IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRA No.S-558-DBA of 1997 (O&M)

State of Haryana

...Appellant

VERSUS

Radhe Shyam

...Respondent

(ii) CRR No.923 of 1997 (O&M)

The Bhiwani Co-operative Bank Ltd.

...Petitioner

VERSUS

Radhe Shyam and another

...Respondents

Date of Decision: February 10, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.R.Singla, Deputy Advocate General, Haryana
for the appellant-State in (CRA No.S-558-DBA of 1997) and
for the respondent-State in (CRR No.923 of 1997).

Mr.S.S.Dalal, Advocate
for the petitioner in (CRR No.923 of 1997).

Ms.Monica Thakur, Advocate
for respondent in (CRA No.S-558-DBA of 1997) and
for respondent No.1 in (CRR No.923 of 1997).

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INDERJIT SINGH, J.

This judgment shall dispose of above-mentioned two connected cases as the matter in dispute is same in both the cases.

CRA No.S-558-DBA of 1997 has been filed by State challenging the impugned judgment dated 13.01.1997 passed by learned Chief Judicial Magistrate, Bhiwani, whereby the accused-respondent was acquitted of the charge framed against him and CRR No.923 of 1997 has been filed by The Bhiwani Co-operative Bank Limited also challenging the above-said impugned judgment.

The brief facts of the prosecution case are that an application from Bhiwani Central Cooperative Bank through the Superintendent of Police, Bhiwani was received in the police station, in which, it was mentioned by Shri Krishan Lal Bishnoi, Manager that Sh.S.K.Mittal, Branch Manager of Bhiwani Central Cooperative Bank Limited while checking the cash in hand of 12.03.1994 at 5.15 P.M., maintained by Radhe Shyam, Cashier, found amount of ₹7,05,000/- less with him. It is also stated that when he enquired about the less amount, then Radhe Shyam gave him in writing that the amount has been utilized by him for his private purposes. The photocopy of the statement given by Radhe Shyam was also enclosed along with the application and a request was made for registration of the case. After registration of the FIR, investigation was conducted. Documents were taken into possession. Statements of witnesses were recorded. Accused Radhe Shyam was arrested. After necessary investigation, challan was presented against accused Radhe Shyam.

On presentation of challan against accused, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused was charge-sheeted under Section 408 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Shri

Krishan Lal Bishnoi, Manager, PW-2 Satpal Singh Parmar, Cashier-cum-Clerk, PW-3 Dharampal Mathur, Junior Accountant, PW-4 Shiv Kumar Mittal, Assistant Manager and PW-5 Ravinder Kumar, Retd. Police Inspector.

Learned Chief Judicial Magistrate vide judgment dated 13.01.1997, found that the evidence produced by the prosecution is not sufficient for bringing the guilt of the accused beyond shadow of reasonable doubt and acquitted the accused.

Aggrieved from the judgment dated 13.01.1997, an appeal was filed by the State and a revision was filed by the complainant before this Court. This Court vide order dated 21.08.2009 accepted the appeal and the judgment passed by learned CJM, Bhiwani was set aside and accused Radhe Shyam was convicted under Section 408 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months. The revision filed by the complainant was stated to be rendered infructuous.

Against the order dated 21.08.2009, an appeal was filed before the Hon'ble Supreme Court and the matter was remanded back to this Court for fresh consideration in accordance with law by holding that this Court either should have appointed an advocate as amicus curiae and then proceeded to dispose of the appeal and revision on merits, more so when there were arguable points in appeal.

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

From the record, I find that findings given by learned CJM, Bhiwani vide judgment dated 13.01.1997 are correct, as per evidence and law. In no way, the findings can be held as perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below. In the present case, the allegation against the accused is that he has embezzled ₹7,05,000/-. Mere document relied upon by the prosecution is the confessional statement of the accused Ex.P8 and the case of the accused is that this document has been obtained under the threat of police and if this document Ex.P8 has been obtained under the threat, then it will become inadmissible in evidence and confession will not be treated as voluntarily.

