

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3546-2014 (O&M)

Date of Decision: January 13, 2015

Mahender Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Vikas Kumar, Advocate,
for the petitioner.

NARESH KUMAR SANGHI, J. (Oral)

The present criminal revision petition has been filed challenging the judgment, dated 17.10.2004, passed by learned Additional Sessions Judge, Faridabad, whereby the appeal filed by the petitioner, Mahender Singh, son of Budh Singh, resident of House No. 80, Vishnu Colony, Ballabgarh, District Faridabad, impugning the judgment of conviction dated 10.3.2014, and the order of sentence dated 13.3.2014, passed by learned Judicial Magistrate Ist Class, Faridabad, was dismissed.

Learned counsel for the petitioner submits that the petitioner was a Lower Division Clerk in the Haryana State Electricity Board at Faridabad and had never acted as a Cashier; the prosecution witnesses had very fairly conceded in their

depositions that the electricity charges were never paid to the petitioner; the stand that the petitioner was not working as a Cashier was fortified from the fact that he was never suspended or charge-sheet was ever issued to him; and that on the basis of conjectures and surmises, both the learned Courts below have held the petitioner guilty.

I have heard learned counsel for the petitioner and with his able assistance gone through the material available on record.

Brief facts of the case are that the Sub Divisional Officer, Dakshin Haryana Bijli Vitran Nigam, Faridabad, lodged a report with the police that the petitioner, Mahender Singh, was posted as Lower Division Clerk in the Sub-Division since 3.4.2007. He was deputed to receive cash from the consumers of their electricity bills against receipts and to enter the received amount in the Consumer Cash Register. The petitioner issued fictitious receipts to the consumers and pocketed the money. When the consumers came to know that the amount deposited by them was not credited to the Consumer Cash Register, then they brought the said fact to the notice of the higher authorities. The petitioner absented himself from duty with effect from 3.8.2007 and in spite of letters sent to him to explain the reason, he failed to do so.

On the basis of the said complaint, FIR No. 41, dated 5.3.2008, for the offences punishable under Sections 408, 409 and 420, IPC, was registered at Police Station, Sarai Khawaja, District Faridabad. After completion of the formalities of investigation, the charge-sheet (report under Section 173, Cr.P.C.) was presented before the learned Area Judicial Magistrate. Finding a *prima facie* case, the learned Trial Court framed the charges for the offences punishable under Sections 408, 409 and 420, IPC, to which the petitioner pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as eleven witnesses, namely, Charan Singh (PW-1), Sajid Hussain (PW-2), Murti Devi (PW-3), Inspector Kartar Singh (PW-4), EASI Naresh Kumar (PW-5), Surender (PW-6), Chet Ram (PW-7), M.L. Rohila (PW-8), Renu (PW-9), Constable Naresh Kumar (PW10) and Suresh Kumar, LDC (PW-11). The prosecution also produced and placed reliance on various documents as detailed in para No. 7 of the judgment of conviction dated 10.3.2014, passed by learned Judicial Magistrate Ist Class, Faridabad.

After conclusion of the prosecution evidence, the statement of the petitioner, under Section 313, Cr.P.C., was recorded in which he denied all the incriminating material

appearing against him. No evidence in defence was led by the petitioner.

After taking into consideration the material available on record, learned Trial Court vide judgment dated 10.3.2014 held the petitioner guilty for having committed the offences punishable under Sections 408, 409 and 420, IPC, and vide order dated 13.3.2014, awarded the following sentences:

Under Section	Sentence	Fine (in ₹)	In Default
408, IPC	S.I. 1 year	1,000/-	--
409, IPC	S.I. 1 year	3,000/-	--
420, IPC	S.I. 1 year	1,000/-	S.I. 15 days

All the substantive sentences were ordered to run concurrently.

The petitioner challenged the said judgment of conviction and the order of sentence before the Court of Session by way of an appeal, but the same was dismissed vide impugned judgment dated 17.10.2014, passed by learned Additional Sessions Judge, Faridabad.

Though both the Courts below have thoroughly scanned the factual and legal aspects of the case and held the petitioner guilty for the offences punishable under Sections 408, 409 and 420, IPC, but to satisfy the conscience of this Court, the copies of the

statements of the prosecution witnesses produced by the petitioner on record and the other material have been thoroughly perused by this Court.

PW-1 Charan Singh deposed that he had obtained an electricity connection at his residence and deposited a sum of Rs. 5,337/- towards the electricity charges for the period w.e.f. 3.2.2007 to 3.4.2007 with Lower Division Clerk, Mahender Singh, who was sitting at the seat of Cashier. A receipt (Ex.PW1/A) was issued by the petitioner but the petitioner did not deposit the said amount in Government account. He (Charan Singh) even identified the petitioner in the Court.

