233A

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.3128 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 20.02.2014 and order of sentence dated 22.02.2014 passed by learned Sub Divisional Judicial Magistrate, 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 ₹3000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months under Sections 408 and 420 IPC each 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 Bhim Sen Gupta, Managing Director moved a written complaint to the police to the effect that on 22.01.2001, vide voucher No.5003, two receipt books bearing No.124201 to 124300 and 124301 to 124400 have been issued to Jai Bhagwan, Clerk, Co-operative Society, Ranila (hereinafter referred to as 'Society'). However, the date of issuance of receipt book No.124301 to 124400 has been tampered and date of issuance has been changed to 23.01.2001 from 22.01.2001. However, aforesaid receipt book is also not available in the Society. It has been transpired that following two receipts have been issued from aforesaid receipt books:-

Sr. Nos.	Receipt No.	Dated	Member's name	Receipt amount	Particulars
1.	124301	05.02.2001	Sh.Prahlad son of Sh.Sheo Karan A/c. no.663	7300	The receipt has been issued by Sh.Jai Bhagwan, Clerk of Society and transaction has been made in the passbook
2.	124303	13.02.2001	Sh.Rameshwar son of Sh.Lekha Ram, A/c. no.749	7000	The receipt bears the signatures of Sh.Krishan Singh Secretary and Sh.Jai Bhagwan, Clerk of Society but signatures of Secretary are not seen correct.

It is prayed that matter be inquired and case be registered. On the basis of this complaint, police proceedings were initiated. FIR was registered. Statements of witnesses were recorded. After necessary investigation, challan was presented against the accused-petitioner. Finding prima facie case, accused was charged under Sections 408 and 420 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined witnesses. At the close of the prosecution evidence, the statement of accused was recorded under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded his false implication. In defence, accused-petitioner examined DW-1 Jaivir Yadav, Handwriting and Fingerprints Expert and closed the evidence.

Learned SDJM, Charkhi Dadri vide judgment of conviction dated 20.02.2014 held the accused guilty under Sections 408 and 420 and sentenced him vide order dated 22.02.2014 as stated above. An appeal was filed by the petitioner and learned Sessions Judge, Bhiwani, dismissed the appeal vide impugned judgment dated 28.07.2015.

Aggrieved from the above-said judgments and order, present revision petition has been filed.

At the time of arguments, learned counsel for the revision petitioner argued that both the Courts below have misread the evidence. There is no cogent evidence on record against the present petitioner and the reasonings given by the Courts below are perverse and against the evidence.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence.

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

From the record, I find that PW-1 SI Chanderpal mainly deposed regarding presentation of challan under Section 173 Cr.P.C. PW-2 SI Phool Kumar mainly deposed that he had taken the receipt No.124301 pertaining to Rajbir in police possession and recorded the statements of the witnesses. The receipt was taken into police possession vide memo Ex.PW2/A. One receipt was of Prahlad and the receipt Ex.PW2/B was taken into police possession. In cross-examination, PW-2 stated that he does not know Prahlad and Rajbir personally. On Ex.PW2/B, signatures of accused Krishan Kumar are not there and he does not know, whose signatures are there on it. He stated that after conducting the investigation, he found that there are no signatures of Krishan Kumar on Ex.PW2/B. The FIR was registered against Jai Bhagwan and thereafter, he was transferred. He also deposed in cross-examination that he had conducted the investigation and Section 120-B IPC was added in this case and Jai Bhagwan, whose name is mentioned in the FIR, was found guilty and during investigation, such like facts had come against Rampal. Krishan was not guilty in his investigation. Therefore, the statement of PW-2 SI Phool Kumar goes in favour of the accused where the witness has stated that Krishan Kumar was not found guilty during his investigation. PW-3 Rampal Singh, Branch Manager, Co-operative Bank, Ranila mainly deposed that on 22.01.2001, the Society had got issued receipt No.124201 to 400 from Bhageshwari Branch after depositing ₹80/- and on getting signatures of Krishan Secretary. Krishan Secretary by issuing receipt No.124303 for ₹7000/- and another of ₹7300/- and making entry of the same in the record, committed embezzlement. Receipt of ₹7000/- was found in audit and the same is attested by the auditor. Thereafter, Krishan Secretary and Samsher E.O. in connivance with each other cancelled the signatures of Krishan Secretary for receipt book in the receipt book issue register. He had reported the same to his senior officers through registered letters. This witness further deposed that receipts books have been taken into charge by Krishan Secretary by entering the same at page No.189 of the cash book of the Society. The receipt book is Ex.PW3/A. In cross-examination, PW-3 Rampal Singh stated that it is correct that column in which signatures are to be appended in that column ahead of entry in which receipt No.124301 to 124400 has been issued and ahead of it there is cutting in the column of signatures and in the next column, there are signatures of Jai Bhagwan. He further stated that Signatures of Jai Bhagwan were not appended in his presence. None of the signatures in the register were appended in his presence. The register is in the custody of the cashier and all the signatures are appended in the presence of the cashier. It is further deposed by this witness in the cross-examination that the cutting was not done in his presence. He admitted that below the cutting, the signatures which he is telling as of Krishan accused, were not appended in his presence. He next deposed in the cross-examination that voucher No.5003/22.1.02 for ₹10,000/- in which two receipt books for ₹80/- have been issued, ₹9920/- have been deposited in the loan account of the Society. One receipt book issued for ₹40/- and on the same through this voucher, Jai Bhagwan Clerk, deducted ₹80/- for two pass books and the same were deposited by Jai Bhagwan. This witness also stated that writing on Ex.PW4/A and PW2/B is of Jai Bhagwan Clerk. Receipt No.124303 contains signature of Krishan Secretary. He specifically denied that on Ex.PW4/A signatures of Krishan are not there. He admitted that the embezzlement as per the FIR was shown against Jai Bhagwan Clerk by Bhim Sen Gupta. PW-4 Rameshwar mainly stated that on 13.01.2001, he had deposited ₹7000/- in his account. The same were given in the hands of accused Krishan in the presence of Jai Bhagwan and thereafter, accused Krishan gave him the receipt and its number was 124303. This receipt was later on taken by the police from him. The original receipt is Ex.PW4/A. Later on, he came to know that said amount of ₹7000/- was not deposited in his account. In cross-examination, this witness stated that he does not know in whose hand the receipt Ex.PW4/A has been written and who has prepared it. He also stated that he got prepared his affidavit Ex.DX/1 as the same was sometimes requisitioned by the police and sometimes by the Bank. As per Ex.DX/1, it is mentioned in the affidavit that above mentioned amount of ₹7000/- was handed over by him in the hands of Jai Bhagwan and he received the above mentioned receipt. At that time, Krishan Secretary was present. This document Ex.DX/1, which has been admitted by the witness in cross-examination, is totally contradictory to the statement made in the chief-examination and it shows that the amount of ₹7000/- was handed over to Jai Bhagwan and not to Krishan Kumar.

