

(2011) 03 P&H CK 0645

High Court Of Punjab And Haryana At Chandigarh

Case No: CRR No. 1272 of 2006

Dhuria Co-operative Agriculture
Society Badshahpur Ltd.

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: March 1, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 408, 409, 467, 471

Citation: (2011) 2 RCR(Criminal) 426

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Alok Singh, J.

These revisions bearing CRR No. 1272 of 2006, CRR No. 1273 of 2006 and CRR No, 1274 of 2006 are filed against the judgment of acquittal dated 6.12.2005 passed by learned Judicial Magistrate 1st Class, Patiala, thereby acquitting accused/Respondent No. 2 in case FIR No. 57 dated 24.6.1991 under Sections 408/409/467/471 IPC, P.S. Ghagga. Since in all the three revisions, facts, evidence and question of law are the identical, hence same are being disposed of with the consent of learned Counsel for the parties by this common judgment. It is important to mention herein that three trials were conducted for different three amounts of the same society, however, evidence is almost same and FIR is one.

2. For the sake of brevity, facts are being taken from CRR No. 1272 of 2006 to decide all the three revisions.

3. This revision petition is filed against order dated 6.12.2005 passed by Judicial Magistrate, 1st Class, Patiala, vide, which accused/Respondent No, 2 has been acquitted in case FIR No. 57 dated 24.6.1991 under Sections 408/409/467/471 of the

Indian Penal Code.

4. Brief facts of the present case inter alia are that Assistant Registrar Co-operative Society Samana at Patiala sent a letter bearing No. R.K.-2/SRS/2437 dated 30.5.1988 to SSP Patiala for registration of case against Ram Kumar, Ex. Secretary of the Society for embezzlement of Rs. 7,63,471.20 of society by alleging that Ram Kumar son of Des Raj was working as Secretary of the society and he had not deposited the amount in C.B. Branch after recovering the same from the members of society and rather misappropriated the same for his personal use. The said fact came to the notice from the entry reflected by him in case book at page No. 52 on 8.7.1987 to the effect that a sum of Rs. 4,30,000/- in cash is lying and he has also appended his signatures in English underneath the said entry after admitting the same to be correct. A show cause notice was given to Ram Kumar Ex. Secretary in this regard vide letter No. R.K.-2/SRS/5889. dated 2.11.1987 which was received by him but no reply was given by him. Audit Officer SS Patiala sent "special report for the year 1985 to 1987 to the office of the society vide letter No. 4781 dated 20.11.1987. The Audit Inspector of P.A.D.B. Samana while conducting the audit of the society, came to know about- the said embezzlement. He held Ram Kumar, Ex. Secretary guilty for embezzlement of Rs. 7,63,471.20. In this way the total amount of embezzlement of society became Rs. 7,63,471.20. A show cause notice in this regard was sent to Ex Secretary Ram Kumar vide letter No. R.K.- 2/SRS/1250 dated 14.3.1988 through registered post which was received by him, but he has neither given any reply to the society nor deposited the said amount in the branch of the society. A sum of Rs. 5,87,923.09 was embezzled by Ram Kumar by not depositing the said amount in the bank of the society and reflecting wrong entry in the rokar behi of the society, a sum of Rs. 1,05,159/- was embezzled from the sale price of fertilizer by not mentioning the exact sale figure of fertilizer in the rokar behi, a sum of Rs. 1075/- was embezzled by making a wrong entry in the stock register regarding the stock of urea fertilizer bag, a sum of Rs. 10,000/- was embezzled after withdrawing the same from saving account CCB Samana and not making an entry in this regard in the rokar behi of the society, a sum of Rs. 13,807/- was embezzled by making wrong entry in CCB loan account of the society, a sum of Rs. 5200/- was misappropriated by making forged entry regarding the making of payment to C.A.S.S. Dwarkapur, a sum of Rs. 3705/- was misappropriated by making the payment of excess share amount to the members of the society, a sum of Rs. 8250/- was misappropriated by not mentioning the amount of the recovery effected from the members of the society in the rokar behi of the society, a sum of Rs. 875/- was misappropriated by making wrong entry regarding the payment received from PUNSUP, a sum of Rs. 5962.86 was misappropriated by not mentioning the said amount in the account book on 1.7.1985, a sum of Rs. 1507.11 was misappropriated by not showing the said amount in the rokar behi, a sum of Rs. 4825/- was misappropriated by not reflecting the entry in the stock register, a sum of Rs. 1906/- was misappropriated by reflecting wrong entry in the CC Goods Account in the rokar behi, a sum of Rs. 4710/- was

misappropriated by making wrong entry regarding the expenses incurred on the repair of the godown, a sum of Rs. 1567/- was misappropriated by making wrong entry regarding the expenses incurred on the hospitality, a sum of Rs. 7000/- was misappropriated by making wrong entry regarding the loan disbursed to the members of the society and in this way Ram Kumar Ex. Secretary misappropriated a total sum of Rs. 7,63,471.20 of the society.

