

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

**CRR-2947 of 2014 (O&M)
Date of Decision: 04.08.2016**

Idrish

.....Petitioner

versus

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Sunil Dhanda, Advocate for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

AJAY TEWARI, J. (Oral)

This revision has been filed against the concurrent conviction of the petitioner and sentence of 2 years alongwith fine of Rs.5,000/- for the commission of offence under Section 406 IPC read with Section 34 IPC.

Custody certificate by way of affidavit of Devi Dyal, Deputy Superintendent, District Jail, Gurgaon on behalf of State has been filed and the same is taken on record. Copy supplied to the counsel opposite. As per custody certificate the petitioner has undergone 05 months and 16 days out of the total sentence of 02 years.

As per the allegations the petitioner purchased a truck from complainant and paid an amount of Rs.1,91,000/- with the understanding that he would continue to pay the EMIs of the financiers. However he did

not do the same and as mentioned above was convicted under Section 406 IPC. It is the contention of learned counsel for the petitioner that the invocation of Section 406 IPC is incorrect. Once the title of the truck is passed and thus there could be no question of entrustment. Section 406 IPC prescribe the punishment for criminal breach of trust and Section 405 IPC is to the following effect :-

“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” .

[Explanation 2[1].—A person, being an employer ³[of an establishment whether exempted under section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee’s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

1[Explanation 2.—A person, being an employer, who deducts the employees’ contribution from the wages payable to the employee for credit to the Employees’ State Insurance Fund held and administered by the Employees’ State Insurance

Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

Learned Deputy Advocate General is not in a position to explain how once the truck having been purchased it could be held that it was entrusted to the petitioner, but he has argued that even if Section 405 IPC is not applicable it is a case under Section 420 IPC. Learned counsel for the petitioner has countered by arguing that there is no evidence which could lead to the conclusion that the petitioner had the intention to defraud right from the beginning.

In find weight in the arguments of the learned counsel for the petitioner. In the circumstances, the revision is allowed. The impugned orders dated 19.08.2014 and 01.11.2012 are set aside.

Since the main case has been decided, the Criminal Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)

JUDGE

04.08.2016

Pooja sharma-I

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No