

(2006) 05 P&H CK 0241

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 25-SB of 1995

Chandgi Ram and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 26, 2006**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 409
- Prevention of Corruption Act, 1988 - Section 13(2)

Citation: (2006) 3 RCR(Criminal) 880**Hon'ble Judges:** M.M. Aggarwal, J**Bench:** Single Bench**Advocate:** Baljeet Mann, for the Appellant; A.S. Ghangas, D.A.G., Haryana, for the Respondent

Judgement

M.M. Aggarwal , J.

This is an appeal against judgment and order dated 10.1.1995 of Special Judge, Kaithal, whereby Chandgi Ram appellant had been convicted for offences u/s 13(2) of Prevention of Corruption Act and u/s 409 IPC and Khem Chand appellant had been convicted for offence u/s 109 IPC read with Section 13(2) of the Prevention of Corruption Act. They were sentenced to undergo RI for 2 years each and to pay fine of Rs. 200/- each and in default of payment of fine to further undergo RI for 1 month each under Sections 409 IPC and 13(2) of Prevention of Corruption Act and u/s 109 IPC read with Section 13(2) of Prevention of Corruption Act, respectively.

2. Prosecution case against the appellants is that Chandgi Ram was Sarpanch of village Haripura. In May 1989 a dust storm came which uprooted about 30-35 trees. Those trees were sold by Chandgi Ram to Ram Chander for a sum of Rs. 11,000/- without any proper resolution of the Panchayat and without obtaining any sanction from the Forest Department. The amount was recovered by Chandgi Ram but he did not deposit the same in the Panchayat account. Then complaint was lodged against

him. Matter was enquired into. It was found that Chandgi Ram had embezzled a sum of Rs. 11,000/- which he had received from Ram Chander. However, this amount was deposited by Chandgi Ram on 7.1.1991 in the Panchayat Account. Case was registered on the complaint of Prem Chand u/s 409 IPC and 13(2) of the Prevention of Corruption Act after enquiry had been made against Chandgi Ram. After completion of investigation, challan was presented. Appellants were charged for the aforesaid offences. After trial, case was found to be proved. They were convicted and sentenced as aforesaid.

3. Counsel for the appellants had argued that Chandgi Ram had remained Sarpanch up to December 1991. The amount was deposited by him of his own on January 7, 1991 before FIR was registered. It was argued that the case was falsely registered at the instance of Prem Chand PW-3 who was inimical. It was further argued that Khem Chand was not involved at all in any offence and has just been falsely roped in.

4. On behalf of the State, it was argued that the amount was deposited only after the complaint had been made and enquiry held. It was also argued that receipt of Rs. 11,000/- was in the name of Khem Chand appellant and he had convicted and abetted the commission of offence by Chandgi Ram. It was also argued that, in fact, 30-35 trees which had fallen but only 15-16 trees were shown and the sale had been without sanction of the Government.

5. In this case, PW-1 Bank Manager had deposed that Rs. 11,000/- was deposited in the Panchayat Fund in Account No. 1629 on 7.1.1991. Ram Chand PW-2, who is stated to have purchased those trees, had stated that 15-16 trees of the Panchayat of various kinds had fallen due to the storm and the Sarpanch had asked him to lift those trees. There were many persons present and he had offered a sum of Rs. 11,000/- which he paid in two instalments and had lifted the trees. Ram Chand PW-3, at whose instance the case was registered, had stated that the value of the trees was Rs. 50,000-60,000/- and the trees were 30-35 in number. That he had made an application to the Deputy Commissioner. He had admitted that Bhagat Dutt was son of Krishan. Krishan was his father's brother. Bhagat Dutt was involved in a rape case and Chandgi Ram was a witness against Bhagat Dutt in that case. PW-6 Bhale Ram, who had succeeded Chandgi Ram as Sarpanch in December, 1991, had stated that fallen trees were sold by the people of the village and not by Chandgi Ram alone. PW-7 Ram Kumar had deposed about the receipt of Rs. 11,000/- issued on behalf of the Sarpanch. It was in the name of Khem Chand. It appears that Khem Chand had been involved as accused due to this fact.

6. It is admitted position that trees had been sold in May/June 1989. The case was registered on 30.11.1992. The amount of Rs. 11,000/- had already been deposited in January 1991. There is no document on the file to show that any complaint whatsoever had been made by any person before January 1991. Exhibit P-3, which is enquiry report of the Vigilance Department will show that same complaint had been marked to the Vigilance Department on 20.11.1991 and after making enquiry the

case was got registered. This would mean that no complaint was made nor any case was registered till the amount had been deposited.

7. Trees had admittedly fallen due to storm. Those trees were on the Panchayat land. No permission from the Forest Department was to be required since the trees were not to be cut. Those were just to be removed and also by the Panchayat. The sale, admittedly, had been in the presence of the people. There is no evidence at all as to the number of the trees, except the bald statement of Prem Chand complainant PW-3 that trees were 30-35 in number and its value was Rs. 50,000-60,000/-. If that was the position, then a complaint could have been made by Prem Chand or by any other person immediately after May 1989, but the same was not done. The complaint was made and the matter was enquired into after the amount had been deposited. Statement of PW-2 Ram Chander, who had purchased the trees, shows that trees were 15-16 in number and its value was Rs. 11,000/-. Same is the statement of the subsequent Sarpanch. Merely because the receipt had been in the name of Khem Chand appellant, it could not be said that he had misappropriated the money or was a party to the offence, if any.

8. Taking into account the facts and circumstances of the case, I hold that this is not a case for offence u/s 13(2) of Prevention of Corruption Act. At the most, the case will be of temporary embezzlement of Rs. 11,000/- by Chandgi Ram for the period from May 1989 to January 1991 which he had received by selling the fallen trees since he was under obligation to have deposited the amount in the Panchayat funds immediately receiving the same.

9. Under these circumstances, the appeal filed by Khem Chand appellant is accepted and he is acquitted of the charges. As far as Chandgi Ram appellant is concerned, he is acquitted of the charge for offence u/s 13(2) of Prevention of Corruption Act but his conviction for offence u/s 409 IPC for misappropriation of sum of Rs. 11,000/- of the Panchayat Fund for the period from May 1989 to January 1991 is maintained.

10. However, taking into account the facts and circumstances of the case, and the fact that the amount was deposited by Chandgi Ram in the Panchayat account before the enquiry started and before the registration of the case, I am inclined to take a lenient view.

11. As such, Chandgi Ram appellant is sentenced to imprisonment till rising of the Court and to pay fine of Rs. 10,000/-. In default of payment of fine to further undergo RI for 2 months. Chandgi Ram appellant shall appear before the Court of Chief Judicial Magistrate Kaithal within a period of two months and deposit the fine and also shall undergo imprisonment till rising of the Court.

Disposed of in the above terms.

Order accordingly.