

## The Ravidas Cooperative House Building Society Limited Vs Gurcharan Singh and another

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

**Date of Decision:** Feb. 25, 2008

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 378, 439(4)  
Penal Code, 1860 (IPC) â€” Section 405, 408, 468, 471

**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J

**Bench:** Single Bench

**Advocate:** V. Ramswaroop, for the Appellant;

**Final Decision:** Dismissed

### Judgement

Kanwaljit Singh Ahluwalia, J.

Gurcharan Singh son of Santa Singh and Hardev Singh son of Harchand Singh both are convicted by the

Court of Judicial Magistrate 1st Class, Ludhiana on 21.05.1994 u/s 408 IPC to undergo simple imprisonment for two years with a fine of Rs.

1000/- each and in default thereof to undergo further simple imprisonment for 15 days.

2. Aggrieved against the same, they filed an appeal, which was allowed by the Court of Sessions Judge, Ludhiana, who acquitted accused

respondents Gurcharan Singh and Hardev Singh.

3. Present revision petition has been filed by complainant-Ravi Dass Cooperative House Building Society Limited, Ucha Pind, Sunet through its

President Baldev Singh, impugning the above said order of acquittal rendered by Sessions Judge, Ludhiana.

4. Prosecution case in brief is that three persons namely Gurcharan Singh, Hardev Singh and Gurdev Singh were named as an accused in case FIR

No. 15 dated 18.01.1983 registered at Police Station Sarabha Nagar, Ludhiana under Sections 408, 468, 471 IPC. The FIR was lodged on the

basis of a letter received in the office of Senior Superintendent of Police, Ludhiana on 18.05.1982, which was sent by the Assistant Registrar

Cooperative Society. It was stated therein that the special audit report was carried out in the accounts for the year 1976 to 1981 as per their

report, embezzlement was found in the funds of the society. It was stated that the amount deposited by various members of the society was either

not entered in the accounts of society or less amount was reflected. Various instances were given and the total embezzlement according to the

special audit report was amounting to Rs. 65,682/-.

5. Charge was framed by the Court of Additional Chief Judicial Magistrate, Ludhiana, and Gurcharan Singh was charged for having embezzled Rs.

1010/- in the year 1975. Hardev Singh was charged for having embezzled Rs. 1524/- and Gurdev Singh was charged for having embezzled Rs.

220/-. However, the Trial Court acquitted Gurdev Singh but convicted both the respondents. As said earlier both the respondents thereafter

preferred an appeal before the learned Sessions Judge, Ludhiana, who acquitted both the respondents and held as under :-

According to the findings arrived at by the Magistrate Hardev Singh criminally mis-appropriated Rs. 12/- deposited on 10.9.75 and Rs. 12/-

deposited on 15.10.75. He entered these amounts in the pass-book Ex.P1. He did not show the amount, in the ledger of the Society. Gurcharan

Singh had mis- appropriated a sum of Rs. 500/- only, deposited by Mohinder Singh PW. 4 on 10.6.75. These were entered in the pass-book

Ex.P4, but these were not entered in the ledger and cash book of the Society. We would, therefore, focus our attention to determining this fact

whether Hardev Singh mis-appropriated this amount of Rs. 12/- deposited by Amarjit Kaur PW on 10.9.75 and 15.10.75, respectively and

whether Gurcharan Singh misappropriated the amount of Rs. 500/- deposited by Mohinder Singh on 10.6.75 which were entered in the ledger

book Ex.P4, but these were not entered in the cash book of the Society.

For determining this fact, let us examine the respective ledger of Amarjit Kaur and Mohinder Singh P.Ws. Amarjit Kaur deposited Rs. 172/- on

16.10.75, i.e. Rs. 160/- as principal and Rs. 12/- as interest. She deposited Rs.172/- on 10.9.75, i.e. Rs. 160/- as principal and Rs. 12/- as

interest. Cash book shows that in both the dates the amount of Rs. 172/- was bifurcated and shown Rs. 160/- as principal and Rs. 12/- as interest.

There was thus shown no embezzlement. Total receipt shown as on 16.10.75 in the Cash book is Rs. 2207/- including Rs. 172/- deposited by Sh.

