IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.3127 of 2015 (O&M)
Date of Decision: December 09, 2015

Krishan Kumar

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.R.Yadav, Advocate
for the petitioner.

Mr.Brijesh Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

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INDERJIT SINGH, J.

The present revision has been filed by the petitioner Krishan Kumar against State of Haryana under Section 401 Cr.P.C., challenging the impugned judgment of conviction dated 21.02.2014 and order of sentence dated 22.02.2014 passed by learned Judicial Magistrate Ist Class, Charkhi Dadri, vide which the petitioner was convicted and sentenced to undergo imprisonment for a period of three years and to pay a fine of ₹5000/- and in default of payment of fine, to undergo simple imprisonment for a period of nine months under Section 408 IPC and also challenging the judgment dated 28.07.2015 passed by learned Sessions Judge, Bhiwani, vide which appeal filed by petitioner was dismissed.

Notice of motion was issued and learned State counsel appeared and contested the petition.

The brief facts of the prosecution case are that the challan was presented against accused-petitioner under Section 408 and 420 IPC by Police Station Baund Kalan, District Bhiwani. As per prosecution version, accused on 18.01.2003, acting as Secretary of Ranila Co-operative Society took ₹21,000/- from the account of Jai Bhagwan and committed criminal breach of trust with respect to that amount by keeping it with himself and also at the same time cheated the complainant by dishonestly inducing him to deliver him ₹21,000/-. On the basis of his complaint, FIR was registered. Investigation was conducted. Accused was arrested. Finding prima facie case, the accused-petitioner was charged under Sections 408 and 420 IPC, to which he pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined PW-1 Ram Kumar, Secretary Ranila Co-operative Society, who deposed that he handed over a payment voucher Ex.P1 to the police, which is duly signed by the accused Krishan Kumar. In cross-examination, he denied knowing whether the amount shown in Ex.P1 was deposited in excess in the account of Clerk Jai Bhagwan and also denied that the payment voucher was drawn for any adjustment. PW-2 Chanderpal mainly deposed that he issued notice to Krishan Kumar on the direction of A.R. for depositing the money. PW-3 Jai Bhagwan, Clerk deposed that on 18.01.2003, ₹21,000/- was withdrawn from his account by Ex-Secretary Krishan Kumar without his signatures. The matter was reported to the Sub-Registrar of Co-operative Society, wherein, on enquiry, accused Krishan Kumar was found guilty and an FIR was registered on the order of D.R. Thereafter, on 30.12.2004, the principal amount of ₹13,630 and interest ₹7370/- was deposited and ₹4000/- from January to March for each month was also deducted from the salary of accused Krishan Kumar and it was deposited with the Society. He further deposed that Ex.P1 is the photocopy of payment voucher which was taken by the Investigating Officer from him. In cross-examination, he admitted that on 18.01.2003 he along with Krishan Kumar was posted in clerical staff. PW-4 Ramphal Singh deposed that on 18.01.2003, Krishan Singh was posted as Secretary at CCS Ranila and he withdrew ₹21,000/- from the account of Jai Bhagwan unlawfully without getting his signatures. The matter was inquired by Sub-Registrar Cooperative Society, Bhiwani, wherein accused was found guilty. PW-5 Dilbag Singh deposed that on 27.04.2005, he went to Ranila Co-operative Bank with ASI Sahab Singh. Raj Pal, Bank Manager, presented receipts regarding withdrawl of money which were taken into possession vide memo Ex.PW4/G and another receipt was presented by Krishan Kumar which was taken into possession vide memo Ex.PW3/A. PW-6 Harbhagwan mainly deposed regarding arrest of the accused. PW-7 ASI Sahab Singh mainly deposed regarding investigation of the case. PW-8 Subhash Chand deposed that on 10.12.2004, a written complaint was sent to SP Bhiwani regarding embezzlement of ₹21,000/- by Krishan Kumar and during investigation, Krishan Kumar was found involved in the embezzlement of ₹21,000/-.

