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

**(1)** **CRR No.636 of 2015 (O&M)**

Gurdeep Singh

...Petitioner

VERSUS

Kailasho Devi and others

...Respondents

**(2)** **CRR No.2128 of 2015 (O&M)**

State of Haryana

...Petitioner

VERSUS

Kailasho Devi and others

...Respondents

**Date of Decision:- May 25, 2016**

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Sanjeev Sharma, Advocate
for the petitioner (in CRR No.636 of 2015).

Mr.D.R.Singla, Deputy Advocate General, Haryana
for the petitioner-State (in CRR No.2128 of 2015) and
for respondent-State (in CRR No.636 of 2015).

Mr.Arvind Singh, Advocate
for respondents No.1 and 5 (in both the cases).

Mr.Anil Kumar Bhardwaj, Advocate
for respondents No.2 and 3 (in both the cases).

Respondent No.4 died.

None for respondent No.6.

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**INDERJIT SINGH, J.**

**CRM No.18981 of 2015 in CRR No.2128 of 2015**

Heard.

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For the reasons mentioned in the application, the same is allowed. The delay of 90 days in filing the revision is condoned.

**CRR Nos.636 and 2128 of 2015**

Both the cases are taken up together as the point for determination in both the cases is the same.

Both the above-said revisions have been filed by the complainant (CRR No.636 of 2015) and State of Haryana (CRR No.2128 of 2015) under Section 401 Cr.P.C. against the accused-respondents challenging the judgment dated 15.07.2011 passed by learned Judicial Magistrate Ist Class, Karnal, whereby accused-respondents were acquitted of the charges and also challenging the judgment dated 15.11.2014 passed by learned Addl. Sessions Judge, Karnal, dismissing the appeal filed by the State.

Notice of motion was issued and learned counsel for the respective respondents appeared and contested the revision petitions.

From the record, I find that State filed the challan against Kailasho Devi, Shimla Devi, Sumer Chand, Mohkam Dass, Krishna Devi and Parkash Chand in case FIR No.164 dated 23.10.2002 Police Station Kunjpura. The brief facts of the case as noted down in the judgment passed by learned JMIC, Karnal, are as under:-

> *"3. The allegations as put forth by the complainant were that he was duly elected Sarpanch for the term 2000/2005 of Gram Panchayat village Kulvehri tehsil and district karnal due to which he is filing the present complaint. He submitted that during previous term i.e. from December 1994 to February 2000, accused no.1 Kailasho Devi was holding the office of Sarpanch whereas accused no.2 to 5 were the Members and accused no.6 Gram Sachiv. He alleged that accused no.1 misused her powers in the capacity of being Sarpanch and has misappropriated and embezzled the amount of the Gram Panchayat with connivance with the other accused. It is also*

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*alleged that when accused no.1 was Sarpanch, complainant was holding the office of UpSarpanch and since the acts of the then Sarpanch, accused no.1 were detrimental to the interest of the inhabitants of the village. He along with other members of Gram Panchayat and prominent residence made written complaint on 2.8.99 to DC Karnal whereas he categorically stated that the income of the Gram Panchayat during the tenure of accused no.1 was not less than Rs.20 lacs from all sources but accused no.1 has spent less than 50% of Rs.4,38,938.93 on the development of the village. It was also alleged that accused persons constructed galis/streets afresh, however, used old bricks and had shown the use of new bricks. He also alleged that accused no.1 was responsible by causing financial loss to the Gram Panchayat by canceling the lease of the fish pond and has spent huge expenses on boring a tubewell which was already in existence. He also alleged that accused no.1 not only canceled the lease of the fish pond but also got it re-auction on a lessor price, thus, again causing financial loss to the Gram Panchayat.*

*4. It is further submitted that the ld. DC Karnal was pleased to mark the said complaint vide endorsement dated 4.8.99 to ADC before 20.8.99. The ADC Karnal in compliance of the directions conducted the inquiry and submitted the same on 1.10.99 stating that accused no.1 has committed irregularities and misused her office which has caused financial loss to the Gram Panchayat.*

*5. It is further submitted that on the basis of this inquiry report dated 01.10.99, DC Karnal issued a show cause notice to accused No.1 on 07.10.99 to which reply was filed but was found to be highly unsatisfactory. It was held by the DC that accused no.1 has embezzled the amount of Gram Panchayat by showing 45350 new bricks and 111 bags of cement in the Gram Panchayat records. It was also held that accused no.1 misappropriated the funds by showing that it was cleaned during her tenure though it had been cleaned by the previous Sarpanch. It was also found that accused no.1 has misused his office by authorizing Dhan Singh Panch to initiate proceedings against Inder Singh for his eviction from Gram Panchayat land and accused no.1 also purchased parts of hand pump and tubewell from village Gheer instead of purchasing them from Karnal, thus showing excess conveyance charges. On these observations, DC Karnal vide order 28.10.99 suspended accused no.1 and directed her to submit the reply before regular inquiry officer within 10 days from the date of receipt. Subsequently, BDPO in continuation with office order dated 29.10.99 placed accused no.1 under suspension and directed her to hand over the entire record relating to Gram Panchayat along with moveable and immoveable property to the UpSarpanch i.e. complainant within 2 days after getting proper*