Amarjit Kaur. Similarly total receipt shown on 10.9.75 in the cash book is Rs. 172/-. Rs. 13059.02 Ps. was the outstanding balance and the total

amount in the cash book of the society was Rs. 13231.02 Ps. There was thus no embezzlement by Hardev Singh. So far as Gurcharan Singh is

concerned, there was no embezzlement made by him. On 10.6.75, many deposits were made by the members of the Society with Gurcharan

Singh. As far instance, Kaur Singh deposited Rs. 1000/-, Gurdial Singh deposited Rs. 1600/-, Tara Singh deposited Rs. 1000/-, Swaran Kaur

deposited Rs. 1200/-, Karnail Singh deposited Rs. 1000/- and so on. When the amount deposited was totalled up there was excess of Rs. 500/-

with Gurcharan Singh. That amount was shown in suspense amount relating to the deposit made by Mohinder Singh (PW4). It has been held in

Shrimati Harjinder Kaur v. Sh. Nachhattar Singh and another, 1993 RCR 69 that dishonest, intention is necessary ingredient of the offence of

Criminal breach of trust u/s 405 IPC. Misappropriation simplicitor would not attract the provisions of Section 405 IPC".

6. Mr. V. Ramswaroop, counsel appearing for the petitioner has stated that no appeal against acquittal has been filed by the State u/s 378 Cr.P.C.

and is unable to assail the findings returned by the Sessions Judge, Ludhiana.

7. It was held in Mahendra Pratap Singh Vs. Sarju Singh and Another, Mahendra Partap Singh v. Sarju Singh and another, relying upon D.

Stephens Vs. Nosibolla, , as under :-

Only two grounds are mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that

there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be a gross miscarriage of justice. In

explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the

Court of Session or if even there is mis-appreciation of evidence. Again, in Logendra Nath Jha and Others Vs. Shri Polailal Biswas, , this Court

points out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at

all. This Court observes that it is not sufficient to say that the judgment under revision is ""perverse"" or ""lacking in true correct perspective"". It is

pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the

Subordinate Court, it is always difficult to reweigh the evidence ignoring the opinion of the High Court. Again in K. Chinnaswamy Reddy Vs. State

of Andhra Pradesh, it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of

procedure such as that the Court had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or

attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not

exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision it is obvious that the defect in the judgment

under revision must be analogous to those actually indicated by this Court. As stated not one of these points which have been laid down by this

Court, was covered in the present case. In fact on reading the judgment of the High Court it is apparent to us that the learned judge has re-

weighed the evidence from his own point of view and reached inferences contrary to those of the Sessions judge on almost every point. This we do

not conceive to be his duty in dealing in revision with an acquittal when Government has not chosen to file an appeal against it. In other words, the

learned Judge in the High Court has not attended to the rules laid down by this Court and has acted in breach of them.

8. In *Akalu Ahir and Others Vs. Ramdeo Ram*, Hon'ble apex Court observed as under:

This Court then proceeded to observe that the High Court is certainly entitled in revision to set aside the order of acquittal even at the instance of

private parties, though the State may not have thought fit to appeal, but it was emphasized that this jurisdiction should be exercised only in

exceptional cases when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been

a flagrant miscarriage of justice." "In face of prohibition in Section 439(4), Cr.P.C., for the High Court to convert a finding of acquittal into one of

conviction, 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 Courts power of ordering re-trial 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 wished 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 over-looked 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. In *Mahendra Pratap Singh Vs. Sarju Singh* and

Another, the position was again reviewed and the rule laid down in the three earlier cases reaffirmed. In that case the reading of the judgment of the

High Court made it plain that it had reweighed the evidence from its own point of view and reached inferences contrary to those of the Sessions

Judge on almost every point. This court pointed out that it was not the duty of the High Court to do so while dealing with an acquittal on revision,

when the Government had not chosen to file an appeal against it. "In other words" said this Court, "the learned Judge in the High Court has not

attended to the rules laid down by this Court and has acted in breach of them.

9. Similar view was reiterated by Hon"ble apex Court in Bansi Lal and Others Vs. Laxman Singh, .

10. Again, Hon"ble apex Court, in Ramu alias Ram Kumar and others 1995 SCC (Cri) 181, held that it is well settled that the revisional

jurisdiction conferred on the High Court should not be lightly exercised particularly when it has been invoked by a private complainant. In Vimal

Singh v. Khuman Singh and another, (1998) SCC (Cri) 1574 and in Bindeshwari Prasad Singh @ B.P. Singh and Others Vs. State of Bihar (Now

Jharkhand) and Another, , the High Court has been reminded of its very limited jurisdiction in revision against acquittal.

11. The period of alleged embezzlement pertains to the year 1975 and the complaint in respect thereof was made in the year 1982. Gurcharan

Singh and Hardev Singh as per the Trial Court judgment was aged 55 and 54 years. Right of speedy trial is also vested in them. Even otherwise, I

find no infirmity, illegality in the order of acquittal passed by Sessions Judge, Ludhiana and hence, no interference is called for and the present

revision petition is dismissed.