

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 13th March, 2015
Judgment Pronounced on: 24th April, 2015

CRL.REV.P. 559/2008

P.C. DHINGON

..... Petitioner

Through: Mr. A.N. Sharma, Advocate

versus

C.B.I.

..... Respondent

Through: Mr. Narender Mann, Sp. PP with
Ms. Utkarsha Kohli, Adv. for CBI

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Aggrieved by the order on conviction dated 26.02.1997 and the order on sentence dated 05.03.1997 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioner to undergo rigorous imprisonment for one year and fine of Rs.2,000/- under Section 409 IPC, in default of payment of fine to further undergo simple imprisonment for 60 days; imprisonment for a period of six months under section 477-A IPC and upholding the same by the learned Additional Sessions Judge vide judgment dated 31.07.2008, the present revision petition has been filed by the

petitioner.

2. Factual matrix, as emerges from the record, is that the petitioner was working as Store Keeper in petrol pump run by Delhi Administration. During the tenure of the petitioner, a complaint dated 24.03.1984 was filed by the Deputy Secretary (Vigilance) in the Anti Corruption Department. A raid was conducted and during investigation, it revealed that about 1,17,489 litres of petrol and 69,764 litres of diesel was found short in the financial year 1983-84. There was a POL (Petrol) scheme under the Development Commissioner for the development of Agriculture. One Manure and Fertiliser Officer (MFO) used to supervise the supply of sludge, repair of trucks, fuel of truck including petrol pump etc.; MFO was deputed for the work of sludge; there was one store keeper and two attendants. It was alleged that during the period 18.08.1983 to 24.02.1984, the petitioner had worked as store keeper and shortage of 91,626 litres of petrol and 52,519 litres of diesel was noticed; the petitioner got the meter reading of pumps jumped by 67,142 litres in case of petrol and 20,972 in case of diesel; he had manipulated the fair register and covered up the shortage by adding 500/700 litres in daily supplies; he had signed the consignee's receipt certificate which only Sh. S.S. Gupta was authorized to sign. On completion of investigation, CBI filed the charge-sheet.
3. Charges under Section 409 and 477A IPC were framed against the petitioner. The petitioner pleaded not guilty to the charges framed.

4. To prove its case, CBI examined 24 witnesses. After conclusion of prosecution evidence, the statement of the petitioner was recorded under Section 313 Cr.P.C. in which he had claimed innocence. The petitioner opted not to lead defence evidence. The learned Metropolitan Magistrate vide judgment dated 26.02.1997 held the petitioner guilty for the offence punishable under Section 409 and 477A IPC and convicted him for the said offences. The order on sentence was passed on 05.03.1997.
5. Thereafter, the petitioner filed an appeal bearing Criminal Appeal No.36/2001. The learned Additional Sessions Judge vide judgment dated 31.07.2008 confirmed the conviction and sentenced awarded to the petitioner.
6. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the judgments rendered by the Courts below and claiming acquittal.
7. The arguments advanced by the learned counsel for the petitioner are that MFO was the overall incharge of the petrol pump; every act was done under his supervision/guidance and knowledge; it was not the duty of the petitioner to take the delivery of petrol as anybody could take its delivery; there were fault in the tank at the petrol pump and pumping unit; consignment receipt certificates were signed by other persons and not by the petitioner; chowkidar used to check the supply of petrol/diesel; petitioner was merely as LDC/store keeper; petitioner used to receive the delivery of petrol/

diesel after verification by chowkidar and attendants; the petitioner had no dominion over the petrol pump; the petitioner had not made any wrong entry in any register.

8. In support the above contentions, learned counsel has referred to judgment in case of *S.V.L. Murthy vs. State* 2009 AIR (SC) 2717 in which it was observed that the ingredients of an offence of the criminal breach of trust are : (1) Entrusting any person with property or with any dominion over property; (2) That person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or wilfully suffering any person so to do in violation (i) of any direction or law prescribing the mode in which such trust is to be discharged, or (ii) of any legal contract made touching the discharge of such trust. It was further held as under :

“It is one thing to say that ordinarily a concurrent finding of fact shall not be interfered with by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India but it is another thing to say that despite opining that accused are entitled to acquittal, a judgment of conviction passed against them should be upheld. In fact, the jurisdiction of this Court must be exercised wherever it is required to do so for securing the ends of justice and to avoid injustice.”

9. On similar point, judgments in case of *Radha Pisharassiar Amma vs. State of Kerala* 2007 (13) SCC 410; *Sudershan Kumar vs. State of Himachal Pradesh* 2014 (10) SLT 657; *Shankar Mandal*

vs. State 2001 (4) RCR (Criminal) 753; State of Orissa vs. Gopinath Panigrahi & Anr.1 (1996) CCR 236; State of Gujarat vs. Chandubhai Ramjibhai Patel 1995 Cri.L.J. 4082 have been relied upon.

