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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR- 2015-2013

Date of Decision : August 11th, 2016

Madan Lal Petitioner

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. Vikas Bahl, Senior Advocate,
with Ms. Balpreet Sidhu, Advocate,
for the Petitioner.

Mr. Deepak Garg, AAG, Punjab,
for the respondent-State.

SHEKHER DHAWAN, J.

Present revision is directed against the judgment of conviction and order of sentence dated 20.03.2013 passed by learned Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar, whereby the petitioner was convicted and sentenced as under:-

Under Section	Sentence	In default
Section 409 IPC	to undergo Rigorous Imprisonment for a period of One year and to pay a fine of Rs.1000/-	To further undergo RI for One month.

2. The appeal filed by the petitioner was dismissed by learned Additional Sessions Judge, Shaheed Bhagat Singh Nagar, vide judgment dated 13.06.2013.

3. Relevant facts for the purpose of decision of this petition; that

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petitioner – Madan Lal was working as a Clerk in the Municipal Council, Nawanshahr and he retired from service on 31.07.2004. Prosecution case is that he had embezzled a sum of Rs.3,975/- while working as such during the period from 4.9.2003 to 13.05.2004 as he had collected the said amount, but did not deposit the same with the bank. The said fact came to the notice of Local Audit Wing and on the basis of that, FIR No. 136 dated 17.09.2008 was registered under Section 409 IPC at Police Station City, Nawanshahr.

4. After completion of investigation proceedings, challan was presented in the Court for trial.

5. During trial, learned trial Magistrate completed various proceedings of trial including recording of statements of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution and the defence version on record, the Court below held the petitioner guilty and convicted him for commission of offence punishable under Section 409 IPC and sentenced him as detailed in para No.1 above.

6. Aggrieved of passing of judgment of conviction and order of sentence, the petitioner filed an appeal which was dismissed by learned Additional Sessions Judge, SBS Nagar [Nawanshahr] vide judgment dated 13.06.2013. As such, the petitioner is before this Court by way of present revision petition.

7. Learned senior counsel for the petitioner submitted that the Courts below have not considered the material facts that the petitioner has been convicted and sentenced under Section 409 IPC whereas, the basic ingredients of offence under Section 409 IPC has not been proved by the

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prosecution. There is absolutely no evidence that the petitioner was appointed as Clerk in the Municipal Council, Nawanshahr and even his appointment letter has not been produced and proved on the file. The prosecution has also not produced on file any document showing the duties to collect cash and to deposit the same with the bank. The prosecution was further required to prove that the amount was in fact, entrusted to him and thereafter he had misappropriated the said amount in his capacity as a public servant. All the material witnesses examined by the prosecution have not supported the prosecution case at all and they have not proved the basic ingredients involved in the offence alleged against the petitioner. The present revision petition deserves acceptance and the judgment of conviction and order of sentence and in term, judgment passed by the first Appellate Court deserve to be set-aside.

8. Learned State counsel submitted that the prosecution case has been duly proved on the basis of evidence adduced by all the four prosecution witnesses examined before the trial Court apart from the documentary evidence. The process of law was set into motion on the basis of audit report. More so, the petitioner himself had confessed his guilt by conduct as he had deposited a sum of Rs.4,200/- with the bank vide pay-in-slip dated 14.08.2006. The petitioner has not disputed his appointment as Clerk in the Municipal Council, Nawanshahar. It had come on record by way of evidence that the petitioner was to deposit the amount with the bank, but he failed to deposit a sum of Rs.3,975/- and this was detected on the basis of audit conducted by Local Audit Wing. The defence version is

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merely plea of denial which does not find any support. More so, the entire evidence has already been looked into by the Courts below and the present revision petition is absolutely without any merit and the same deserves dismissal.

9. Having considered the submissions made by learned counsel for the parties and perusal of the record, it is evident that the prosecution has mainly relied upon the testimony of four prosecution witnesses examined during the trial and the documentary evidence consisting of FIR [Ex. PW-3/B] and receipt showing deposit of sum of Rs.4,200/- with the bank dated 14.8.2006 and the audit report. PW-1, Vinod Mehta had deposed that Madan Lal was working as Clerk with the Municipal Council, Nawanshahr. He was also looking after the department of Sewerage and Water Supply. He had misappropriated a sum of Rs.3,975/- during the period from 4.9.2003 to 13.5.2004 and produced documents, Ex. PA to PD which bear his signatures. However, during cross-examination, this witness had not supported the prosecution case. He had admitted the fact that Madan Lal was not working as Cashier in the Municipal Council, Nawanshahr whereas, it was the job of the Cashier to collect the cash and deposit the same with the bank. More so, every branch including Sewerage, Water Supply, House Tax etc. used to hand over the cash to the Cashier after collecting the same and filling up the challan. It was the duty of the Cashier to check the same and thereafter to submit the challan form to the Accounts branch for completion of account books. PW-1 has further admitted in his cross-examination that he had not verified as to whether the amount was in fact,

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deposited by the petitioner himself or through the Cashier. More so, Madan Lal is not to deposit the cash direct. He has also not produced any document showing that the accused was assigned the duty to work in the branch of Sewerage and Water supply. PW-1 further took the plea that it was the duty of the Accountant to count the receipts and he was not aware as to whether the Accountant had verified the accounts at the time of making entries in the account books, meaning thereby that though, the witness supported the prosecution case to some extent in his examination-in-chief, but he disproved the prosecution case in his cross-examination. It is settled proposition of law that the statement of the witness is to be read as a whole and not his examination-in-chief alone. If the entire statement of PW-1 is taken into consideration, practically, he has not uttered anything material against the accused.