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*receipt. Accused no.1 despite the order of BDPO did not hand over the charge to the Upsarpanch due to which BDPO got the search warrant against accused no.1 from the court of Shri Bhupinder Singh, HC, SDM Karnal on 16.11.99. Hence, in this way accused no.1 failed to hand over the charge intentionally and deliberately thereby violating the direction issued by the competent authority.*

*6. It is further alleged that during the course of inquiry, the accused no.1 without having any right, title or authority in active connivance with the other accused withdrew Rs.50,000/- on 25.8.99, Rs.25,000/- on 13.9.99, Rs.50,000/- on 12.10.99 and Rs.25,000/- on 28.10.99. It is alleged that the above said amounts were withdrawn from the bank out of the account of Gram Panchayat with malafide intention to misappropriate and embezzle the same for causing wrong loss to the Gram Panchayat. It is also alleged that though this amount was withdrawn from the account of Gram Panchayat but the same was not spent for the welfare of the village. Hence, again an application in the shape of complaint was filed before DC Karnal on 4.12.99 which was marked to ADC on 6.12.99. It is also submitted that various applications were moved to higher authorities including Chief Minister Haryana requesting that appropriate orders be passed so that the Sarpanch should hand over the charge to the complainant, however, despite all the exercised, accused no.1 did not hand over the charge to the complainant.*

*7. It is further submitted that in order to verify the amount lying in the account of Gram Panchayat, complainant moved an application dated 18.12.99 to the Branch Manager, Central Cooperative Bank with a request to issue a statement of account bearing account no.2061 of the period w.e.f 1.8.99 to 30.12.99 which was duly supplied. The perusal of the said statement shows that accused no.1 misusing her powers has withdrawn amount on different dates as mentioned in the para no.5 of the complaint."*

Learned JMIC, Karnal, after appreciating the evidence, acquitted the accused-respondents as stated above. An appeal was filed by the State and the same was dismissed by learned Addl. Sessions Judge, Karnal, vide judgment dated 15.11.2014.

Aggrieved from the above-said judgments, present revision petitions have been filed.

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

Learned JMIC, Karnal held that the prosecution has to prove the guilt of the accused beyond shadow of reasonable doubt. Undoubtedly, accused No.1 (Kailasho Devi) in the present case is a Sarpanch, accused No.2 to 5 are Panches and accused No.6 is a Gram Sachiv. The allegations which have been levelled by the complainant Gurdeep Singh vide his complaint Ex.PW3/E moved to SP, Karnal, disclose that the accused being the Members of Gram Panchayat have not only misused their powers but have also misappropriated the funds of Gram Panchayat through resolutions which do not fulfill the necessary procedure. The Court below, from the evidence, held that the preliminary report was against accused No.1 but in the regular enquiry, the accused has been exonerated by the department. The Court held that complainant in cross-examination has deposed that he has moved present complaint on the basis of preliminary enquiry and he has no knowledge about the regular enquiry. He also deposed that after the suspension of the accused No.1, the charge would have come to his hands. He also admitted that he had filed the appeal against the order, which is later on withdrawn from the Court of Financial Commissioner. The Court held that this fact itself substantiate that the complainant very well knew about the regular enquiry and the fact that accused No.1 was exonerated because he himself filed the appeal, which was later on withdrawn.

The perusal of the record shows that there is no evidence on record, from which this Court can say specifically that any amount has been embezzled by the accused. If the accused have committed some negligence in performance of their duties, it will not prove the offence of criminal breach

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of trust nor it will be treated as embezzlement. To prove these offences, the prosecution is to prove its case beyond reasonable doubt by showing that Gram Panchayat's fund has been used for personal gains by the accused. There is no cogent evidence on record to show this. Even, the Investigating Officer in the present case has not been examined. The report of ADC Karnal and audit report are marked documents, which cannot be read in the evidence.

The perusal of the judgments passed by both the Courts below show that findings have been given as per the evidence on record. 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. Nothing has been argued as to which of the findings are perverse or against the evidence and law.

Learned State counsel as well as learned counsel for the complainant argued that Section 175 of the Haryana Panchayati Raj Act, the Deputy Commissioner has no right to revoke suspension and it is further argued that after suspension, charge was not given to Up-Sarpanch (Deputy Sarpanch) and record was taken away by accused No.1 and has not handed over the same. Even if these arguments are considered as it is, even then these arguments will not prove that there is any criminal breach of trust or embezzlement of amount etc.

Learned counsel for the accused-respondents argued that Section 204 of above-said Act, gives the protection to the Sarpanch and Member Panchayat from the civil and criminal proceedings qua the work done by them in discharge of their duties.

In view of the above discussion, I find that the findings have

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been given by both the Courts below while appreciating the evidence in right perspective. In no way, the findings can be held as perverse or against the evidence and law. These are revision petitions. In the revision petition, this Court is not to re-appreciate the evidence like Court of an appeal. No illegality has been committed by the Courts below while passing the impugned judgments. The impugned judgments passed by both the Courts below are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in both the revision petitions, the same are dismissed.

**May 25, 2016** **(INDERJIT SINGH)**
Vgulati **JUDGE**

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