

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR no. 1933 of 2006(O&M)
Decided on :22.07.2015

Sube Singh

....Petitioner(s)

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE MAHESH GROVER

Present:- Mr.Rajesh Chaudhary, Advocate for the petitioner

Mr. Kuldip Tiwari, Addl. AG, Haryana

MAHESH GROVER, J

This petition is directed against the judgment of the learned Trial Court dated 25.11.2002/27.11.2002 and that of Appellate Court dated 8.9.2006.

Initially the charge was framed against the petitioner under Section 408 and 420 IPC and the learned Trial Court went on to convict him under both the provisions of law and sentenced him for a period of 1 year under Section 408 IPC alongwith fine of Rs. 1,000/- and also for a period of 1 year and a fine of Rs.1,000/- under Section 420 IPC. In appeal the petitioner was acquitted of the charge under Section 420 but the conviction and sentence under Section 408 IPC was maintained.

Learned counsel for the petitioner pleads innocence and states that he was not associated with the audit report on the basis of which FIR was registered. There is serious violation of principles of natural justice and the investigation suffers from a taint.

The prosecution story would indicate that the petitioner was

working as a Secretary of the Cooperative Society and embezzled an amount of Rs.1,05,064.50 P. The Assistant Registrar Cooperative Societies Kaithal vide his letter dated 26.7.1996 sent to the complainant Bhim Singh Gupta intimating the shortage of amount and attributing it to the petitioner. This was on the basis of audit inspection conducted by Sh. Satyawar of the Cheeka Cooperative Society. It was established during this process of audit that Rs. 31,628/- had been misappropriated by the petitioner while Rs.74,436.58 P were wrongly used while Rs.950/- were found missing from the stock. A departmental inquiry was also initiated against the petitioner and the charges established leading to dismissal of the petitioner from service of the society.

I have perused the impugned judgments and find that there is overwhelming evidence in the shape of documents which indicate that the petitioner had wrongly taken Rs. 30,000/- intended for one Pawan Kumar who had applied for housing loan which never reached him.

Learned counsel for the petitioner contended that this amount was deposited with the Haryana Housing Society and therefore no embezzlement can be attributed to him. He has rather pleaded that there is no embezzlement and therefore his conviction under Section 408 IPC cannot be sustained. He placed reliance on case titled as **Dadarao vs. The State of Maharashtra** reported as 1974 CrL. L.J 447.

The facts however indicate to the contrary as it has been established during the course of departmental enquiry as also during the course of trial that Pawan Kumar who was member of Cheeka Cooperative Society was expecting a second instalment of loan i.e Rs.30,000/- for construction of his house. The petitioner had withdrawn this amount after

getting the signatures of the Pawan Kumar on cheque but this amount was never deposited in his account preventing said Pawan Kumar from withdrawing the amount on the cheque intended for withdrawal for himself. Pawan Kumar has been examined and he has testified to that effect. The petitioner could not shatter his testimony. This witness went on to state that an amount of Rs. 75,000/- was sanctioned out of which he received first instalment of Rs.22,500/- but the second instalment was misappropriated by the petitioner. Apart from this the petitioner has admitted his signatures on mark 'A' establishing his liability of an amount of Rs.74,436.58 P. In this receipt he had admitted that this amount was to be paid to the society but was not done. Eidently from the aforesaid overwhelming evidence on record petitioner cannot establish his plea of innocence particularly when no such evidence was led by him except for making denial under Section 313 Cr.P.C. The petitioner has made a feeble attempt to say that signatures on mark 'A' were obtained under duress but if the judgments of the Courts below are to be seen the petitioner does not qualify such a defence while pleading not guilty in statement under Section 313 Cr.P.C nor did he raise such a plea at any stage of proceedings. The petition is thus held to be without any merit and is hereby dismissed particularly when no perversity has been shown in the impugned orders.

July 22, 2015
rekha

(Mahesh Grover)
Judge