PW-2 Satpal Singh Parmar, Cashier-cum-Clerk admitted that when the accused went to Oriental Bank of Commerce, Bhiwani for bringing cash, on that day, the transaction continued in the absence of the accused. The Court held that this fact was further corroborated with the cash receipt Ex.P3 prepared by the Branch Manager, which shows that cash transaction continued in the absence of accused Radhe Shyam on 11.03.1994. As per evidence on record, it is admitted fact of the prosecution that there were two keys of chest and one key was with the Branch Manager, in other words, there is double lock on the chest and it cannot be opened by one person. The Court held that there were chances that Branch Manager might have made the transaction in the absence of the Cashier. The Court further held that there is no document on record to show that cash was handed over to cashier on morning of 12.03.1994. Then a reasonable doubt exists in the prosecution version. In the evening of 11.03.1994 and in the morning of 12.03.1994, as per evidence, the cash was found intact. No amount in cash was recovered during the investigation from the accused. The cash was intact in the morning of 12.03.1994 and the chest has double lock and as per evidence, when the accused Radhe Shyam went to Oriental Bank of Commerce for half an hour, he had not taken any bag or anything with him and rather came back after half an hour with cash amounting to ₹5 lacs and one security person was also with him. The Court has correctly held that where the amount of ₹7,05,000/-, which is a voluminous amount, has disappeared. Either the version of the prosecution is not correct that cash on the evening of 11.03.1994 and in the morning of 12.03.1994 was found intact in the chest or the amount has been misappropriated on that day by someone else. A reasonable doubt exists in the prosecution version that in the morning of 12.03.1994, the amount was there in the bank. It is also proved from the evidence on record that when the accused went to Oriental Bank of Commerce for bringing cash with security person, he had not taken any amount with him, rather, he came back by withdrawing ₹5 lacs from that Bank along with security person, then this version of the prosecution creates reasonable doubt. It is not the case of the prosecution that chest was operated upon only by the accused and the amount has been taken away earlier to the occurrence as stated by complainant Branch Manager. Therefore, this version of the prosecution cannot be believed and reasonable doubt exists in the prosecution version.

The writing Ex.P8 looks to have been taken under pressure from the accused. Otherwise also, if the amount would have been embezzled on 12.03.1994 by the accused then there should have been some recovery from the accused of cash amount. He cannot misappropriate such a voluminous and huge amount in some 2-3 hours, especially when, he has left the bank only for a short period along with security guard.

As per PW-1 Krishan Lal Bishnoi, this shortage of amount of ₹7,05,000/- came to the knowledge of S.K.Mittal, Branch Manager, Bhiwani Central Cooperative Bank Limited at 12.15 P.M. PW-1 Krishan Lal Bishnoi, Manager, Bhiwani Central Cooperative Bank Limited was called Sh.S.K.Mittal PW-1 made enquiry from the accused and the accused admitted his guilt that he has embezzled that amount. It is in the cross-examination of PW-1 that he enquired from Branch Manager S.K.Mittal and he told him that the embezzlement was done on that day. PW-2 in his cross-examination has stated that on 12.03.1994, in the morning at about 10.00 A.M. when the bank was opened, the cash was checked at that time and cash was found correct. He also stated that on 12.03.1994, Radhe Shyam was sent to bring cash from Oriental Bank of Commerce at about 11.00 A.M. and he came back within 30 minutes by bringing ₹5 lacs cash from OBC. Another official of the bank had gone with him.

He also stated that till the period accused Radhe Shyam went to OBC, the transaction in the bank continued. He further stated that one key always remained with the Branch Manager. PW-2 also in cross-examination stated that when the accused had gone to OBC Bank, he had seen him and he had gone only along with one cheque and empty bag and he has not taken away anything with him.

Keeping in view the evidence on record, I find that the findings given by learned CJM, Bhiwani, in no way, can be held as perverse or against the evidence and law. A reasonable doubt exists in the prosecution version and learned CJM, Bhiwani, after giving benefit of doubt, has rightly acquitted the accused. Therefore, the judgment dated 13.01.1997 passed by learned CJM, Bhiwani, is correct, as per law and the same is upheld.

In view of the above discussion, I find that there is no merit in the appeal filed by the State i.e. CRA No.S-558-DBA of 1997 as well as in the revision filed by the Bhiwani Cooperative Bank Limited i.e. CRR No.923 of 1997 and therefore, the same are dismissed.

February 10, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**