IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.4850 of 2015 (O&M)
Date of Decision: April 28, 2016

Rajpal Dudi

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjay Vashisth, Advocate
for the petitioner.

Mr.Brijesh Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

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INDERJIT SINGH, J.

The present revision has been filed by the petitioner Rajpal Dudi against State of Haryana, challenging the impugned judgment of conviction dated 30.03.2015 and order of sentence dated 31.03.2015 passed by learned Judicial Magistrate Ist Class, Charkhi Dadri, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹5000/- and in default of payment of fine to undergone simple imprisonment for a period of nine months under Section 409 IPC and also challenging the judgment dated 20.11.2015 passed by learned Addl. Sessions Judge, Bhiwani, vide which appeal filed by petitioner was dismissed.

The brief facts of the case as noted down in the judgment passed by learned JMIC, Charkhi Dadri are as under:-

"The prosecution case was set up on the basis of complaint given by Ramphal Block Education Officer, Charkhi-Dadri(here-in-after referred to as complainant), wherein it has been stated that Rajpal Dudi Retd. Assistant(accused) worked in the office w.e.f 30.07.2006 to 30.04.2009 till he retired from there. It is alleged that during his tenure Rajpal Dudi committed several irregularities/embezzlement. The D.E.O Bhiwani and Primary Education Officer Bhiwani issued cheques to the tune of ₹14,94,420/- and ₹12,00,100/- in the months of June and October, 2006 to B.E.O Charkhi-Dadri for scholarship of the students of Schedule Caste and Backward Class. This amount was to be distributed in various school. But Rajpal Dudi did not correctly distribute the same. The cheques were not having dates upon them and for want of date the tallying of the cash book with the passbook was difficult. The cash book has also not maintained which indicates doubt over the integrity of the official because after completion of the cash book the embezzlement of the amount could be found definitely. Further it is alleged that accused had also taken cash amount out of the distributed amount which was not in accordance with rules because cash which was received to the tune of ₹11,160/- and it was not entered in the book. The amount of ₹3,71,275/- was kept by the accused with him without any reason and this amount was deposited by him in the month of July and September 2009 in the Government Account whereas he retired from the service on 30.04.2009. The amount of ₹3,71,275/- which was temporarily embezzled and subsequently deposited by the accused as under:-

1	1.7.2009	1,52,100/-	Central Co-Operative Bank	Account No.5413
2	1.7.2009	80,087/-	State Bank of Patiala, Dadri	55075774037
3	9.9.2009	23,258/-	State Bank of Patiala, Dadri	55075774037
4	9.9.2009	80,500/-	Central Co-Operative Bank	5413
5	16.9.2009	35,330	Central Co-Operative Bank	5413
	Total	3,71,275		

3. Regarding aforesaid irregularities correspondence was made with the accused but he did not submit any satisfactory reply to the same. As per 6th Pay Commission arrears were withdrawn by B.E.O Charkhi-Dadri for different schools and for 40% of arrears of the teachers employed at Government Middle School, Jhojhu Khurd, *Cheque No.7682588 dated 17.03.2009 for an amount of ₹5,16,219/- was issued but the accused as per cash book mentioned amount ₹4,98,819 and the remaining amount had not been entered anywhere and in this way the accused had embezzled the amount of ₹18,000/- which were received back by him as cash. The amount of ₹32,300/- was withdrawn after fixing the pay wrongly which was the arrears of 40% pay and likewise an amount of ₹9,280/- for earned leave was wrongly withdrawn. The accused also mentioned the grade pay of ₹4000/- dishonestly which was written by him after verification by the Section Officer. In this way, the accused enhanced his personal grade pay illegally and it fell within the definition of cheating and embezzlement. Earlier accused also entered the amount of ₹13,000/-, ₹3,360/-, ₹29,330/- total amount of ₹45,690/- on 09.05.2007 with regard to distribution of cheques for the student of Schedule Caste in different schools vide cheque No.21181, 21183 and 21185 and those were again entered on 13.09.2007 and this type of entries also fell within the definition of cheating and embezzlement. The complainant (B.E.O) took the charge on 06.09.2006 and was granted the facility of conveyance at the rate of ₹17,000/- per month and this was required to be entered in the log book and as per description of the log book it was to be given to the driver of the vehicle concerned and the concerned Block Education Officer was to verify the same and then the amount was to be paid. But the accused paid the amount to the tune of ₹43,000/- even without verification which was paid by him wrongly. Hence, in this way, the accused Ramphal temporarily embezzled the total amount of ₹3,71,275/-. It is prayed that a strict legal action be taken against the accused. On the basis of complaint, FIR was registered. Investigation was conducted. Accused was arrested and later on was released on bail. After completion of investigation in all means and respect, the challan against the accused was presented before the court with a prayer to convict and to sentence the accused as per law."*

