

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Breach of Trust

#### [s 408] Criminal breach of trust by clerk or servant.

Whoever, being a clerk<sup>1</sup> or servant<sup>2</sup> or employed as a clerk or servant,<sup>3</sup> and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### COMMENT—

Section 381 punishes theft by a clerk or a servant. This section inflicts enhanced punishment on such a person for criminal breach of trust. The property must have been entrusted to the accused in his capacity as a clerk or a servant. A clerk or a servant who takes his master's property is punishable for theft.

1. '**Clerk**'.—A clerk in modern usage means a writer in an office, public or private, either for keeping accounts or entering minutes.

2. '**Servant**'.—Master and servant—a relation whereby a person calls in the assistance of others, where his own skill and labour are not sufficient to carry out his own business or purpose.<sup>358</sup> A servant acts under the direct control and supervision of the master and is bound to conform to all reasonable orders given in the course of his work.<sup>359</sup>

3. '**Employed as a clerk or servant**'.—Where the accused employee dishonestly misappropriated money entrusted with him and left the service and there is no documentary evidence except extra-judicial confession of accused Court held that accused is entitled to acquittal.<sup>360</sup> Where a person sent his salesman with a letter to fetch Rs. 10,000 from his residence and he, instead of returning, slipped away with the money, it was held that the fact that he absconded for a number of days clearly established his intention of causing wrongful gain for himself.<sup>361</sup>

In the prosecution of an employee under this section, the original account books were destroyed after the matter was decided by the sessions' judge, so that it was impossible for the appellate Court to verify the correctness of the questionable entries and the other evidence was of suspicious nature, the Court had no choice but to acquit the accused.<sup>362</sup> The Court relied upon its own earlier decision<sup>363</sup> where it was observed: "The appellate court and the revisional court are entitled, while scrutinising the case against the accused, to have complete material before it on which the prosecution relies for proving the case against the accused persons. In the present case, to deprive this court of the benefit of looking at the entries, in a serious infirmity which must be held fatal to the prosecution case."<sup>364</sup>

### **[s 408.1] Branch manager of transport company.—**

The accused was a branch manager of a transport company. He delivered a consignment to the co-accused on his promise to deposit consignee copy inspite of specific instructions from the head office not to deliver the consignment without receiving the consignee copy. It was held that the conduct of the accused was *prima facie* dishonest and he was properly convicted under section 408.<sup>365.</sup>

### **[s 408.2] Employer.—Directors of company.—**

Criminal proceedings were launched against the employer for default in payment of contribution to the Employees State Insurance. It was held that the expression "employer" did not include directors.<sup>366.</sup>

<sup>358.</sup> Wharton, 14th Edn, p 641.

<sup>359.</sup> *Chandi Prasad*, (1955) 2 SCR 1035 [LNIND 1955 SC 108] : AIR 1955 SC 149 .

<sup>360.</sup> *Raghunath Dhondur Vani v Ilahi Babulal Mujavar*, 2012 Cr LJ 1345 (Bom); *Mancheswar Service Co-op Society Ltd v Anant Narayan Mishra*, 2003 Cr LJ 4390 (Ori).

<sup>361.</sup> *Harish Chandra Singh v State of Orissa*, (1995) 1 Cr LJ 602 (Ori), the offence under the section was made out.

<sup>362.</sup> *Makimuddin v State*, 1991 Cr LJ 2903 (Del).

<sup>363.</sup> *Mohd. Ibrahim v State*, AIR 1969 (Del) 315 [LNIND 1968 DEL 115] : 1969 Cr LJ 1377 .

<sup>364.</sup> *Citing Lala Ram v State*, 1988 Chand Cr C 446 : 1989 Cr LJ 572 , stressing the duty of the prosecution under sections 451-452, Cr PC to preserve the evidence.

<sup>365.</sup> *Banwarilal Agrawal v A Suryanarayan*, 1994 Cr LJ 370 .