10. Ld. counsel for the petitioner further relied upon judgments in case of *Keshav Dutt vs. State of Haryana 2010 (9) SCC 286; Ram Prasad Sharma vs. The State of Bihar 1969 (2) SCC 359; Kessarbai vs. Jethabhai Jivan AIR 1928 Privy Council 277; Hardevi Malkani vs. State and another 1969 Cri.L.J. 1089; State (Delhi Administration) vs. Pali Ram AIR 1979 SC 14* to press the contention that the handwriting and signatures of the petitioner ought to have been examined by the handwriting expert and in the absence of same, the admissibility of documents bearing writing and signatures of the petitioner is in doubt; the accused is not to prove his case with the same strictness and rigour as the prosecution is required to prove a criminal charge.
11. The petitioner was charged under Section 409 IPC for misappropriating 91,626 litres of petrol and 52,519 litres of diesel while working as store keeper at the petrol pump of Delhi Administration. To prove the entrustment of petrol/diesel or the dominion of the petitioner over the same and falsification of record by him, prosecution witness PW23 Sh. Kewal Krishan had stated that he had conducted detailed enquiry vide report Ex.PW21/B. As per entries made on 18.08.1983 in Fair Register Ex.PW23/I, the petitioner had taken over the charge of the petrol pump on that day

with regard to petrol. Vide entry dated 18.08.1983 made in diesel register Ex.PW23/M, the petitioner had taken the charge with regard to diesel. Both these registers were maintained by the petitioner during the discharge of his official duties. As per entries of the registers, when the petitioner had taken charge, the balance of the petrol was 3635 litres and meter reading was 62446 litres. Balance of diesel was 11,283 litres and meter reading was 63,658 litres. Thereafter, the petitioner received several consignments of petrol and diesel which was reflected vide entries at serial no.16 to 39 except entry nos.21 and 35 at page 10 of register Ex.PW21/B. The said fact has been corroborated from the testimony of PW17 Sh. S.S. Gupta. The entries of CRC register proved vide Ex.PW3/P and Ex.PW3/O further corroborated this fact. Even the petitioner had admitted that he received the consignments of the petrol and diesel during the said period.

12. It has been submitted by the learned counsel for the petitioner that he was not responsible for maintaining the stock of petrol and diesel and it was the MFO who was the incharge of the functioning of the petrol pump and it was his duty to maintain the stock. There is no force in this contention of the petitioner inasmuch as it is admitted case of the petitioner himself that he was the store keeper of the petrol pump and it has come on record that the consignments of petrol and diesel used to be received by him and for that purpose, he used to maintain the record. The fact that the petitioner was the incharge of the petrol pump and he used to maintain the stock, has

also been corroborated from the testimony of PW3 Indraj Singh Tyagi and PW17 S.S. Gupta. PW3 Indraj Singh Tyagi, Manure and Fertiliser Officer (MFO) had stated that the petitioner was the incharge of petrol and diesel. PW17 had stated that as a store keeper, it was the duty of the petitioner to take supply of petrol/diesel, to maintain stock, to deliver petrol/diesel to vehicles of government departments and to raise bills from the said departments. Thus, it was duly established that the petitioner was incharge of the petrol pump; it was his duty to take supply of petrol and diesel and to maintain the stock of the same. The entries made in the registers further established this fact. Even in his statement under Section 313 Cr.P.C., the petitioner stated that he joined as Store Keeper on 18.08.1983 and remained as such at Petrol Pump of Delhi Administration upto 31.01.1984. He admitted that as a Store Keeper, it was his duty to take supply from I.O.C. in the presence of MFO, to maintain stock registers and to raise bills on various departments.

13. There is no force in the contention of the petitioner that he used to receive the supply of petrol and diesel on the directions of MFO and it was the MFO only who was responsible for the stock of the petrol/diesel at the petrol pump for the reasons that the delivery of petrol and diesel used to be taken by the petitioner being Store Keeper and it was his duty to maintain the stock by making entries in the stock register. It has duly been established that the petitioner failed to discharge his duties efficiently by making mis-

appropriation of petrol and diesel as he used to maintain the stock of petrol and diesel and had dominion over the same and misappropriated the same.

14. Next contention of the petitioner is that there were some faults in the pumping units and petrol pump which might be the reason for showing variation in the stock of petrol and diesel. Though it is apparent that PW4 Rattan Lal Bhardwaj had stated that there were some defects in the petrol pump and PW8 and PW9 had stated that they attended the complaints at the said petrol pump, but the fact cannot be lost sight that due to said defects in the petrol pump, the stock of petrol/diesel could not be deficient. Even otherwise, it did not come on record that there was any such major fault in the dispensing units or the petrol pump which could have resulted into loss of petrol/diesel.
15. It also came on record that the capacity of the tank at the petrol pump was 16000 litres. Vide entry dated 25.10.1983 Ex.PW3/P, petitioner had received a consignment containing 12000 litres of petrol on that day and had issued 4309 litres of petrol till the receipt of next consignment of 10000 litres on 28.10.1983. If 4309 litres of petrol is deducted from 12000 litres, it comes 7691 litres and if this quantity is added in the next supply of 10000 litres of petrol, then it comes to 17691 litres, which falsifies the entries made by the petitioner in the stock register as the tank was of the maximum capacity of 16000 litres only. There were other discrepancies with regard to other consignments also.