5. To prove the case, the prosecution has examined Mishra Singh retired Deputy Registrar as PW1, Mall Singh, Ex. Inspector of Society as PW3, Leelu Ram Garg Inspector Audit as PW4, Baldev Singh member as PW7, ASI Kanwal Nain IO as PW8, Sharanjit Singh Bham Joint Registrar as PW8 (renumbered as PW8/A), Jasdev Singh as PW9 and thereafter, learned APP for the State closed the prosecution evidence by making the statement.

6. In statement recorded u/s 313 Code of Criminal Procedure. accused/Respondent No. 2 has denied all the incriminating evidence produced by the prosecution against him and pleaded his innocence. No witness was examined in defence and defence evidence was closed after tendering certified copy of statement of Brij Lal PW2 as Ex. DI.

7. I have heard learned, counsel for the parties and have perused the record.

8. As per the statement of Brij Lal PW2 accused had resigned from the society on 27.8.1985 and his resignation was accepted on 27.8.1985 itself.

9. Sharanjit Singh Bham PW8/A who has filed the complaint against accused vide letter No. 2437 dated 30.5.1988 Ex.PW8/A has nowhere stated in his statement on oath that the amount was misappropriated by the accused during his tenure nor he has identified the writing and signatures of accused in the account books of the society rather he has stated that as per the legal opinion of the District Attorney, no criminal offence against Ram Kumar is made out. Mall Singh Inspector PW3, who though identified the signatures of Ram Kumar on various entries Ex.PW3/A to PW3/E in the stock register in his examination-in-chief, but in his cross-examination he has stated that he worked in the Society from April 1987 to August 1987 and none of the said entries was signed by Ram Kumar in his presence. He has also stated that he could not identify the signatures of Ram Kumar in the rokar behi wherein the accused has allegedly admitted the amount of Rs. 4,30,000/-. He has also admitted that he could not identify the signatures of Ram Kumar on those entries as the same were not reflected in his presence. He has also stated that he has not seen Ex.PW3/A to Ex.PW3/E prior to the day on which his statement was recorded in the Court. He has also stated that Ram Kumar submitted his resignation on 27.8.1985 and he does not know whether he was reappointed in the society or not. Thus, when neither any entry was reflected by Ram Kumar accused in the presence of Mall Singh, nor Mall Singh had any knowledge about the reappointment of Ram Kumar accused in the society after 27.8.1985, then it cannot be said that the

entries reflected in the stock register and the rokar behi after 27.8.1985 were in the handwriting of Ram Kumar and the same were signed by Ram Kumar. Ronak Lal PW7 and Mall Singh Inspector PW3 have admitted in their cross-examination that the accounts of the society have been audited every year and prior to the said special audit report, the accounts of the society were audited in the year 1985-86 and no irregularities were found by the auditor.

10. Learned trial Court has rightly observed that prosecution has failed to prove that Ram Kumar/accused has ever embezzled any amount of the society. After going through the entire evidence, I am also of the view that since from the annual audit of the accounts no irregularities were found by the auditor, hence it is doubtful that any embezzlement was made by the accused, which has been surfaced in the special audit. Even witnesses produced by the prosecution could not prove beyond doubt that accused has made any wrong entry in the accounts embezzling the amount.

11. Hon"ble Apex Court In the matter of Akalu Ahir reported in 1973 (3) SCC 583 in para 8 has observed as under:

...the revision from an order of acquittal, should appropriately refrain from interfering except when there is a glaring legal defect of a serious nature which has resulted in grave failure of justice.

... It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial court in the court of trial, that the High Court is empowered to set aside the order of acquittal and direct the retrial of the acquitted accused persons. From the very nature of this power, it should be exercised in exceptional cases and with great care and caution. Trials are not to be lightly set aside when such order expose the accused persons to a fresh trial with all its consequential harassment. This matter is not res integra and had indeed been dealt with by this Court at least in the four cases noticed by the High Court.

... It makes all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering re-trial. No doubt, in the opinion of this Court no criteria for determining such exceptional cases which would cover all contingencies for attracting the High Court's power of ordering retrial can be laid down. This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision.

- i. Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;
- ii. Where the trial court has wrongly shut out evidence which the prosecution wishes to produce;
- iii. Where the appellate court has wrongly held the evidence which was admitted by the Trial Court to be inadmissible;

- iv. Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and
- v. Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal.

12. In view of the dictum of the Hon"ble Apex Court, in the humble opinion of this Court, in revision filed by the complainant against the order of acquittal, revisional Court has no jurisdiction to re-appreciate the evidence. However, revisional Court shall be within its jurisdiction to see as to whether trial Court has shut out or has overlooked the evidence which* could clarify the issue. Revisional Court can further see manifest error of law or jurisdictional error or procedural error committed by the trial Court amounting to failure of justice.

13. In the present case, neither manifest error of law nor jurisdictional error is, pointed out by the revisionist. The only argument advanced by learned Counsel for the revisionist is that from the evidence available on the record, guilt of the accused is proved.

14. I am afraid that while exercising my revisional jurisdiction, I cannot re-appreciate the evidence. This is not a case where an important piece of evidence was left by the trial Court while deciding the case.

15. Petition is devoid of merit, hence is dismissed.

16. Photocopy of this order be placed on the files of connected cases.