

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRA-S No. 2006-SB of 2002(O&M)

Date of Decision: February 23 , 2015.

Jaswant Singh

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. J.S.Bhandohal, Advocate
for the appellant.

Mr. P.S.Grewal, DAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal is preferred by appellant – Jaswant Singh against the impugned judgment and order dated 03.12.2002 passed by learned Additional Sessions Judge, Patiala wherein the appellant has been convicted and sentenced to undergo rigorous imprisonment for two years and pay a fine of ₹3,000/- and in default thereof, to further undergo rigorous imprisonment for four months for the offence punishable under Section 409 IPC. He was also sentenced to undergo rigorous imprisonment for two years and pay a fine of ₹1,000/- and in default thereof, to further undergo rigorous imprisonment for one month for the offence punishable under Section 13(1)(c) read with Section 13(2) of the Prevention of

Corruption Act, 1988. Both the sentences were ordered to run concurrently.

As per the prosecution case, information was received by the Vigilance Bureau that the appellant was working as Sarpanch of village Ghunder. A part of the available cultivable land of the Panchayat was auctioned on 30.04.1994 for the year 1994-95 for a sum of ₹3,99,000/-. A sum of ₹70,000/- was deposited by the appellant on 02.05.1994 and a sum of ₹1,60,000/- was deposited on 21.10.1994 in the account of the Panchayat. A sum of ₹1,69,000/- was not deposited by the appellant and he has misappropriated this amount to his own use. Therefore, he was guilty for the commission of the aforementioned offences having embezzled the amount of ₹1,69,000/-. The appellant was arrested on 20.08.1996. On interrogation, the appellant suffered a disclosure statement (Ex.PE) on 21.08.1996 to the effect that he had kept concealed the record of the case in a trunk concealed in the haystack at his home and he could get the same recovered.

In pursuance to the said statement (Ex.PE) the records of the case were recovered and taken into possession vide memo Ex.PX. It was found that the Panchayat land of village Ghunder measuring 263 Bighas 4 Biswas was auctioned for the year 1994-95 for a sum of ₹3,99,000/-. Darshan Singh son of Chanan Singh i.e., the real brother of the appellant took the land on lease for a sum of ₹92,000/-, while Amarjit Singh took the land on lease for ₹1,00,000/-, Swaranjit Singh for ₹1,10,000/- and Nazar Singh for ₹97,000/-. Receipts No.9/10 were issued as acceptance of the amount of ₹67,000/- from Darshan Singh and ₹1,10,000/- from Amarjit Singh on 02.05.1994. The full amount of the lease money was not collected despite the specific resolution of the Panchayat.

Receipt for an amount of ₹25,000/- was issued in favour of Darshan Singh on 21.10.1994, Receipt No.12 for an amount of ₹1,10,000/- was issued in favour of Swaranjit Singh and Receipt No.13 for an amount of ₹97,000/- was issued in favour of Nazar Singh. A sum of ₹2,32,000/- was collected out of which only a sum of ₹1,60,000/- was deposited in the Bank account of the Gram Panchayat. As per the rules governing the Panchayat, a Sarpanch cannot keep an amount above ₹500/- in cash with him. Cash Books from February, 1993 to April, 1996 were produced by Lakhbir Singh, Panchayat Secretary. Appellant – Jaswant Singh was asked to deposit the remaining amount but the same was not deposited. The auction of the Panchayat land was not conducted for the year 1996-97 but the lease deeds of the land auctioned for ₹1,23,000/- in favour of Ram Singh, for ₹90,500/- in favour of Amarjit Singh and for ₹75,700/- in favour of Rulda Singh were prepared. The lease amount collected was to the tune of ₹3,64,700/- and the receipts qua the collection of the said amount were also issued. The appellant deposited only a sum of ₹1,60,000/- on the earlier point of time and another amount of ₹20,000/- in the Block Samiti, Nabha for paying the salary of the Secretary of the Panchayat. The amount of ₹1,83,932.32 was not deposited and the appellant was alleged to have embezzled this amount.

After obtaining sanction for prosecution from the Deputy Director, Panchayat, the challan/report under Section 173 Cr.P.C. was presented against the appellant. The charge against the appellant was framed to which he pleaded innocence and claimed trial.