<sup>366.</sup> *Employees State Insurance Corpn. v SK Agarwal*, AIR 1998 SC 2676 : 1998 Cr LJ 4027 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Breach of Trust

**[s 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<sup>1</sup> or in the way of his business as a banker,<sup>2</sup> merchant,<sup>3</sup> factor,<sup>4</sup> broker,<sup>5</sup> attorney<sup>6</sup> or agent,<sup>7</sup> commits criminal breach of trust in respect of that property, shall be punished with <sup>367</sup>[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.

### COMMENT—

This section classes together public servants, bankers, merchants, factors, brokers, attorneys and agents. As a rule the duties of such persons are of a highly confidential character, involving great powers of control over the property entrusted to them; and a breach of trust by such persons may often induce serious public and private calamity.

### **[s 409.1] Ingredients.—**

In order to sustain conviction under [section 409, IPC, 1860](#), 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, 1860](#). The basic requirement to bring home the accusations under section 405 are the 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.<sup>368</sup>

Merely because the accused allegedly kept the amount in defiance of the official instruction, it cannot be an incriminating circumstance to arrive at a conclusion that he has committed the breach of trust. It is a settled position of law that suspicion howsoever grave cannot take the place of proof.<sup>369</sup>

The section cannot be construed as implying that any head of an office that is negligent in seeing that the rules about remitting money to the treasury are observed is *ipso facto* guilty of criminal breach of trust; but something more than that is required to bring home the dishonest intention. There should be some indication which justifies a finding that the accused definitely had the intention of wrongfully keeping Government out of the moneys.<sup>370</sup> Subjecting to a civil liability would thus attract one of the ingredients of criminal breach of trust. There cannot be, however, any doubt whatsoever that a mere error of judgment would not attract the penal provision

contained in [section 409 of the IPC, 1860](#).<sup>371</sup> the fact that the accused puts back the money,<sup>372</sup> or promises to do so,<sup>373</sup> does not wipe out the offence or absolve him from liability. Where a post-master misappropriated the money entrusted to him but paid back the whole amount before being challenged, his acquittal on this ground was held to be wrong.<sup>374</sup> But the Courts do take that fact into account as a mitigating factor and would consider light punishment as sufficient to meet the ends of justice.<sup>375</sup> Where certain articles disappeared from an open *godown* which was being watched by a *Chowkidar* (watchman), it was held that the over-all incharge overseer could not be held liable under the section unless there was the proof that the articles disappeared because of his doings or non-doings.<sup>376</sup>

The offence under the section requires criminal intent or *mens rea*. Where in the matter of post office deposit accounts, all that was proved showed that there was negligence in maintaining them, the Court said that it could be a fit case for departmental proceedings but not proceedings under section 409 because the intention to misappropriate the proceeds of the accounts was not in evidence.<sup>377</sup>

### **[s 409.2] Property of Government company.—**

The property of a Government company was purchased by a firm of which the accused was a partner. He was the CM of the company. The CM or the Minister was not shown to have dominion over the property of the company. The relationship between the CM and the company was not shown to be of trustee and fiduciary. It was held that the ingredients of the section were not satisfied.<sup>378</sup> The complaint does not contain the averment that Rs.5 lakhs was entrusted to the appellant, either in his personal capacity or as the Chairman of Maharashtra State Electricity Board and that he misappropriated it for his own use. The said amount was deposited by the complainant company with MSEB and there is nothing in the complaint which may even remotely suggest that the complainant had entrusted any property to appellant or that the appellant had dominion over the said money of the complainant, which was converted by him to his own use, so as to satisfy the ingredients of [section 405 IPC, 1860](#). Proceedings quashed.<sup>379</sup>

### **[s 409.3] Prosecution against company.—**

Since, the majority of the [Constitution Bench](#) ruled in *Standard Chartered Bank v Directorate of Enforcement*.<sup>380</sup> That the company can be prosecuted even in a case where the Court can impose substantive sentence as also fine, and in such case only fine can be imposed on the corporate body.<sup>381</sup>

### **[s 409.4] Ownership right in films.—**

In an agreement for film production the terms stated that the rights in the negative of the film and the right of distribution for exhibition were to be vested in the complainant. The accused, the other party, departed from the terms and exhibited the film publicly without consent of the complainant. It was held that the accused was guilty of the offence of breach of trust.<sup>382</sup>

## [s 409.5] Temporary misappropriation.—

The allegation is that while he was working as a Lower Division Clerk in the Office of the Deputy Superintendent of Police, the accused had temporarily misappropriated an amount of Rs. 1,839. Admittedly, the sum had been deposited in the post office before the due date and that no loss had been caused to the Department, even if it is assumed that a false entry had been made in the record. Offence alleged under [IPC, 1860](#) against the appellant are trivial in nature and have caused no harm and in fact no offences in the eye of law. The benefit of [section 95 IPC, 1860](#) is available to the appellant.<sup>383.</sup>

**1. 'In his capacity of a public servant'.—**Persons like public servants, bankers, etc., who are made liable under the section occupy a position of highly confidential nature involving great power of control over property entrusted to them. Breach of trust by such persons may result in serious public or private calamity. High morality is expected from such persons. They are supposed to discharge their duties honestly.<sup>384.</sup> Where a police dog handler had taken a sum of money by way of travelling and daily allowance (TA, DA), but went on to his native place on unauthorized absence and returned the money on coming back, it was held that he did not use the money for the official purpose and though the diversion was temporary, it constituted an offence under the section. The trial Court convicted him. It was held that there was no scope for interference in the judgment of the trial Court.<sup>385.</sup>

**2. 'Banker'.—**A banker is one who receives money to be drawn out again as the owner has occasion for it, the customer being lender, and the banker borrower, with the superadded obligation of honouring the customer's cheques up to the amount of the money received and still in the banker's hands.<sup>386.</sup> The word 'banker' includes a cashier or shroff.<sup>387.</sup> In *ANZ Grindlays Bank plc v Shipping and Clearing (Agents) Pvt Ltd*,<sup>388.</sup> it was held that relation between the bank and its depositors is that of debtor and creditor but that the relation of trust can be created under special circumstances.

Where the principal debtor did not repay the bank loan, the bank as creditor can adjust it at the maturity of the fixed deposit receipts deposited by the guarantor with the bank as security, though the debt became barred by limitation at the time of maturity of the said fixed deposit receipts. Such adjustment would not amount to offences punishable under [sections 109, 114 and 409 IPC, 1860](#).<sup>389.</sup> Bank officials who allowed advance credits on banker's cheques to a customer in violation of Departmental instructions acted in violation of direction of law. The officials had dominion over the money belonging to the bank and they dishonestly used that money for conferring a benefit on the customer. They were held guilty of the offence under the section.<sup>390.</sup>

## [s 409.6] Securities Scam.—

The National Housing Bank cannot advance loans to anybody except housing finance institutions, scheduled banks and statutory slum clearance bodies. The advancement of any loan to any individual is an offence under [National Housing Bank Act, 1987](#). Allegation of advancement of loan to Harshad Mehta by NHB under the disguise of a call money transaction was held illegal. If as result of that illegal transaction a private person who was not expected to reap the fruit of 'call money' was allowed to retain the same for a period to make an unlawful gain therefrom, offence of criminal breach of trust must be held to be have been committed.<sup>391.</sup>

**3. 'Merchant'.—**A merchant is one who traffics to remote countries; also any one dealing in the purchase and sale of goods.<sup>392.</sup> A failure on the part of persons responsible to refund the share application money when it becomes refundable

because of the stock exchange refusal to approve the prospectus, has been taken to be a misappropriation by a merchant.<sup>393.</sup>

**4. 'Factor'.—**Is a substitute in mercantile affairs; an agent employed to sell goods or merchandise consigned or delivered to him by or for his principal, for a compensation commonly called factorage or commission.<sup>394.</sup> Complainant took loan from company against shares of complainant. Shares were not returned to him after repayment of loan. Court below has found that the charge under section 409 was tenable since, though the accused were not bankers or the public servants, they would fit in the category of factor. The "factor" has been defined in Law Lexicon as "A factor is a mercantile agent who, in the customary course of his business as such agent, is entrusted with the possession or control of goods, wares, or merchandise for sale on commission". An agent employed to sell goods or merchandise consigned or delivered to him, by or for his principal, for compensation commonly called "factorage" or "commission". The Bombay High Court held that it cannot be held that accused directors of company were agent, employed by complainant, to sell goods or merchandise, entrusted to them for compensation called a "factorage" or "commission" and the accused were not covered by definition of 'factor' as envisaged under [section 409 IPC, 1860](#).<sup>395.</sup>

**5. 'Broker'.—**Is an agent employed to make bargains and contracts between other persons in matters of trade, commerce and navigation, by explaining the intentions of both parties, and negotiating in such a manner as to put those who employ him in a condition to treat together personally. More commonly he is an agent employed by one party only to make a binding contract with another.<sup>396.</sup>

A factor is entrusted with the possession as well as the disposal of property; a broker is employed to contract about it without being put in possession.<sup>397.</sup>

**6. 'Attorney'.—**Is one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated.<sup>398.</sup> The High Court, while dismissing the revision petition, observed that it was possible that the appellants were duped by the general power of attorney holder who knew that his powers had been revoked but concealed the fact. If there any *bona fides* in the conduct of the accused person, (by reason of revival of power), such arguments could have made at the trial stage. The Court refused to interfere in the judgment.<sup>399.</sup>

**7. 'Agent'.—**Is a person employed to do any act for another, or to represent another in dealings with third persons.<sup>400.</sup> An agent though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal is not subject in its exercise to the direct control or supervision of the principal.<sup>401.</sup> The trustee of a temple is an agent of the deity, and if he misappropriates temple jewels he is guilty under this section.<sup>402.</sup> Where it is a servant's duty to account for and pay over the moneys received by him at stated times, his not doing so wilfully amounts to embezzlement.<sup>403.</sup> The term 'agent' is not restricted to persons who carry on the profession of agents. The requirements of this section would be satisfied if the person is an agent of another and that other person entrusts him with property or with any dominion over property in the course of his duties as an agent. The entrustment must be in connection with his duties as an agent.<sup>404.</sup> Where the appellant, an agent entrusted with the distribution of the rice under the 'Food for Work Scheme' to the workers on production of coupons was charged with misappropriation of 67.65 quintals of rice, the evidence proves that there was entrustment of property to the accused, Court upheld the conviction.<sup>405.</sup>

#### **[s 409.7] Commission agent.—**

The accused was appointed as commission agent. Certain accounts were found to be outstanding against the accused. The Court said that it was a dispute between a principal and his agent of civil nature. The agent should not be harassed for such a dispute by resort to criminal proceedings.<sup>406.</sup>

#### **[s 409.8] Minister.—**

Accused, the Minister for electricity and higher officials of Electricity Board alleged to have awarded contract at a very high and exorbitant rate with special conditions having heavy financial implications, by reducing the retention and security amount and by allowing the contractor to return only fifty per cent of the empty cement bags. It is found that accused persons have abused their official positions. Supreme Court set aside the order of acquittal and convicted the accused.<sup>407.</sup>

#### **[s 409.9] Independent contractor.—**

An independent contractor was entrusted with a specific quantity of steel for purposes of fabrication and erection of trolley. He fraudulently disposed of the steel contrary to the terms on which possession was handed over to him. The Court said that he could be treated as a trustee for the purposes of appropriate use of steel, in view of the decision of the Supreme Court in *Somnath v State of Rajasthan*.<sup>408.</sup> He was guilty of criminal breach of trust and liable to be punished under section.<sup>409.</sup>

#### **[s 409.10] Insurance agent.—**

Where an agent of the Life Insurance Corporation collected the premium amount from the policy holder but did not deposit it with the corporation, his conviction for misappropriation was held to be proper.<sup>410.</sup>

