one of four positive acts, namely, misappropriation, conversion, use, or disposal of property.<sup>12</sup>

18. Partnership arrangements create a distinct challenge because partners are treated in law as joint owners of the firm’s assets until dissolution and settlement of accounts. This raises the question as to whether one partner can ever be said to be “entrusted” with partnership property for the purposes of section 405 PPC, or whether misappropriation of such property merely gives rise to civil liability. This issue has sparked considerable debate across jurisdictions, resulting in conflicting judicial opinions.

<sup>9</sup> [1995] 2 AC 378

<sup>10</sup> [2005] UKPC 37; [2006] 1 WLR 1476.

<sup>11</sup> *Jaikrishnadas Manohardas Desai v. The State of Bombay* (AIR 1960 SC 889).

<sup>12</sup> *Ratanlal & Dhirajlal, The Indian Penal Code*, 33rd Edition, p. 2763.

19. Under English common law, a partner could not be charged with larceny or embezzlement of partnership property because, as a joint owner, he was regarded as having an equal proprietary interest in the firm's assets. Even if he received money on behalf of the firm and failed to account for it, he could not be prosecuted because the property was deemed as much his own as that of his co-partners. This was notwithstanding that, as an agent of the firm, a partner could be said to have received property in a fiduciary capacity (as an agent or servant of the firm), and his failure to account for it could resemble embezzlement. To address this difficulty, a specific provision was introduced in the Larceny Act 1901 to enable the prosecution of a partner for larceny or embezzlement of partnership property.<sup>13</sup> However, no corresponding provision exists in the Pakistan Penal Code.

20. In British India, earlier authorities generally held that if there is a partnership, there could not be a conviction for criminal breach of trust. However, in *The Queen v. Okhoy Coomar Shaw*, (1874) 13 Beng. L.R. 307, a Full Bench of the Bengal High Court (comprising five judges) held that the language of section 405 of the Penal Code was broad enough to include a partner, provided that both entrustment and dishonest misappropriation were proved. Whether the element of entrustment exists in a given case is a question of fact. The Court rejected the proposition that partners should be exempt from the operation of this provision solely because of their joint ownership of partnership property.<sup>14</sup>

21. The ruling in *Okhoy Coomar Shaw* has been criticized on two main grounds. First, it has been described as largely theoretical. It offers little practical guidance on how or in what circumstances a partner can be said to be "entrusted" with partnership property or to have misappropriated it, given the joint ownership of firm assets. Secondly, sections 403 to 409 of the Penal Code fall under Chapter XVII, titled "*Offences Against*

<sup>13</sup> Under English law, the Larceny Act 1861 consolidated and codified various theft-related offences, including embezzlement by clerks, servants and agents. However, it did not clearly extend to all forms of misappropriation by co-partners. The Larceny Act 1901 amended sections 75 and 76 of the 1861 legislation to impose liability for fraudulent conversion (i.e. misappropriation of entrusted property) in cases where a person had been entrusted with property. Under the 1916 consolidation, many of these provisions were reformed and absorbed in a revised statutory scheme.

<sup>14</sup> *Okhoy Coomar Shaw* was followed in *Jagannath Baghunathdas v. Emperor* (AIR 1932 Bombay 57), *Bhikchand Gangaram v. Emperor* (AIR 1934 Sind 22), *Sham Lal v. Chaman Lal and another* (AIR 1939 Lahore 406).

*Property,"* and more specifically under the sub-heading "*Criminal Misappropriation of Property.*" These provisions enumerate various categories of persons (such as clerks, servants, carriers, public servants, and agents) but make no reference to partners, not even in the statutory illustrations appended thereto. The illustrations envision cases in which property is wholly owned by another person and entrusted to the accused, rather than property jointly owned with them. If these illustrations are treated as indicative of legislative intent, they suggest that the provisions were not meant to apply to partners. Further, section 424 of the Penal Code demonstrates that dishonest or fraudulent concealment of one's own property is punishable only because it expressly includes the phrase "property of himself or any other person."<sup>15</sup>

