

Judgment Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Cr. Appeal No. S- 52 of 2021
[Naseeruddin Bhand v. The State]

Appellant (Naseeruddin Bhand) present in person
Mr. Khalid Hussain Lakho, D.P.G.

Date of Hearing : 28.01.2026

Date of Announcement :

J U D G M E N T

Omar Sial, J. - Naseeruddin Bhand, being a Junior Commercial Assistant was accused of embezzling a total of Rs. 1,620,842 together with the Supervisory Staff, Gulfam, Irfan and Siddique and Amin in the period 04.10.1999 to 14.10.1999. This allegation was made after an internal inquiry, which resulted in the registration of F.I.R. No. 23 of 2000 under sections 109, 409, 420, 468, 471 and 34 P.P.C. read with section 5(2) of the Prevention of Corruption Act, 1947.

2. Bhand pleaded not guilty and claimed to be tried. At trial the prosecution examined:

PW-1 Mehmood Hassan Samoo and PW-3 Mazhar Minhas:
members of the Inquiry Committee

PW-2 Abdul Ghaffar Pathan: the complainant in the F.I.R.

PW-4 H.C. Mohammad Hanif: witnessed the arrests of the accused.

PW-5 DSP Mukhtiar Ali: the investigating officer

PW-6 P.C. Shah Zado Jatoi: witnessed certain recoveries.

3. In his section 342 Cr.P.C. statement the appellant denied all wrong doing and said that he had handed over the cash he collected to the cashier.

4. At the end of the trial the learned Special Judge (Central), Hyderabad sentenced Bhand to three years imprisonment and a fine of Rs. 1,620,842 for having committed an offence under section 409 P.P.C. It is this judgment which has been challenged through this appeal.

5. The appellant is a 68 year old man who has faced the trauma of investigation and trial for 25 years. When the case came up for hearing

neither was his counsel present nor did anybody from the Attorney General's office come. The paper book was read and the evidence reviewed with the assistance of the learned Deputy Prosecutor General. The Attorney General's office was given three days to file their written arguments if any, but the AG office deemed it appropriate to not even do that.

6. The whole saga begins with the Inquiry Report. The Inquiry Committee consisted of PW-1 Mehmood Hassan Samoo, PW-3 Mazhar Minhas and Javed Junaid Siddiqui (who did not appear as a witness).

7. **PW-1 Mehmood Hassan** did not say much at trial except exhibiting a copy of the Inquiry Report. **PW-3 Mazhar Minhas** admitted that all the tickets (manipulation of which was the subject) were issued by the Stock Department and that the proper record was also maintained by the Stock Department. However, he admitted that the Inquiry Committee had not recorded the statements of any person from the Stock Department. He also admitted that the cash collected by the appellant was to be deposited with the cashier Taj Mohammad at the end of the duty hours. I note that Taj Mohammad was neither made an accused or a witness nor was he investigated or interrogated by the Inquiry Committee or the investigating officer. PW-3 Mazhar Minhas acknowledged at trial that the DTC (the main register) was not taken in possession by the Inquiry Committee. He further acknowledged that his role in the Inquiry was to only verify accounts but that he had not examined any bank statement, deposit slips or receipts or refund.

8. The F.I.R. was ostensibly lodged by **PW-2 Abdul Ghaffar Pathan**, however at trial Pathan said that "*I do not know about the registration of the F.I.R. on the basis of my report*". His section 161 Cr.P.C. statement was not recorded. The first time he knew that a case had been registered with his name was when he received a court notice to appear as a witness. He confirmed that he had also not conducted the enquiry against the appellant nor did he give any finding nor did he collect any evidence against him. A case was thus registered without the complainant of that case even aware of its registration.

9. **PW-5 DSP Mukhtiar Ali** was the investigating officer who hardly investigated the case. However, he admitted at trial that it was Taj Mohammad who was the Stock Supervisor and that all tickets issued had to be entered into the Stock Register. He went on to admit that "*I did not secure the Stock Register*" and that "*I did not record the statement of Taj*

Mohammad". He acknowledged that he "*I did not secure bank statement regarding depositing of the cash by the cash supervisor of the reservation counter or the advance counter. I did not record the statement of any bank employee*". Further "*As per procedure booking clerk has to deposit cash before supervisor at closing time. It is a fact that Taj Mohammad was the supervisor of Naseeruddin. It is a fact that Taj Mohammad is neither shown as an accused nor as a witness in the challan.*"

10. For ease of reference, section 409 P.P.C. for which Bhand was convicted provides as follows:

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 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.

An offence under section 409 occurs when there is a criminal breach of trust. What "criminal breach of trust" is defined in section 405 P.P.C. to mean:

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 wilfully suffers any other person so to do, commits "criminal breach of trust".

11. No evidence was produced at trial to establish the quantum of money embezzled, its misappropriation or conversion by Bhand of the money for his own use. No money trail was established or even an attempt made to establish it. Documents on which the findings of the Inquiry Committee were made were not produced at trial. The Stock Register or its relevant extract even, which contained details of tickets was not produced at trial, in fact not even looked at by the investigating officers. The original inquiry report was neither produced nor were the statements recorded by the accused during the inquiry. The DTC Book, which was admittedly the main document on which the Railways had relied to support the fraud, was not produced at trial. The Railways Commercial Manual, which was allegedly breached, was not produced at trial. The person responsible for verifying accounts for the Inquiry Committee said that he had not perused any financial record. The officer who was allegedly the complainant had no idea that an F.I.R. had

been registered in his name. He had no idea regarding the contents of the F.I.R. Bhand, all along had said that he had given the collected money to Taj Mohammad but Taj Mohammad was never even questioned let alone made an accused or a witness. No evidence was produced to show Bhand as the beneficiary of the money allegedly embezzled.

12. Given the above, the prosecution was unable to prove its case beyond reasonable doubt. The appeal is therefore allowed and Bhand acquitted of the charge. He is on bail. His bail bonds stand cancelled and sureties discharged. Sureties may be returned to their depositors upon identification.

JUDGE

karar_hussain/PS*