#### **[s 409.11] Buyer of goods.—**

Goods were delivered to a buyer in a sales transaction in the ordinary course of business and he became the owner also because the vesting of property was not linked with payment. It was held that he could not be held liable for misappropriating his own property though his cheque, which was issued for payment of price afterwards, bounced.<sup>411.</sup> Where the buyer refused to accept the shipment on premise that on a random checking too many defects were found in the garments and complaint was filed to recover the dues, Supreme Court held that the dispute between the parties is civil in nature.<sup>412.</sup>

#### **[s 409.12] Entrustment.—"**

Entrustment" being a necessary part of the offence, where it is not proved, no offence arises under this section.<sup>413.</sup> It is the settled law that mere proof of entries in the books

of account, unsupported by any evidence of receipt, is not alone sufficient to fasten the accused with the offence of criminal breach of trust.<sup>414</sup> An Assistant Engineer was charged for criminal breach of trust for misappropriating Govt. Funds. It was found that there was no entrustment of funds to the accused public servant. It was held that question of misappropriation of funds does not arise.<sup>415</sup> Accordingly, a school inspector withdrawing money against false pay bills and misappropriating the entire amount was held to be punishable for misappropriation and cheating but not of criminal breach of trust because the amount withdrawn was not entrusted to him.<sup>416</sup> Where a postal delivery agent was given an insured cover supposed to contain Rs. 1000 and on delivery to the addressee, who opened the cover in the presence of the agent, it was found that it contained blank papers, the agent was held not liable under the section. The prosecution did not prove the most vital fact that at the time of handing over to the agent, the cover did contain the amount in question.<sup>417</sup> Where a quantity of diesel oil which was delivered to a junior officer under his signature and he embezzled it, his senior was not allowed to be prosecuted. There was no entrustment to him. The fact that he exercised authority over the junior did not establish his possession. The conviction of the senior was set aside, while that of the junior was upheld.<sup>418</sup> Where no account was produced as to the quantity of yarn entrusted and how much was returned after making the finished product, it was held that there was no infirmity in the order of acquittal.<sup>419</sup>

#### **[s 409.13] President of Co-operative Society.—**

It has been held that the President of a Co-operative Society is not a public servant. Dishonest retention of money of the society by the President was not an offence under section 409. But section 406 was attracted.<sup>420</sup> Secretary of co-operative society is not a public servant within meaning of [section 21 IPC, 1860](#) r/w.s. 8 of W.B. [Co-operative Societies Act](#), and no previous sanction is necessary for prosecuting him for offence under [section 409, IPC, 1860](#).<sup>421</sup>

#### **[s 409.14] Burden of proof.—**

The prosecution has to prove that a public servant was entrusted with property which he was duty bound to account for and that he misappropriated the property. Where the fact of entrustment has been admitted or proved, the burden is then upon him to show that the property was applied to the purpose for which it was entrusted to him.<sup>422</sup>

#### **[s 409.15] Amount repaid.—**

The accused persons acting through directors of company in concert with the Chartered Accountants and some other persons hatched a criminal conspiracy and executed it by forging and fabricating a number of documents in order to support their claim to avail hire purchase loan from the bank. The accused had not only duped the bank, they had also availed of depreciation on the machinery, which was never purchased and used by them, causing loss to the exchequer, a serious economic offence against the society. Supreme Court had declined to quash the proceedings. Merely because the dues of the bank have been paid up, the appellant cannot be exonerated from the criminal liability.<sup>423</sup>



## [s 409.16] CASES.

Even a mistaken receipt of money by a public servant in official capacity does create an obligation for the public servant to render an account of the money so received. All that is required is entrustment or acquisition of dominion over property in the capacity of a public servant. Thus where the accused, an official of the Indian Unit of Hindustan Insurance Society who had no authority to collect premiums from Pakistani policy-holders, did in fact represent to them that they could pay their premiums to him and also issued receipts purporting to act in his official capacity and thereafter misappropriated the money after making false entries in the relevant register, it was held that he was guilty under [section 409, IPC, 1860](#).<sup>424</sup> It should, however, be remembered that the prosecution has to prove that the public servant has acted dishonestly in regard to property entrusted to him.<sup>425</sup>