At the close of the prosecution evidence, the statement of accused was recorded under Section 313 Cr.P.C. and he pleaded himself to be innocent. In defence, accused-petitioner examined DW-1 Devender, who brought the summoned record dated 18.02.2003 and tendered the copy of page No.84 and 85 as Ex.DX. He also tendered Ex.D2 copy of order dated 20.01.2009 in appeal/revision No.69 of 2008.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

PW-1 Ram Kumar, Secretary mainly brought the record and simply given the payment voucher Ex.P1 from the record to the police. In his cross-examination, he has stated that he was not present at the time of preparation of Ex.P1. He had never worked with accused Krishan Kumar. Accused had not signed the same in his presence and the same was not filled in his presence. This witness is a formal witness, who simply given the payment voucher to the police. PW-2 Chanderhass is also a formal witness, who simply gave notice regarding depositing of money as per directions from the Assistant Registrar. PW-3 Jai Bhagwan, who was posted with the accused in the above-stated society deposed that on 18.01.2003, Krishan Kumar withdrew ₹21,000/- from his deposit account without his signatures. He stated that photocopy of Ex.P1 payment voucher was taken by the Investigating Officer from him and same was taken into police possession. The perusal of statement of PW-3 nowhere proves that this amount has been withdrawn by Krishan Kumar, Ex-Secretary. He stated that it has been withdrawn without his signatures. In cross-examination, he admitted that on 18.01.2003, ₹21,000/- were deposited in his account. He stated that accused did not put his signatures for withdrawl of his money. From the perusal of this statement, nothing is clear as to whether the money was withdrawn by Krishan Kumar accused by forging the signatures of Jai Bhagwan nor there is anything that Krishan Kumar withdrew the amount under his signatures from the account of Jai Bhagwan. From the statement of PW-3, in no way, it can be held that prosecution has proved its case against the accused Krishan Kumar. Mere depositing of money on the asking of Assistant Registrar, in no way, can be treated as presumption of guilt against the accused. PW-4 Ram Pal Singh also stated that on 18.01.2003, Krishan Secretary had withdrawn ₹21,000/- from account of Jai Bhagwan without his signatures illegally but he is not telling as to how this money was withdrawn. Even, there is nothing that from which bank account the money was withdrawn. What was the account number of the society or of Jai Bhagwan Clerk.

From the evidence on record, it is not clear that where the money was lying and how it was withdrawn. No name of the bank etc. has been mentioned from where the money was withdrawn. In cross-examination PW-4 Ram Pal Singh stated that cash is not dealt by the Clerk. It is the duty of Secretary to accept and give receipt. He also stated on the receipt Ex.PW4/A, name of Krishan is mentioned. He cannot tell about the voucher for depositing the money. He also stated that in Ex.PW4/A, except the words 'Amanat Vapas Jai Bhagwan 18.01.2003' the remaining receipt is with carbon. He specifically stated that accused did not make forged signatures in the name of Jai Bhagwan. As regarding PW-6 ASI Sahab Singh, he investigated the matter partially. PW-7 Subhash Chander mainly deposed regarding conducting enquiry but in cross-examination, he stated that he had never given notice to Secretary Krishan Kumar. So, much reliance cannot be placed upon his statement.

From the perusal of the record itself, it is clear that prosecution has not proved its case beyond reasonable doubt by leading cogent evidence. From the evidence on record, nothing is clear from where the money was withdrawn, what was the account number of Jai Bhagwan, whether the money was withdrawn by forging the signatures, whether the money was withdrawn under the signatures of Krishan Kumar. Nobody proved the signatures of Krishan Kumar on the document vide which the amount was withdrawn.

In view of the above discussion, I find that the Courts below have misread the evidence and have not given the findings as per evidence on record. The prosecution has failed to prove the guilt of the accused-petitioner beyond reasonable doubt by leading cogent evidence. Where the reasonable doubt exists, the benefit of doubt is to go to the accused. Therefore, by holding that prosecution has failed to prove its case beyond reasonable doubt and by giving benefit of doubt to the present petitioner, the present revision is accepted.

The judgments and order passed by learned Courts below are set aside. Petitioner Krishan Kumar is acquitted of the charges framed against him and he be released forthwith if his custody is not required in connection with any other case.

December 09, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**