22. In **Bhuban Mohan Das v. Surendra Mohan Das** (AIR 1951 Cal. 69), a Full Bench of the Calcutta High Court (comprising five judges) considered, on reference, the correctness of the decision in *Okhoy Coomar Shaw*. Harries C.J. observed that for a charge under section 406 of the Penal Code to succeed against a partner, it must be shown that property belonging to someone else was entrusted to him. A partnership firm, unlike a limited company, has no legal existence separate from its partners and cannot own property independently. If a partner holds partnership property, it cannot be said that he has been entrusted with his own share in it. Nor can it be easily asserted that he holds his co-partner's share in trust, since the extent of each partner's interest is indeterminate until the accounts are taken, liabilities are settled, and the remaining assets are distributed in accordance with the partnership agreement. In view of this, a partner who receives partnership property in the ordinary course cannot be regarded as entrusted with the specific share of another partner so as to attract section 406. The learned Chief Justice further clarified that whether a partner may be said to have been entrusted with property depends on the existence of a special agreement between the parties. In the absence of such an agreement, the partner does not receive property in a fiduciary capacity. However, if a partnership agreement expressly authorizes one partner to have exclusive possession of the firm's

---

<sup>15</sup> *Bhuban Mohan Das v. Surendra Moham Das* (AIR 1951 Cal. 69).

assets or to receive funds on its behalf, then it may be arguable (though not conclusively so) that such a partner entrusts money to another when giving it to him for a defined purpose.

23. Answering the reference, the Court held that *Okhoy Coomar Shaw (ibid.)* and *Alla Rakha v. Liakat Hossein* (44 C.W.N. 650) could not be regarded as correctly decided if they were read to lay down a general rule that partners may be prosecuted under section 406 of the Penal Code for handling partnership property in the ordinary course of business. Nevertheless, those decisions might be treated as sound precedents if confined to cases involving a special agreement that vests one partner with dominion or entrustment over the property.

24. The SCI reaffirmed the above view in *Velji Raghavji Patel v. State of Maharashtra* (AIR 1965 SC 1433). It clarified that every partner has dominion over partnership property by virtue of his status as a partner. This dominion is inherent in ownership and is of the kind possessed by any co-owner over jointly held property. However, such dominion, by itself, does not satisfy the requirement of “entrustment” under section 405 of the Penal Code. To establish criminal breach of trust, it must be shown that the accused’s dominion over the property arose specifically from an act of entrustment. The Court further held that an owner of property, even if not its exclusive owner, cannot be held guilty of misappropriation merely for using that property, regardless of intent. Since a partner has a joint and undefined interest in the entire partnership estate, his use of partnership assets for personal purposes may give rise to civil liability, but it does not amount to criminal misappropriation within the meaning of the Penal Code.

25. In *Debabrata Gupta v. S. K. Ghosh* [(1970) 1 SCC 521], the SCI held that an FIR under sections 406 and 424/34 of the Indian Penal Code (which are *pari materia* with sections 406 and 424/34 of the Pakistan Penal Code) could not be quashed merely on the ground that the dispute arose out of partnership dealings. The Court emphasized that criminal liability may still occur if the allegations disclose that the accused partner was entrusted with property under a specific agreement and misappropriated it in breach of that trust. A similar approach was adopted in *Anil Saran v. State of Bihar* [(1995) 6 SCC 142], where it was

contended that a partner could not be said to have committed a criminal breach of trust in respect of their own funds, and that the matter was purely one of civil liability. The Supreme Court ruled that a partnership firm is not a legal entity but a legal mode of carrying on business by all the partners. Until the firm is dissolved in accordance with the law and the accounts are settled, all partners have joint dominion over the property and funds of the firm. Criminal breach of trust under section 406 is not constituted with respect to property belonging to the partnership firm; it arises only where property is specially entrusted to a partner under a particular contract and he holds it in a fiduciary capacity under that contract. If such property is misappropriated, the offence is made out.

26. Jurisprudence in Pakistan has developed along the same lines. In Abdul Hakim v. The State and another (PLD 1978 Karachi 359), the Sindh High Court quashed an FIR lodged by one partner against another on the ground that the accused had received money on behalf of the partnership, not in a fiduciary capacity, and that the proper remedy was a civil suit for rendition of accounts. Similarly, in Kazim Ali Dossa v. Faisal Malik and others (1980 PCr.LJ 818), the Court set aside a conviction under section 406 PPC because no special entrustment of the firm's assets to the accused partner was established.

27. In sum, the prevailing view is that a partner may be prosecuted under section 406 PPC only if there is proof of special entrustment or dominion over a particular asset arising from a distinct agreement, and the alleged misappropriation is established. In the absence of such entrustment, misappropriation of partnership property constitutes a civil wrong rather than a criminal offence.

28. Having examined the governing principles, it is now necessary to consider their application to the present dispute by reviewing the agreement between the parties and determining whether it created any special entrustment or fiduciary control over the property in question. The Petitioner has produced a copy of Agreement No. T980365 (drawn on a stamp paper of Rs. 100/-) executed between him and Respondent No.3, effective from 01.07.2017. According to this document, Respondent No.3 was the sole owner of TGP, which he valued at Rs. 13 million, including

receivables. He agreed to transfer a 15% share therein to the Petitioner for Rs. 1,950,000/- . For this purpose, the Petitioner issued the following four cheques:

Cheque #	Date	Amount (Rupees)
2400104340	03.10.2017	500,000
2400104338	01.04.2018	500,000
2400104339	01.07.2018	500,000
2400104341	01.11.2018	450,000

29. Clauses 1.2, 3.4, and 3.5 of the Agreement are relevant for our present purpose, so they are reproduced below in *extenso*:

1.2 Now in compliance of that mutual agreement, First Party is willing to transfer his 15% Share in business of “TG Pharma” to Second Party.

3.4 First party would be liable to transfer share in business to second party up to the payment actually received by the first party.

3.5 In case, any of the aforementioned cheques issued by second party dishonour, then clause (1.2 in subject matter) is not binding on the first party. First party will transfer share to second party in proportion to amount actually received.

30. As discussed, Respondent No.3 represented that the Petitioner was his employee (Sales Manager) while making the complaint to the Respondent SHO and subsequently while filing an application under section 22-A Cr.P.C. before the JOP on 09.04.2021. He concealed the Agreement on both occasions. During the proceedings on this constitutional petition, in C.M. No.4/2021, he changed his stance and levelled altogether different allegations against the Petitioner, as detailed earlier in this judgment. Since his application under section 22-A Cr.P.C. formed the basis of the Impugned Order (and resultantly this petition), Respondent No.3 cannot be permitted to take a stance inconsistent with what he then asserted.

31. Out of the four cheques listed above, Cheque No. 2400104340 for Rs. 500,000/- was encashed. Respondent No.3 contends that no valid partnership ever came into existence because only one cheque was honoured and the remaining cheques were not encashed. This contention overlooks Clause 3.5 of the Agreement, which expressly provides that shares in the business would be transferred to the extent of the payments

actually received. The clause does not make full payment a condition precedent for the creation of rights; it envisages a proportionate transfer corresponding to the amount realized. Accordingly, upon receipt of Rs. 500,000/-, the Petitioner became a partner in TGP to that extent. This is notwithstanding the fact that no formal transfer of shares was made pursuant to Clause 3.5.

32. Under section 4 of the Partnership Act, 1932, a partnership is constituted when two or more persons agree to share the profits of a business carried on by all or any of them acting for all. Unless agreed otherwise, the Partnership Act does not require that a full capital contribution or a formal transfer of shares precede the formation of a partnership. Mutual intention to share profits suffices. Although the Agreement dated 01.07.2017 does not expressly use the word “partnership”, its terms indicate a profit-sharing arrangement, including the Petitioner’s proposed 15% share in TGP. Clause 3.5 stipulates that upon partial payment, a proportionate share would be transferred. In the circumstances, Respondent No. 3 cannot deny the existence of the partnership altogether. At most, the dispute concerns the extent of the Petitioner’s share and the settlement of accounts, which are matters of civil liability rather than criminal culpability.

33. The Agreement does not specify the Petitioner’s duties. Clause 4.3 merely stipulates that Respondent No. 3 will be the managing partner and that operational responsibilities, including the management of bank accounts, will be determined later by mutual consent. This clause indicates that managerial control remained with Respondent No.3 and that no exclusive dominion over the partnership property was conferred on the Petitioner.

34. Although Respondent No. 3 has described the Petitioner as a Sales Manager, the documentary record, particularly the Agreement dated 01.07.2017 and the admitted receipt of Rs. 500,000/-, contradicts that claim. Even if the Petitioner performed certain sales-related functions, his legal status remained that of a partner to the extent of the amount paid.

35. In view of the foregoing and the principles discussed above, the allegations made by Respondent No.3 do not establish the essential elements of “criminal breach of trust” under section 405 PPC, particularly in the absence of any special agreement conferring exclusive dominion over partnership assets. Moreover, the concealment of the Agreement before the JOP undermines the credibility of Respondent No.3’s application. The Impugned Order is, therefore, unsustainable. **This petition is accepted and the Impugned Order is set aside.**

(Tariq Saleem Sheikh)  
Judge

*Naeem*

Announced in open court on \_\_\_\_\_

Judge

Approved for reporting

Judge