## [s 409.17] Section 420 and 409.—Distinction.—

In 'criminal breach of trust', an accused comes into possession of a property or acquires dominion over a property honestly and *bona fide*, but he develops dishonest intention subsequent to the taking possession of, or subsequent to having acquired the dominion over, the property and, having developed such dishonest intention, he dishonestly misappropriates or converts to his own use the property or dishonestly uses or disposes of the 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 wilfully suffers any other person so to do. Thus, in 'criminal breach of trust', the intention of the accused cannot be dishonest or *mala fide* at the time, when he comes into possession of the property or comes to acquire dominion over the property; but, having come into possession of, or having acquired dominion over, the property, the accused develops dishonest intention and actuated by such *mens rea*, he converts to his own use the property or dishonestly uses or disposes of the 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 wilfully suffers any other person so to do. Contrary to what happens in "criminal breach of trust", the intention of the accused, in a case of "cheating", is dishonest from the very commencement of the transaction. There is really no consent by the person, who is intentionally induced by deception to deliver the property or allow any person to retain the property or is intentionally induced, as a result of deception, to do or omit to do anything, which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. In short, thus, while in "criminal breach of trust", the accused comes into possession of the property without dishonest intention and develops dishonest intention subsequent to his coming into possession of the property, the offence of 'cheating' is one, wherein the accused has dishonest intention from the very commencement of the transaction.<sup>426</sup>

## [s 409.18] Section 409 and section 477A IPC, 1860.—

Contention of the accused is that scheme of [sections 408 and 409 IPC, 1860](#) goes to show that distinct offences have been provided respectively for the clerks or servants and for the bankers and the present petitioner has been charged for the offence under [section 409 IPC, 1860](#) as he is a banker, but at the same time, he has been convicted for the offence under [section 477A IPC, 1860](#), where bankers have not been included in the description of offence under [section 477A IPC, 1860](#) and conviction under [sections](#)

477A and 409 IPC, 1860 cannot go hand to hand. The accused has been charged for the offence under [section 409 IPC, 1860](#) as he was public servant at the relevant time being a Postal Assistant and his contention that he was a banker is misplaced. The accused has not been charged as a banker.<sup>427.</sup>

#### **[s 409.19] Director.—**

A director of a company is not only an agent but also a trustee of the assets of the company which come to his hand. Thus having dominion and control over property he can come within the mischief of this section if he dishonestly misappropriates that property to his own use.<sup>428.</sup> The manager of a rice mill was held liable under the section for causing disappearance of a quantity of paddy from a huge stock of the material entrusted to him.<sup>429.</sup>

#### **[s 409.20] Directors of Company.—Vicarious liability.—**

It is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the board and senior executives are joined as the persons looking after the management and business of the appellant Company.<sup>430.</sup> The [Penal Code](#) does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question, viz., as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.<sup>431.</sup> In the case of *Punjab National Bank v Surendra Prasad Sinha*,<sup>432.</sup> a complaint was lodged by the complainant for prosecution under [sections 409, 109 and 114, IPC, 1860](#) against the Chairman, the Managing Director of the Bank and a host of officers. Since the principal debtor defaulted in payment of debt, the Branch Manager of the bank on maturity of the said fixed deposit adjusted a part of the amount against the said loan. The complainant alleged that the debt became barred by limitation and, therefore, the liability of the guarantors also stood extinguished. It was, therefore, alleged that the officers of the bank criminally embezzled the said amount with dishonest intention to save themselves from financial obligation. The Magistrate without advertent whether the allegations in the complaint *prima facie* make out an offence charged for, in a mechanical manner, issued the process against all the accused persons. The High Court refused to quash the complaint and the matter finally came to Supreme Court. The Supreme Court allowed the appeal, quashed the proceedings and held that the complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued.

#### **[s 409.21] Society.—**