16. PW3 Indraj Singh Tyagi had categorically deposed that the petitioner was incharge of petrol and diesel. PW4 Rattan Lal Bhardwaj had deposed that rough registers and fair registers were maintained at the petrol pump. PW5 Madan Mohand had deposed that entries used to be made in rough register regarding delivery and receipt of petrol and diesel and the Store Keeper used to make such entries in the fair registers. PW11 Ishwar Singh had also deposed that the petitioner was the incharge of the oil stock of the petrol pump. PW17 S.S. Gupta had stated that the rough registers used to be handed over to the storekeeper after completing the entries; the petrol attendants were under the supervision of storekeeper. PW23 Kewal Krishan had stated that the petitioner used to maintain fair register on the basis of rough register. Ex.PW23/I, Ex.PW23/J and Ex.PW23/K were the fair registers pertaining to petrol, whereas Ex.PW23/L was the fair register pertaining to Diesel which were proved by PW23. The entries made in the registers duly proved that the petitioner was responsible for maintaining the stock of petrol and diesel while posted as storekeeper and there was shortage of petrol and diesel during his tenure.
17. It was duly established that the petitioner being Store Keeper of the Petrol Pump of Delhi Administration at Mall Road was the incharge of the same. It was further established that during his tenure, he misappropriated 91,626 litres of petrol and 52,519 litres of diesel which was entrusted to him as the entries made by him in the

registers duly proved that he used to maintain the stock of the same. It was further established that he was entrusted with the petrol and diesel of the petrol pump which was being supplied at the petrol pump and he was also responsible for maintaining the records in the concerned registers with regard to their stock. It was further established that the petitioner made false entries in stock registers, challans and receipts with the intention to defraud the Delhi Administration. The contention of the petitioner that his hand writing and signatures were not examined by the hand writing expert were not necessitated as it was admitted case of the petitioner himself that he was he joined as Store Keeper on 18.08.193 at Mall Road Petrol Pump of Delhi Administration and remained posted there as such upto 31.01.1984. It was also admitted fact by the petitioner that he was his duty to take supply of the petrol/diesel, to maintain stock registers and to raise bills on various departments. Even during trial the petitioner had not disputed his hand writings and signatures on the relevant registers, challans and receipts. In the absence of any such dispute raised by the petitioner, there was no need to get the hand writings and signatures of the petitioner examined from the hand writing expert. In view of the clear and cogent evidence available on record, the judgments relied upon by the petitioner in case of *S.V.L. Murthy* (supra), *Radha Pisharassiar Amma* (supra), *Sudershan Kumar* (supra), *Shankar Mandal* (supra), *Gopinath Panigrahi* (supra), *Chandubhai Ramjibhai Patel* (supra), *Keshav Dutt* (supra), *Ram Prasad Sharma* (supra), *Kessarbai* (supra), *Hardevi Malkani*

(supra) and ***Pali Ram*** (supra) are of no assistance to him as the facts of the present case are distinguishable.

18. In the judgment in case of ***Ram Briksh Singh and Others vs. Ambika Yadav and Another (2004) 7 SCC 665*** it was observed that the revisional court does not function as a court of appeal and, therefore, cannot re-appreciate the evidence. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. The jurisdiction can be invoked to correct the wrong appreciation of evidence. Though the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice. The High Court is not required to interfere in the concurrent finding of facts.
19. Similar observations have been made in recent judgment of Hon'ble Apex Court in case titled ***Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke MANU/SC/0040/2015*** in which it was observed that the whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court Under Sections 397 to 401 of Code of Criminal Procedure is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material

facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction. *This Court is of the considered opinion that the present case is not a fit case where the revisional jurisdiction is required to be exercised on the concurrent finding of facts recorded by the Courts below.*

20. On the quantum of sentence, learned counsel for the petitioner has submitted that the petitioner has faced the protracted proceedings for about 29 years; the petitioner is having two daughters and a son and a lenient view may be taken on the quantum of sentence of imprisonment.
21. In the present case, it is apparent from the record that FIR was registered on 06.02.1986; charge sheet was filed on 16.12.1988; judgment of conviction was passed on 26.02.1997; order on sentence was passed on 05.03.1997; criminal appeal filed by the petitioner was dismissed on 31.07.2008 and now we are in the year 2015. The petitioner is stated to have remained behind the bar for about three months.
22. In view of discussion made above, the judgments passed by the Courts below cannot be said to be not sustainable in the eyes of law and deserve to be upheld. However, this Court is of the considered opinion that it would not serve any purpose to send the petitioner behind the bar. Accordingly, the sentence of imprisonment is modified to the period already undergone by the petitioner, subject

to enhancement of fine from Rs.2,000/- to Rs.20,000/- for offence under Section 409 IPC, in default the petitioner shall undergo simple imprisonment for three months and the adjustment of fine already paid.

23. The petitioner shall appear before the Chief Metropolitan Magistrate (South East) within the period of one month from the date of order to pay the fine, failing to which surrender to serve the sentence in default of payment of fine.
24. The present revision petition is dismissed with the modification on the quantum of sentence. Files of the trial Court as well as of appellate Court be sent back.

P.S.TEJI, J.

April 24, 2015
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