10. PW-2, Ashok Kumar had also deposed that the petitioner had embezzled a sum of Rs.3,975/- during his tenure while he was posted as Clerk and proved the documents, Ex. PA to PD and also proved the signatures of the Executive Officer, Bhushan Rana on Ex. PG. However, the said witness also totally disproved the prosecution case as he had specifically deposed in the cross-examination that the accused had not embezzled any amount. He had also taken the plea that whatever record he had produced before the police was produced at the instance of the department, meaning thereby that he had not prepared the documents, Ex. PA to PD and he had no personal knowledge about the same. Remaining two witnesses are Avtar Singh, Assistant Manager, State Bank of Patiala

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[PW-3] and ASI Balwinder Singh [PW-4]. PW-3, Avtar Singh produced the pay-in-slip Ex. PW3/A showing deposit of Rs.4,200/- by Madan Lal and statement of account Ex. PW3/B. PW-4, ASI Balwinder Singh deposed that FIR Ex. PW3/B was registered on the basis of complaint having been received from Municipal Council, Nawanshahar. Apart from that, main documentary evidence is Ex. PB, showing difference of amount of Rs.3,975/- which was deposited by Madan Lal, Junior Assistant. If the entire prosecution evidence is taken into consideration, it would transpire that even the basic ingredients of Section 409 IPC are not proved against the petitioner. Relevant Sections 405 and 409 IPC read as under:-

Section 405 IPC

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

Section 409 IPC

“409. Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment

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for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

A perusal of the above provisions establishes that to hold any body guilty for an offence punishable under Section 409 IPC, following basic ingredients of offence must be proved:-

- i). appointment as a public servant;
- ii). entrustment of property; and
- iii). mis-appropriation of funds.

11. In the case in hand, admittedly, no appointment letter of Madan Lal has been produced and proved on the file showing his appointment as public servant. There is absolutely no evidence that what were the duties of Madan Lal in his capacity as public servant.

12. PW-1 and PW-2 have not been able to make out a case that petitioner – Madan Lal was working as public servant at the relevant time and he was entrusted with the money for which he has been facing trial of mis-appropriation. At the same time, there is no evidence that the same amount was mis-appropriated by him. The testimony of PW-3 and PW-4 is more or less formal in nature. Both the Courts below have completely ignored this fact.

13. PW-1, Vinod Mehta has admitted in his cross examination that it was not the duty of Madan Lal as Octroi Clerk to collect the cash and deposit the same in the bank, rather the same was the duty of the Cashier. As per office procedure, the Cashier used to collect the funds, fill up the required challan form and deposit the amount in the bank. Madan Lal had

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no authority to deposit the cash. More so, it was the duty of the Accountant to count the receipts after verifying the accounts, but that was not the duty of the petitioner. PW-2 Ashok Kumar though alleged that Madan Lal embezzled Rs.3,975/- but maintained that he was not knowing any material fact rather, he was producing the record which was handed over to him by the department. He had even gone to the extent of deposing that the amount was never embezzled by Madan Lal. It is strange as to how the trial Court read in between the lines that the petitioner was working as a public servant at the relevant time and he was entrusted with a sum of Rs.3,975/- and thereafter mis-appropriated the same.

14. Now, coming to the point of deposit of Rs.4,200/- in the bank account vide Ex. PW-3/A, it is not proved that the said amount was deposited by Madan Lal. More so, mere deposit of a sum of Rs.4,200/- on 14.8.2006, i.e., approximately two years prior to the registration of FIR, does not prove that the petitioner had deposited the alleged amount which he had ever embezzled. The specific amount is Rs.3,975/- whereas the deposit amount is Rs.4,200/-. More so, an official, who has already retired, can take the plea that he had done so just to buy the peace and to set at rest the entire controversy and that by itself does not establish that he had committed the alleged offence. The first and foremost ingredient required to be proved against the petitioner was mis-appropriation of funds by Madan Lal while working as a public servant which has not been proved by the prosecution though, it was the duty of the prosecution to prove the guilt beyond shadow of any doubt. It is settled law that the benefit of doubt is to be given to the

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accused and not to the prosecution. The Courts below have completely ignored this fact and the judgment of conviction and order of sentence and the order passed by learned first Appellate Court are result of mis appreciation of evidence.

15. Resultantly, the present revision petition stands allowed and judgment of conviction and order of sentence dated dated 20.03.2013 passed by learned Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar, and order dated 13.06.2013 of Additional Sessions Judge, Shaheed Bhagat Singh Nagar are set-aside. The petitioner is acquitted of the charge.

(SHEKHER DHAWAN)
JUDGE

August 11th, 2016
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes