

In the High Court of Punjab and Haryana at Chandigarh
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(1) Criminal Misc. No.41886 of 2015 and
Criminal Revision No.4980 of 2015 (O&M)

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Date of decision:4.4.2016

Avtar Singh
...Petitioner

v.

State of Punjab
...Respondent

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(2) Criminal Misc. No.41890 of 2015 and
Criminal Revision No.4981 of 2015 (O&M)

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Avtar Singh
...Petitioner

v.

State of Punjab
...Respondent

....

(3) Criminal Misc. No.41894 of 2015 and
Criminal Revision No.4982 of 2015 (O&M)

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Avtar Singh
...Petitioner

v.

State of Punjab
...Respondent

....

(4) Criminal Misc. No.41899 of 2015 and
Criminal Revision No.4983 of 2015 (O&M)

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Avtar Singh
...Petitioner

v.

State of Punjab
...Respondent

....

Cr. Revision Nos.4980 of 2015 (O&M) etc.
[2]

(5) Criminal Misc. No.41905 of 2015 and
Criminal Revision No.4984 of 2015 (O&M)

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Avtar Singh

...Petitioner

v.

State of Punjab

...Respondent

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(6) Criminal Misc. No.41912 of 2015 and
Criminal Revision No.4985 of 2015 (O&M)

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Avtar Singh

...Petitioner

v.

State of Punjab

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Baldev S. Sidhu, Advocate for the petitioner.

Mr. T.N. Sarup, Additional Advocate General, Punjab for the
respondent-State.

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Inderjit Singh, J.

This order will dispose of the above mentioned six criminal revision petitions as these arise out of same FIR No.173 dated 19.12.2004 registered for the offence under Section 408 IPC, but six impugned judgments of conviction and order of sentence passed by learned Sub Divisional Judicial Magistrate, Samrala dated 22.1.2013 in different cases

filed vide Police Challans against which six different appeals were filed, which were also dismissed by the learned Additional Sessions Judge, Ludhiana.

The brief facts are taken from the judgment dated 22.1.2013 passed by learned Sub Divisional Judicial Magistrate, Samrala in case No.P.C.407/01 dated 25.4.2006, in which it has been stated as under:-

“Facts of the case of prosecution, in brief, are that on 11.10.2003 complainant Thakar Singh son of Lal Singh, resident of Village Neelon Kalan, P.S. Samrala had moved a complaint before SSP, Khanna to the effect that he is President of the Co-operative Agricultural Services Society Ltd. (hereinafter referred as CASS), Neelon Kalan. Shri Amarjit Singh, Secretary of the CASS was authorised to maintain its proceedings book. A resolution was passed to register an FIR against Avtar Singh, ex-Secretary of the CASS regarding embezzlement of Rs.2,73,000/-. The letter contains that accused was working as Secretary in the CASS, Neelon Kalan, District Ludhiana. Audit Inspector of Co-operative Societies, while checking the record of members of Co-operative Societies and hearing the arbitration matters, found that accused Avtar Singh, ex-Secretary of the CASS, Samrala had embezzled the amounts of different persons by not depositing the same into the CASS account or in Ludhiana Central Co-operative Bank, Branch Samrala during his service. The names

of those members whose amounts had been embezzled by accused Avtar Singh, ex-Secretary of the CASS Ltd. Samrala are as under:-

- (1) Mohinder Singh son of Surjan Singh, Dhande :Rs. 3,000/-
- (2) Surinder Singh son of Chanan Singh, Dhande :Rs.21,550/-
- (3) Bhajan Singh son of Chanan Singh, Dhande :Rs.24,500/-
- (4) Ranjit Singh son of Dalip Singh, Dhande :Rs.20,960/-
- (5) Gurmit Singh son of Surjan Singh, Dhande :Rs. 7,000/-
- (6) Jarnail Singh son of Ujagar Singh, N. Kalan :Rs. 3,000/-
- (7) Gurcharan Singh son of Gopal Singh, Dhande :Rs.35,200/-
- (8) Jarnail Singh son of Ujagar Singh, N. Kalan :Rs. 6,000/-
- (9) Kulwant Singh son of Karnail Singh, Rohle :Rs.22,000/-
- (10) Gurmail Singh son of Kartar Singh, Rohle :Rs. 6,000/-
- (11) Tehal Singh son of Mast Singh, N. Kalan :Rs.11,100/-
- (12) Tara Singh son of Santa Singh, N. Kalan :Rs. 2,200/-
- (13) Kulwinder Singh son of Gurdev Singh, N/K :Rs. 6,000/-
- (14) Ranvir Singh son of Gurdev Singh, N/Kalan :Rs. 6,000/-
- (15) Kirpal Singh son of Santa Singh, N. Kalan :Rs.21,525/-

Manjit Singh son of Kirpal Singh, N. Kalan :

Rs.20,500/-

- (16) Mukhtiar Singh son of Nihal Singh, N. Kalan :Rs.25,000/-

Total :Rs.2,41,535/-

Besides the above said embezzlement of Rs.2,41,535/-, accused also had embezzled the fertilizer worth Rs.1,89,824/-

and cash in hand to the tune of Rs.30,866.16 P. In this way, accused Avtar Singh had embezzled the total amount of Rs.4,62,000/-.

On this complaint after conducting the inquiry by police, the FIR under Sections 408, 420 IPC was registered against accused, statements of witnesses under Section 161 Cr.P.C. were recorded. Accused Avtar Singh had got anticipatory bail from Hon'ble High Court. So, IO ASI Gurnam Singh made formal arrest of accused on 11.10.2005 and released him on bail. After completion of remaining investigation challan against accused was presented in Court on 25.4.2006.