At the time of preliminary hearing, it was informed that petitioner retired from the service in the year 2009 and he is at present 64 years of age. The amount allegedly embezzled has been deposited by the petitioner before lodging of the FIR.

Notice of motion was issued and learned State counsel appeared and contested the revision petition.

At the time of arguments, learned counsel for the petitioner argued that the petitioner was over-burdened and department remained silent. He further argued that BEO, who has supervisory powers, is also responsible. He next argued that entrustment has not been proved and the money was given to the BEO. Learned counsel for the petitioner next argued that the findings given by the Courts below regarding embezzlement of more than ₹3,71,275/- are perverse and not proved from the evidence.

On the other hand, learned State counsel argued that present petitioner has retired in April 2009 and after that, in the month of July 2009 and September 2009, he deposited the amount which he had embezzled. He next argued that PWs have also been examined to prove the embezzlement by the petitioner and some of the amount has been taken from the private witnesses. PWs-4, 5, 6 etc. have deposed regarding the amount deposited with the present petitioner which has been embezzled by him.

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

From the record, I find that both the Courts below have given concurrent findings regarding conviction of the accused-petitioner on the basis of the evidence. The perusal of the judgments passed by the Courts below show that the judgments have been passed after appreciating the evidence in right perspective. In a criminal case, it is not necessary that total amount which has been embezzled must be proved by bringing all the witnesses. So many witnesses have been examined by the prosecution who have deposed regarding depositing of the amount with the accused and have proved the receipts. The petitioner has retired on 30.04.2009 and the amount of ₹3,71,275/- as given above, has been deposited in the month of July and September 2009. Even if it is taken that BEO was also negligent in performing the duty, even then, he cannot be charged for the embezzlement of amount and this is also no ground for acquittal of the accused-petitioner. The fact that present petitioner was over-burdened with the work, also will not allow him to embezzle the amount. The entrustment of the amount has been duly proved by the PWs. There is nothing on the record that the amount, at that time, had been deposited with the BEO or given to the BEO as there is no such receipt produced by the present petitioner to show that amount has been deposited with the BEO.

The perusal of the evidence on record show that findings given by the Courts below are correct, as per evidence and law. In no way, the judgments passed by the Courts below can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Courts below. The perusal of the record shows that findings given by the Courts below are as per law and have been given after appreciating the evidence in right perspective. The present petitioner has embezzled the amount, though temporarily and if the same is deposited after some time, even then it amounts to embezzlement. Therefore, the judgments of conviction passed by the Courts below are correct, as per law and the same are upheld.

Learned counsel for the petitioner, in the alternative, prayed for reduction of sentence.

From the record, I find that the petitioner has already undergone imprisonment of six months and sixteen days out of the total sentence and he is stated to be more than 64 years of age. The petitioner is facing long protracted criminal proceedings since 2010 i.e. for the last about 5½ years. The petitioner has already deposited the embezzled amount.

Keeping in view above facts, the sentence of the petitioner is reduced and he is directed to undergo rigorous imprisonment for a period of two years instead of three years under Section 409 IPC. However, the sentence of fine and default thereof, shall remain the same.

With the above-said modification in the sentence, the present revision petition stands dismissed.

April 28, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**