

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.1806 of 2008 (O&M)

.....

Date of decision:6.5.2016

Vijay Kumar

...Petitioner

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Bipan Ghai, Senior Advocate with Mr. Paras Talwar,
Advocate for the petitioner.

Mr. Vikramjit Singh, Additional Advocate General, Haryana
for the respondent-State.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned judgment dated 3.9.2008 passed by learned Additional Sessions Judge, (Ad hoc), Fast Track Court, Panchkula, vide which the appeal filed by the petitioner against the impugned judgment of conviction and order of sentence dated 26.2.2007/27.2.2007 passed by learned Judicial Magistrate Ist Class, Panchkula, convicting the petitioner for the offences under Sections 408, 467, 468 and 471 IPC and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of ₹3,000/- and in default of payment of fine to further undergo simple imprisonment for three months for the offence under Section 467 IPC; also

to undergo rigorous imprisonment for two years and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo simple imprisonment for two months for the offence under Section 408 IPC; also to undergo rigorous imprisonment for two years and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo simple imprisonment for two months for the offence under Section 468 IPC and also to undergo rigorous imprisonment for two years and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo simple imprisonment for two months for the offence under Section 471 IPC, has been partly accepted. Vide the judgment of learned Additional Sessions Judge, the judgment of conviction and order of sentence of the petitioner for the offence under Section 408 has been upheld whereas the judgment of conviction and order of sentence for the offences under Sections 467, 468 and 471 has been reversed and the petitioner has been acquitted for the offences under Sections 467, 468 and 471 IPC.

The learned State counsel has put in appearance and contested this revision petition. Lower Courts record was also summoned. At the time of arguments, learned counsel for the petitioner mainly argued for taking lenient view against the revision petitioner and for reduction of the sentence. Nothing has been argued as to how the judgments passed by the Courts below are perverse. Nothing has been shown as to which material evidence has been misread and which material evidence has not been considered by the Courts.

The brief facts of the case as noted down by the learned

Judicial Magistrate Ist Class, Panchkula, in the judgment are as under:-

“That a letter No.6512 dated 10.8.94 received in the Police Station from Sh. M.S. Sandhu Sr. Registrar & OC Tps for Commandant for registration of case on the allegations that Lt. Col. H.L. Vohra (Retd.) as Canteen Manager w.e.f. 1.12.1991 and a Hav./Clk. Vijay Kumar (retired) as Accountant w.e.f. 3.5.91 were running the CSD Canteen of command hospital (W.C.) Chandimandir alongwith other staff.

3. It is further alleged that a shortfall of amount of Rs.1,68,951.30 cash has been occurred in CSD Canteen during the period of 1.2.1992 to 26.12.1993 as a result of Hav Vijay Kumar, accountant depositing less amount in the Bank. Later on Hav. Vijay Kumar paid back Rs.25,000/- to CSD Canteen. Lt. Col. H.L. Vohra Kumar paid back Rs.25,000/- to CSD Canteen. Lt. Col. H.L. Vohra Manager of CSD Canteen had failed to check the functioning of Hav. Vijay Kumar and there was incorrect handling of cash between the accountant and the manager and have not followed the standing orders laid down for the canteen. In fact, right from the very beginning a conspiracy was hatched by Col. H.L. Vohra (retired) in connivance with Hav. Vijay Kumar, Accountant to embezzlement the Govt. fund and to cause wrongful loss to the govt. and wrongful gain to themselves. In pursuance of that conspiracy both the officers in connivance with each other

embezzled a sum of Rs.1,68,951.30 by not depositing the amount in the bank and then by making forgery in the bank receipts. The conspiracy was revealed on 24.12.93 when the OIC Extension counter of the State Bank of India informed that cheque issued by CSD Canteen in Dec. 93 could not be honoured due to insufficient funds in their account. Although as per the account book both the officers were showing more than sufficient balance in cash book than cheque issued. Then the matter was inquired into and it was found that both the officers have intentionally embezzled a sum of Rs.1,68,951.30. The services of Manager Lt. Col. H.L. Vohra (retired) and Hav./Clk. Vijay Kumar (retired) have since been terminated from CSD Canteen.”

I have gone through the judgments passed by the Courts below.

A perusal of the judgments passed by the Courts below shows that the findings given by the Courts below are correct as per evidence and law. There is nothing on the record to show that these findings are perverse or against the evidence. No illegality has been committed by the Courts below in convicting the petitioner. This Court is not to re-appreciate the evidence like a Court of appeal and has only to see whether the order passed by the learned Court below is illegal, perverse or some material evidence has not been discussed or the evidence has not been discussed in the right perspective. A perusal of the judgments passed by the Courts below shows that the PWs have duly proved the embezzlement by the present petitioner

and even a suggestion has been given that accused Vijay Kumar has deposited ₹25,000/- out of the embezzled amount. Therefore, from the record, I find that evidence has been appreciated by the Courts below in right perspective and no illegality has been committed nor the judgments passed by the lower Courts can be held as perverse. There is nothing on the record that evidence has been misread or has not been considered by the Courts below. Therefore, the conviction of the present petitioner is upheld.

Otherwise also the concurrent findings of fact have been given by both the Courts below.

Therefore, from the above, the conviction of the petitioner is upheld.

As regards the reduction of sentence the learned counsel for the petitioner prayed that the petitioner is suffering from the long protracted criminal proceedings since 1994 i.e. for the last more than 22 years and he is a poor person and bread earner of the family.

Keeping in view the above facts i.e. the petitioner is first offender, poor person, only bread earner of the family and suffering from the criminal proceedings for the last more than 22 years and keeping in view the facts and circumstances of the present case, the sentence imposed upon the petitioner is reduced to one year rigorous imprisonment instead of two years for the offence under Section 408 IPC and the sentence regarding fine and in default of payment of fine shall, however, remain the same. The sentence of imprisonment of the petitioner was suspended by this Court vide order dated 16.10.2008 and he was released on bail during the pendency of the

revision petition. As he is on bail, his bail/surety bonds stand cancelled. He is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

With the above modification in the sentence of imprisonment,
the criminal revision petition is dismissed.

May 6, 2016.

(Inderjit Singh)
Judge

hsp