On appearance of accused in Court he was supplied free copies of report under Section 173 Cr.P.C. and after hearing the arguments he was served with charge sheet under Section 408 IPC, on 31.5.2006, for embezzlement of cash amount qua Rs.11,100/- of Tehal Singh son of Mast Singh, dated 21.5.2002, Rs.21,550/- of Surinder Singh son of Chanan Singh, dated 23.5.2002 and of Rs.5,000/- of Mukhtiar Singh son of Nihal Singh, dated 3.6.2002. The contents of the same were read over and explained to him to which he pleaded not guilty and claimed to face trial. Then prosecution evidence was directed to be summoned.”

After necessary investigation, different challans were presented in the Court.

On presentation of challan, the trial Court finding prima facie case against the accused, framed charge for the offence under Section 408 IPC, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution produced the evidence. At the close of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution but he denied the correctness of the evidence and pleaded himself as innocent.

The learned Sub Divisional Judicial Magistrate, Samrala, vide judgment dated 22.1.2013 convicted the present petitioner for the offence under Section 408 IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo simple imprisonment for two months.

Aggrieved from these judgments, appeals were filed by the present petitioner. The learned Additional Sessions Judge, Ludhiana vide separate judgments dated 9.2.2015 dismissed the appeals. Aggrieved against the judgments and orders passed by the Courts below these criminal revision petitions have been filed by the petitioner.

Notice of motion was issued. Learned State counsel appeared in these criminal revision petitions and contested the same.

At the time of arguments, learned counsel for the petitioner argued that in these cases no resolution was passed by the Society that the present revision petitioner can receive the money. It is also argued that there is no cogent evidence on record to prove the guilt of the accused. In

some of the cases, the concerned witnesses have not been examined and the same witnesses have been examined in all the cases. He further argued that the appointment of the present petitioner as Cashier has also not been proved. Therefore, he argued that the judgments passed by the Courts below in all these cases are not as per evidence and law.

I have gone through the record specially the judgments passed by the learned trial Court i.e. Sub Divisional Judicial Magistrate, Samrala as well as the judgments passed by the learned appellate Court. In all the cases while framing the charge specifically names of the persons have been mentioned and the amounts have been mentioned regarding which the charge has been framed. In all these six cases, statement of at least one of the aggrieved/victim has been recorded as a witness. In no way, it can be held that the private witness has not appeared in these cases to prove the charge. Further more, in all these cases Randip Kumar PW deposed that accused Avtar Singh was working as Secretary in the above said Society from 28.8.1981. He was appointed by passing the resolution by CASS Limited and later on he was promoted as Secretary-cum-Cashier on 18.1.1982. His services were terminated vide resolution on 2.6.2003. He identified the signatures of Shri Gurdeep Singh, Administrator of CASS Limited on resolution. He further proved the resolution Ex.P.1 regarding appointment of Avtar Singh as salesman and the resolution dated 12.1.1981 Ex.P.2 vide which he was appointed as Secretary of CASS Ltd. Neelon Kalan. He also proved the resolution dated 18.1.1982 Ex.P.3, vide which Avtar Singh was appointed as Cashier. He also proved the resolution dated

2.6.2003 Ex.P.4, vide which services of Avtar Singh were terminated.

Keeping in view the above evidence on record, in no way, it can be held that he was not authorised to receive the money or he was not appointed as Cashier. The arguments of the learned counsel for the petitioner have no merit. As already discussed in these cases one private witness, whose amount is alleged to be embezzled in the charge-sheet, has been examined. The other PWs have also deposed regarding the embezzlement of the fertilizer amount and the cash amount. Both the Courts below have given concurrent findings of fact against the present revision petitioner. A perusal of the record shows that the PWs have deposed consistently regarding the prosecution version. Even the Court while giving the findings has stated that the case has been duly proved by the PWs. It is also stated that there is nothing on record to prove that the awards given by Arbitrators were challenged by the accused till date. It is also stated by the Court that the accused was given an opportunity to offer explanation regarding the incriminating material found in evidence against him while recording his statement under Section 313 Cr.P.C. He simply denied the evidence of the prosecution and stated that the witnesses are not speaking the truth. He has not produced any defence evidence.

Keeping in view the concurrent findings given by the Courts below, I find that the findings are correct, as per evidence and law. In no way, these findings can be held as perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread by the Courts below. Nothing has been pointed out as to which

material evidence has not been considered by the Courts below. These are revision petitions and in the revision petition, this Court is not to re-appreciate the evidence like a Court of an appeal. In no way, the findings given by the Courts below can be held as perverse or against the evidence or law. Rather, the Courts below have given the findings while appreciating the evidence in the right perspective. Therefore, the judgments of conviction and orders of sentence passed by the Courts below are correct as per law and do not require any interference from this Court.

Finding no merit in the criminal revision petitions, the same are dismissed.

Cr. Misc. Nos.41886, 41890, 41894, 41899, 41905 and 41912 of 2016:

These applications have been filed, in the above mentioned criminal revisions petitions, under Section 482 Cr.P.C. for undergoing the sentence in all the six cases concurrently.

I have heard learned counsel for the applicant-petitioner and learned State Counsel on the applications for undergoing the sentence concurrently. As all these cases have arisen from the same FIR i.e. from the same transaction, therefore, it is ordered that the sentences passed in all these above stated cases shall run concurrently.

The applications stand disposed of accordingly.

April 4, 2016.

(Inderjit Singh)
Judge

hsp