Prosecution examined as many as 11 witnesses to prove its case.

The statement of the appellant was recorded under Section 313 Cr.P.C. and he

claimed false implication in this case due to factionalism in the village.

Learned Additional Sessions Judge, Patiala after going through the evidence on record found the appellant guilty for the commission of the aforementioned offences, thereby convicting and sentencing him as detailed above for the said offences.

Learned counsel for the appellant submits that the appellant has been falsely involved in the present case due to acute party-faction in the village. There is no evidence on record to show that he has embezzled the amount as mentioned in the FIR. It is, firstly, argued that in view of the letter dated 22.02.1983 memo issued by the Deputy Director, Vigilance, Government of Punjab, Vigilance Bureau (Ex.DX), the matter could not have been investigated by the Vigilance Bureau. It is submitted that as per this memo, the Government has decided that complaints against the Sarpanches/Panches/ Municipal Commissioners shall not be looked into by the Vigilance Department/Bureau and any such complaint would be passed on to the concerned Administrative Department for appropriate action which may get it investigated from the Home Department/CID wherever the investigation is deemed necessary by the Department.

Learned counsel for the appellant further submits that the entire amount of money, which was not deposited by the appellant in the Bank account of the Panchayat, was in fact utilized for development works in the village. Learned counsel for the appellant vehemently argued that the cash book has duly been recovered but the same has not been produced on record by the prosecution in a mala fide manner because perusal of the cash book would have shown that

the entire lease money was utilized for the development work of the village. Reference is made to the statement of PW6 Lakhbir Singh, the Panchayat Secretary of the village Ghunder in the year 1994-95, wherein he admits that the lease money was utilized for the development works of the village and the amount of the lease money was accounted for in the cash book. He states that the records of the case were in his custody and handed over by him to the Investigating Officer Amar Nath, DSP Vigilance Bureau against a proper receipt. In this view of the matter the prosecution has miserably failed to prove the charges against the present appellant. Furthermore, the Investigating Officer of the case i.e., Amar Nath, DSP, Vigilance Bureau has not even been examined by the prosecution to prove its case.

It is further submitted that the FIR, Ex.PM has been lodged on the basis of a secret information, therefore, it should not have been taken cognizance of and is reflective of mala fides on the part of the authorities. It is alleged that there was a dispute regarding the *Shamlat* land in the village as one particular community wanted the distribution of this land to the proprietors as per their shares whereas, the faction headed by the appellant-Sarpanch wanted the land to be auctioned and the amount to be used for the benefit of the Panchayat. It is submitted that PW4 Nazar Singh and PW7 Swaranjit Singh have admitted the said dispute.

Per contra, learned counsel for respondent-State submits that the charges against the appellant have been proved by the prosecution by leading clear and cogent evidence. Prosecution case has been proved beyond reasonable doubt. It is proved that the appellant has indeed embezzled the amount as mentioned above. It is submitted that the appellant holding a responsible post of

Sarpanch has misused his position. Therefore, it is prayed that the conviction and sentence imposed upon the appellant be upheld.

I have heard learned counsel for the parties and gone through the record.

In respect to the contention of the appellant that the matter could not have been investigated by the Vigilance Bureau, a perusal of the memo dated 22.02.1983, Ex.DX which purports to lay down the guidelines for the working of the Vigilance Bureau, Punjab cannot mandate that no matter against the Sarpanch/Panch or Municipal Commissioner can be investigated by the Vigilance Bureau. Apart from the fact that there is nothing on record to show that the said guidelines were still in currency at the time of the alleged occurrence, memo dated 22.02.1983 is merely a guideline. It is not a mandate, non-compliance of which would vitiate a trial. Conviction of the appellant cannot be set aside on this ground. Therefore, this contention of learned counsel for the appellant is rejected.

Contention of the learned counsel for the appellant that there was a dispute between two factions in the village in respect to the utilization of common land in the village is irrelevant to the controversy in hand because it is an admitted position that Panchyat land was indeed auctioned in favour of the lessees/auction purchasers i.e., PW4 Nazar Singh, PW5 Mohinder Singh, PW7 Swaranjit Singh and PW8 Amarjit Singh, who have duly been examined by the prosecution. The said witnesses have supported the prosecution version. There is no dispute regarding the sum of lease money/auction money.

