

**(2003) 04 P&H CK 0145**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Revision No. 106 of 1989

Municipal Corporation, Amritsar

APPELLANT

Vs

Kuldip Singh

RESPONDENT

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**Date of Decision:** April 2, 2003

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 406, 409

**Citation:** (2003) 6 CriminalCC 308 : (2003) 3 RCR(Criminal) 648

**Hon'ble Judges:** Swatanter Kumar, J

**Bench:** Single Bench

**Advocate:** A.S. Bakshi, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

Swatanter Kumar, J.

I have heard learned counsel for the parties at some length.

2. This revision is directed against the judgment and order of acquittal dated 3rd November, 1988 passed by the learned Additional Sessions Judge, Amritsar.

3. The case of the prosecution, is that the accused-Kuldip Singh was working as a Pipe Fitter in the Municipal Corporation, Amritsar. He was empowered and authorised by Shri Izzat Rai Khanna Water Works Supervisor to collect cash on behalf of the Municipal Corporation Amritsar and for this purpose, receipts book were issued to him. The accused collected Rs. 14,109.34 paise on behalf of the Corporation but failed to deposit the same in the treasury. As per rules, this amount was collected by him on 30th October, 1984 and he was required to deposit the same on 31st August, 1984. The accused was charge-sheeted for an offence u/s 409 of the Indian Penal Code. An F.I.R. was registered on 13.9.1984 against him being F.I.R.No.248 under sections 409 and 406 of the Indian Penal Code at Police Station

"E" Division Amritsar. After investigation, the challan was filed before the competent court of jurisdiction. The prosecution examined five witnesses to support its case. The statement of the accused u/s 313 Cr. P.C. was recorded and the examined three witnesses in defence. The learned Magistrate, vide judgment dated 12th December, 1987 found the petitioner guilty of the offence u/s 409 and acquitted him u/s 406 of the Indian Penal Code. Vide order of the same date, the learned Magistrate awarded sentence of one year rigorous imprisonment to the accused and also to pay fine of Rs. 1,000/- and in default thereof to further undergo rigorous imprisonment for the period of two months. The accused filed an appeal before the learned appellate court which vide its judgment dated 3rd of November, 1989 acquitted the petitioner, as referred to above.

4. Learned first appellate court acquitted the accused primarily for the short reason that the prosecution has not examined any witness except one, to prove that they had actually given the amount to the accused against the receipt and the accused had actually received the said amount from them. Secondly that there was no proper authorisation in favour of the accused empowering him to collect the revenue on behalf of the Corporation and to issue receipts as competent officer.

5. Learned counsel for the Corporation contend that both these findings recorded by the appellate authority are erroneous inasmuch as one witness has been examined who stated that he had paid Rs. 197.22 paise and copy of the receipt whereof was placed on record as exhibit PW4/A. Mr. Izzat Rai Khanna was found to be a lethargic person and resultantly a general noting was made that the receipt books be issued to the staff and they should be directed to collect the amount and issue receipt and thus receipt book was issued to the respondent.

6. None of these reasons are enough to disturb the findings recorded by the learned first appellate court. The burden to prove its case lies with the prosecution that accused had actually received a sum of Rs. 12079.62 paise and he had mis-appropriated the said amount.

7. It is not disputed by the learned counsel for the Corporation that the accused was a mere Pipe Fitter and collection of money and to issue receipts was not his normal function. Collection of revenue on behalf of the Corporation, and to issue receipt would be an important function and could not be assigned without any proper resolution of the Corporation. Noting in regard to Mr. Izzat Rai Khanna cannot be termed basis, in law, as an appropriate delegation of power, because the powers must be delegated by a person or authority who is permitted to delegate under the statute. It is not disputed that the competent authority of the Corporation i.e. Elected members of the House never passed any such resolution authorising the accused to collect revenue on behalf of the Corporation. Mere fact that one witness was examined, who stated that he paid Rs. 197.22 paise to the accused per se will be no evidence to show that actually accused had received sum of Rs. 12079.62 paise. The charge must be proved beyond reasonable doubt. The Court cannot infer any

part of the prosecution story and it must be established as a matter of fact or there should be complete chain of events based on irresistible evidence leading to or indicating towards the accused as the person who committed the crime. None of these ingredients are satisfied in the present case.

8. Learned first appellate authority has taken a view and granted the benefit of doubt to the accused. It is settled principle of law that against finding of acquittal, the High Court would normally not interfere. Interference with the order of acquittal should be only when there is perverse finding or material piece of evidence has been ignored by the learned courts below. Reference in this regard can also be made to the judgments of the Hon'ble Supreme Court in the cases [Bhim Singh Rup Singh Vs. State of Maharashtra](#), and [Chandrakant Ganpat Sovitkar and Another Vs. State of Maharashtra](#), . In Bhim Singh Rup Singh's case (supra), the Hon'ble Supreme Court held as under:-

.....The appellate court has power to review the entire evidence and to come to its own conclusion in an appeal against acquittal. In exercising this power the appellate court, should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but it must express its reasons in its judgment which led it to hold that the acquittal is not justified. The appellate court must bear in mind the fact that the trial court had the benefit of seeing the witnesses, in the witness box and the presumption of innocence is not weakened by the order of acquittal. Therefore, if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the findings of the trial court. [Sanwat Singh and Others Vs. State of Rajasthan](#), Rel.on.

Thus, it is settled law that merely because another view is possible, the High Court would not convert the findings of acquittal into conviction.

I find no merit in this appeal. Dismissed.