

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-349-DB of 2015
Date of Decision : April 09, 2015

Sumer Singh, Inspector (now retired)Appellant
VERSUS
Vipin Chand Mittal and othersRespondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MRS. JUSTICE SNEH PRASHAR

Present : Mr. S.S. Dalal, Advocate

T.P.S. MANN, J.

The appellant has filed the present appeal for challenging the judgment dated 20.10.2011 passed by the Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri whereby respondents No.1 to 8 were acquitted of the charges framed against them.

The case of the appellant was that respondent-Vipin Chand Mittal while acting as Secretary of the Silver Kite Co-operative House Building Society Limited, Jagadhri (here-in-after referred to as 'the Society') had committed embezzlement by receiving the loan amount from the members and not depositing the same with the Haryana State Co-operative House Building Society Limited. He had signed page No.2 of the cash-book dated 3.4.2001 by showing balance credit of Rs.10,10,030.85p. In order to bring down the cash balance, he had shown loan of Rs.3,00,000/- in his name and Rs.2,00,000/- in the name of Nitika Mittal so as to embezzle the funds of the Society. He had been keeping the cash balance with him even after 3.4.2011. In the aforesaid embezzlement, respondent-Jeet Singh, Assistant Development Officer of the Haryana State Co-operative House Building Society Limited and Jaswant Singh Joshi, Development Officer of the Haryana State Co-operative House Building Society Limited had been conniving with him.

They had committed embezzlement by not getting the cash balance deposited by respondent-Vipin Chand Mittal and allowing him to retain the same. Besides, he had also withdrawn amount from the account of the Society with Oriental Bank of Commerce on different dates and not deposited the same with the head office. A sum of Rs.13,11,338.46p. remained as balance towards Vipin Chand Mittal.

Respondents No.1 to 8 were initially charged under Sections 406 and 120-B IPC. However, charge was, later on, amended qua respondent-Vipin Chand Mittal, Jaswant Lal and Jeet Singh by charging them under Section 409 IPC, instead of Section 406 IPC.

Having heard learned counsel for the appellant and on going through the impugned judgment of acquittal, this Court finds that the only allegations against respondents No.2 to 8 were of associating themselves with respondent-Vipin Chand Mittal in committing the offence punishable under Section 409 IPC and, thus, liable under Section 120-B IPC. However, the prosecution could not elicit from any of its witnesses that respondents No. 2 to 8 were privy to the conspiracy. Merely because they had associated themselves with respondent-Vipin Chand Mittal is not sufficient to hold them liable for the offence of criminal conspiracy. Neither any purpose for their involvement in the crime has been disclosed by the prosecution nor any act done which could form the offence of criminal conspiracy. Thus, no case is made out for any interference in the impugned judgment whereby respondents No.2 to 8 have been acquitted of the charges against them.

As regards respondent No.1-Vipin Chand Mittal, it may be noticed that PW3 Baldev admitted in his cross-examination that the original day-to-day book w.e.f. 1.4.2000 to 31.3.2001 was not present in

the Society nor taken in possession during the investigation of the case. The same were also not signed by him. He also could not say as to who had written the receipt book. The cash book, which is maintained separately was also not available in the Society. He also stated that three societies, namely, Sarv Kalyan, the Silver and Satyakal were amalgamated in the Silver Kite Society. These societies were audited and report thereof kept in the Society. He feigned ignorance if in the audit report upto the year 2000, clean- chit had been given to the Society. The appellant, who was posted as Inspector of the Silver Kite Co-operative House Building Society Limited, Jagadhri had appeared before the trial Court as PW7. During his cross-examination, he stated that though aforementioned documents were written by respondent-Vipin Chand Mittal but the same were not written in his presence. At the same time, he admitted that respondent-Vipin Chand Mittal had filed suit for rendition of account wherein he was also a party. He denied about Vipin Chand Mittal depositing the entire amount alongwith interest with the Society as per the decision of arbitration.

In view of what has already come on the record, as referred to above, no fault can be found in the judgment of the trial Court in acquitting respondent No.1-Vipin Chand Mittal also of the charges against him.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

April 09, 2015
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(SNEH PRASHAR)
JUDGE