Learned counsel for the appellant has fairly stated that the land, in

question, was undoubtedly auctioned and the auction amount/lease money was deposited by the lessees though not immediately at the time of auction but subsequently at different points of time. The receipts thereof are also not in dispute. While referring to the evidence on record it is submitted that except Amarjit Singh, none of the lessees had deposited the lease money on 02.05.1994. It is admitted to be deposited later on. In view of the fact that there is no dispute regarding the lease amount which has been deposited, the question regarding some of the lessees being defaulters also pales into insignificance. This is so because there is no dispute regarding the amount of lease money, admittedly, deposited by the said lessees at a later stage.

It is vehemently urged by the learned counsel for the appellant that it is duly proved on record that the amount of lease money which was not deposited was actually spent and utilized for development works in the village. The prosecution not having produced the cash book is reflective of mala fides as they have withheld the best evidence available.

Entrustment of the lease money admittedly not deposited in the Panchayat account has been duly proved on record. Appellant's stand that it was utilized for development works is not borne out from the record. Once the prosecution has discharged its onus of proving entrustment, it was for the appellant to have proved the utilization of this amount for development works. Reference to the cash book not being produced does not advance the appellant's case. Testimony of the witnesses including that of Panchayat Secretary (PW6) clearly establishes the offence qua the appellant. Therefore, non-production of the cash book etc. is not fatal to the case of prosecution. There is no evidence to show the utilization of the funds not deposited in the Panchayat account, in the

manner suggested.

Further argument of the appellant that trial is vitiated on account of the Investigating Officer i.e., Amar Nath, DSP, Vigilance Bureau not having examined is equally untenable. In view of the evidence on record, the failure of the prosecution to examine the Investigating Officer cannot be stated to be fatal to its case.

It has been held by Hon'ble Supreme Court in **Mano Dutt and another v. State of U.P., 2012(2) RCR(Criminal) 798**, that it is not always mandatory for the prosecution to examine the Investigating Officer when the case can otherwise be proved beyond reasonable doubt.

PW11 HC Rajwant Singh who was appointed as a Reader to Amar Nath , DSP, Vigilance Bureau has been examined. He has identified the signatures and handwriting of Amar Nath, DSP on FIR (Ex.PM). He has also stated that the statements of various witnesses were written by him on the dictation of Amar Nath, DSP. He has proved Memo Ex.PB, Ex.PC, Ex.PD, Ex.PF and Ex.PL. Signatures of Amar Nath, DSP were also identified on the report under Section 173 Cr.P.C. by him. Therefore, non-examination of Amar Nath, DSP is not fatal to the prosecution case.

Argument that only interested witnesses have been examined by the prosecution is also untenable on a perusal of the evidence.

It is proved on record on the basis of clear and cogent evidence that the appellant is indeed guilty of the offences punishable under Section 409 IPC as well as Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act, 1988.

There is no infirmity or illegality in the conviction of the appellant.

Learned counsel for the appellant, in the alternate, prays for extension of the benefit of probation to the appellant as he has been undergoing agony of trial since the year 1996 or in the alternate, sentence imposed upon him be reduced.

It has been held by Hon'ble Supreme Court in State through CBI v. Sanjiv Bhalla and another, 2014(4) RCR (Criminal) 17 that benefit of release on probation of good conduct should not be extended to a person convicted under the provisions of Prevention of Corruption Act. There is no ground for reduction of the sentence imposed upon the appellant keeping in view the fact that being a Sarpanch of the village a solemn duty was cast upon him to safeguard the interest of the people of his village. He has misused his position.

There is no mitigating or extenuating circumstance which would call for reduction of the sentence of two years imposed upon him.

Consequently, this appeal is dismissed.

Bail bonds and surety bonds of the appellant shall stand cancelled and he shall be taken in custody to undergo the sentence imposed upon him.

Copy of the judgment be sent to the learned Chief Judicial Magistrate, Patiala, who shall take necessary steps to comply with the judgment with due promptitude.

February 23, 2015.
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(LISA GILL)
JUDGE