Furthermore, as regarding Ex.PW4/A, it was admitted by PW-3 Rampal Singh that writing on Ex.PW4/A is of Jai Bhagwan, Clerk. Second receipt Ex.PW2/B is also in the hand of Jai Bhagwan, Clerk. Therefore, the statement of PW-4 further creates doubt in the prosecution version. PW-5 Ram Kumar, Clerk mainly brought the enquiry report. PW-6 Bhim Sain Gupta, Managing Director of the Co-operative Bank deposed regarding the complaint made by him to the SHO. In cross-examination, he stated that he got the FIR of embezzlement registered against Jai Bhagwan, Clerk after thorough investigation and according to him, the embezzlement was committed by Jai Bhagwan Clerk. He further deposed that signatures of Jai Bhagwan Clerk are on the receipts. He further deposed that receipts were signed by Jai Bhagwan. This statement also creates doubt in the prosecution version. PW-7 Jai Bhagwan in the chief-examination stated that on receipt Ex.PW2/B for ₹7300/- his signatures are appearing in place of Secretary. He stated that the same were forged by Krishan but in the present case no handwriting and fingerprints expert was examined by prosecution. In cross-examination also, he stated that on Ex.PW3/A his signatures are there which are entered at column number. The other signatures are also of him. He further stated that on Ex.PW3/A, there are no signatures of any other person. He also admitted in cross-examination that original of Ex.PW4/A is completely written by him and stated that it is signed by Secretary. He also stated in cross-examination that receipt Ex.PW2/B is also prepared by him and on this, there are no signatures of the Secretary.

I have gone through the statements of other material witnesses also. No cogent evidence is produced by the prosecution to prove that accused has embezzled the amount. The signatures of the accused-petitioner on the receipt have not been proved by leading cogent evidence. Rather, the Investigating Officer, who initially investigated the case, also found Jai Bhagwan as guilty and he found Krishan Kumar as not guilty. Only one receipt out of two, does not bear the signatures of anybody whereas the other receipt is in the hand of Jai Bhagwan Clerk, which is admitted by him. Jai Bhagwan stated that it was signed by Krishan Kumar. This witness in chief-examination nowhere stated that he identifies the signatures of Krishan Kumar and this receipt bears signatures of Krishan Kumar. No expert has been called to prove the signatures of Krishan Kumar. On the other hand, accused examined expert in defence which further create doubt in the prosecution version.

Furthermore, even the witness who stated that he has paid ₹7000/- to Krishan Kumar and receipt was given to him, has also in his affidavit Ex.DX/1 stated that he gave the money to Jai Bhagwan, Clerk, who issued receipt and Krishan Kumar was only present there.

From the evidence on record, I find that the Courts below have misread the evidence. The findings given by the Courts below are not as per evidence on record. A reasonable doubt exists in the prosecution version and the prosecution has not led the cogent evidence to prove its case against the present revision petitioner. The benefit of doubt is to go to the accused. Therefore, by giving benefit of doubt to the present petitioner, the present revision petition 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**