PW-2 Sajid Hussain deposed that he being a consumer of the electricity department had deposited a sum of Rs. 3,180/- on 18.7.2007 towards electricity charges with Mahender Singh, Cashier, but the said amount was never credited in the account book. He also identified the petitioner as a person to whom the amount was paid.

PW-3 Murti Devi deposed that her husband had deposited the electricity charges with the petitioner, Mahender Singh, against receipt on 3.6.2007. However, in the cross-examination she admitted that she neither knew Mahender Singh

nor her statement was ever recorded by the police. She further admitted that she had not paid the amount to Mahender and even no receipt was obtained by her from the petitioner.

PW-4 Inspector Kartar Singh – He had registered the FIR and thereafter investigated the case. He deposed in detail about the formalities of the investigation conducted by him. Nothing material in favour of the petitioner could be elicited from his mouth after lengthy cross-examination.

PW-5 EASI Naresh Kumar was an associate of Inspector of Police and remained associated in the investigation.

PW-6 Surender was also a consumer of the electricity department and deposed that an amount of Rs. 1,081/- was deposited on 23.5.2007 with Mahender Singh (petitioner) who was sitting at the counter. The said amount was not credited to his account.

PW-7 Chet Ram was also a consumer and he too deposed that an amount of Rs. 3,200/- was deposited against receipt (Ex.PW7/A) and when the said amount was not credited in his account, then he moved an application against Mahender Singh (petitioner).

PW-8 M.L. Rohila, Executive Engineer, DHBVN,

Gurgaon, deposed that on 12.12.2007 he was posted as Sub Divisional Officer (Operations), DHBVN, and presented an application No. 3550, dated 12.12.2007 (Ex.PW8/A) before the Station House Officer, Sarai Khawaja, for registration of the case against Mahender Singh (petitioner). He also deposed that the petitioner was deputed to receive the payment from the consumers of their electricity charges at the cash counter against receipts. The said cash amount was pocketed by the petitioner and the receipts thereof were not entered in the register. On the complaints of the consumers, it came to his knowledge. The complaints were inquired into and it was found that Mahender Singh had cheated 13 such consumers. In his cross-examination, he admitted that neither any charge-sheet was served upon Mahender Singh nor he was suspended. However, he disclosed that the matter was brought to the notice of the higher officers.

PW-9 Renu deposed that she had given a sum of Rs. 8,966/- to her husband on 27.6.2007 for depositing the same with the electricity department, but when the electricity meter was removed from her house, then it came to her notice that the amount deposited by her husband was not credited to her account. In her cross-examination, she fairly admitted that she had not gone

to deposit the bill amount, however, she denied the suggestion that she did not know the person with whom her husband had deposited the amount. Voluntarily she disclosed that she had seen the petitioner earlier in the electricity office. Rest of the suggestions put to her in her cross-examination were denied.

PW-10 C. Naresh Kumar and PW11 Suresh Kumar, LDC, had produced the record of the electricity department before the Court.

There is no doubt that PW-3 Murti Devi and PW-9 Renu, in their cross-examination admitted that they had not gone personally to deposit the amount, but admissions on their part would not by itself be sufficient to discard the depositions of other witnesses who were very specific in their depositions that the electricity charges were handed over to the petitioner, Mahender Singh, at the cash counter against receipts, but the amount was not credited in their accounts. The inquiry conducted by the then Sub Divisional Officer (Operations) also revealed that the petitioner after charging the amount from 13 consumers, had not credited the same to their respective accounts.

The argument of the learned counsel for the petitioner that no inquiry was conducted by the department is falsified from

the deposition of the then Sub Divisional Officer (Operations). The further submission of the learned counsel for the petitioner that he was a Lower Division Clerk and never acted as a Cashier is also falsified from the depositions of the witnesses. Even the then Sub Divisional Officer (Operations)[PW-8], who was incharge of the electricity department at that point of time, was very clear in his deposition that the petitioner was deputed to act as a Cashier and to receive the amount from the consumers. Learned Trial Court as well as the learned first Appellate Court have assigned cogent reasons for holding the petitioner guilty for the offences punishable under Sections 408, 409 and 420, IPC, and passed the appropriate sentences. This Court is of the considered opinion that no interference is called for in the impugned judgment of conviction and the order of sentence and, as such, the present criminal revision petition sans merit and is hereby dismissed.

January 13, 2015
Pkapoor

(NARESH KUMAR SANGHI)
JUDGE