

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.736 of 2016

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Date of decision:16.9.2016

Lekh Raj

...Petitioner

v.

State of Haryana

Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. T.S. Sangha, Senior Advocate with Mr. Narinder Singh,
Advocate for the petitioner.

Mr. Vikas Chopra, Deputy Advocate General, Haryana for
the respondent-State.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. against the impugned judgment dated 11.2.2016 passed by learned Additional Sessions Judge, Palwal, dismissing the appeal filed against the judgment of conviction and the order of sentence dated 11/12.3.2014 passed by learned Additional Chief Judicial Magistrate, Palwal, convicting the petitioner for the offence under Section 409 IPC and sentencing him to undergo rigorous imprisonment for two years and to pay a fine of ₹1,000/- and in default of payment of fine to further undergo simple imprisonment for three months.

Notice of motion has been issued in this case.

Mr. Vikas Chopra, learned Deputy Advocate General, Haryana has put in appearance on behalf of the respondent-State and contested this revision petition.

I have heard learned counsel for the petitioner and learned Deputy Advocate General, Haryana for the respondent-State and have gone through the record.

The brief facts of the case as noted down by the learned Additional Chief Judicial Magistrate, Palwal, in his judgment are as under:-

“In brief the prosecution case is that a letter No.2905 dated 30.12.2005 received from BDPO, Palwal at PS Chandhut on 30.12.2005. On which this case was registered. As per letter Lekh Raj, Ex-Sarpanch of Gram Panchayat Chirwari had failed to deposit difference of Rs.10,000/- of November 1996. Rs.6400/- of July 1998 and Rs.14357/- which comes to Rs.30,757/- and interest of Rs.25,000/-. Accused had failed to deposit amount of Rs.55,757/- and thereby accused committed an offence under Section 409 IPC. After receiving letter case under Section 409 IPC was registered and investigation commenced. During investigation statements of witnesses were recorded and accused were arrested. During investigation an amount of Rs.14,357/- recovered from accused and on completion of investigation, challan was presented in the Court.”

Learned counsel for the petitioner mainly argued that there is no

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cogent evidence on record led by the prosecution to show any embezzlement by the present petitioner and both the Courts below have misread the evidence.

On the other hand, learned State counsel has argued that the PWs have duly proved the prosecution case and the present revision petitioner has been rightly convicted and sentenced by the learned lower Court.

The challan was presented in this case by the Police of Police Station, Chandhuti in FIR No.171 dated 31.12.2005 for the offence under Section 409 IPC against the present revision petitioner Lekh Raj.

Learned Additional Chief Judicial Magistrate, Palwal, vide his judgment dated 11.3.2014 convicted and sentenced the petitioner as mentioned above. Aggrieved from this judgment, Lekh Raj filed an appeal before the learned Sessions Judge, Palwal, which was dismissed vide judgment dated 11.2.2016 by the learned Additional Sessions Judge, Palwal. Aggrieved from both these judgments, the present revision has been filed. Record of the lower Courts was also summoned and I have gone through the same.

A perusal of the evidence on record shows that the prosecution has failed to lead cogent evidence against the present revision petitioner to prove his guilt. The prosecution has examined 11 witnesses PW-1 to PW-11, but no cogent evidence had been led to prove the entrustment to the present petitioner and then the misappropriation by leading cogent evidence. PW-1 Virender Chaudhary, B.D.P.O. mainly deposed regarding two

applications for registration of the case against Sarpanch of Village Chirwari which were written by DC at that time. In both the applications, Lekh Raj was accused of misusing the Panchayat funds to the tune of ₹55,757/-. He further deposed that he had sent a written application Ex.PW.1/C to Police Station for registration of FIR against Lekh Raj, Sarpanch. He had also sent a notice Ex.PW.1/D to accused Lekh Raj, Sarpanch on 23.7.2004 regarding this. In cross-examination, he stated that he had never conducted inquiry in this case because the inquiry had already been done in the year 2002. On the instruction of Deputy Commissioner, he got this case registered, which means that PW-1 had no personal knowledge regarding any embezzlement or entrustment. PW-2 Madan Lal, SEPO, Palwal stated that Lekh Raj, Sarpanch remained Sarpanch of Village Chirwari from 1996 to 2000 and regarding this, he had given a certificate Ex.PW.2/A to the Police. In examination-in-chief, he also stated that Lekh Raj had misused the Panchayat funds. In the cross-examination, he stated that he had neither conducted any inquiry in this case nor joined in the inquiry. He had not received any letter from Deputy Commissioner. PW-3 Vijender Singh, Inspector, Rohtak is a formal witness, who presented the challan. PW-4 Krishan Kumar, Assistant, Faridabad was working as Clerk in the office of D.M. and he brought the summoned records, the true copies of which are Ex.PW.1/B and Ex.PW.1/A. In cross-examination, he stated that in this case, the inquiry was not conducted by their office. Voluntarily, inquiry was held in the BDPO office. He also stated that the record of the inquiry is present in their office. The statements were recorded in BDPO

office which means that this witness was deposing qua some inquiry which had not been proved on record and which was lying in the office of Deputy Commissioner. PW-5 HC Surinder Singh mainly deposed that ₹14,357/- had been recovered from the accused Lekh Raj, before him, which were taken into possession. Qua this recovery, the accused cannot be held guilty under Section 409 IPC. After the time of three to four years, ₹14,357/- had been recovered, which may be his personal currency notes. These currency notes cannot be connected with the amount which had been alleged to have been embezzled. Rather, to prove the offence under Section 409 IPC, there should be cogent evidence regarding entrustment of the money and then misappropriation or the embezzlement of the same by the accused. PW-6 Pappu simply states that he had purchased TV and furniture from the Panchayat. He was present at the time of auction. This PW has also not deposed anything against the accused. PW-7 Attar Singh, Retired Inspector mainly deposed regarding registration of the FIR on receiving the application from the BDPO. PW-8 Dharambir Singh, Panchayat Secretary, Chirwari brought the summoned record regarding Haryana State Electricity Board bill Ex.PW.8/A, lease Patta register Ex.PW.8/B, lease Patta Form No.2 Ex.PW.8/C, Cash books Ex.PW.8/D, Ex.PW.8/E, Ex.PW.8/F and register, agreement, lease auction Ex.PW.8/G, which are true and correct as per original record. In cross-examination, this witness stated that condemned articles like TV etc. had to be auctioned by the Panchayat and this resolution was passed. He stated that it is correct that auction was held in the presence of BDPO, which was an open auction. This auction is

Ex.PW.8/G, which bears the signatures of BDPO. The auction resolution was passed by the Panchayat vide resolution No.2 dated 11.5.1999. He also stated that the difference in the cash book is the result of clerical mistake. After depositing amount by the Sarpanch, the record had been rectified. He also admitted that there is no due in respect of Panchayat from the side of Sarpanch. He also stated in the cross-examination that the complaint registered against the Sarpanch was due to party faction. He also stated that he did not know that Sarpanch had filed one civil suit which is decided in his favour. PW-9 Mohar Singh son of Kishan Singh, Ex-Sarpanch Chirwari stated that he remained Sarpanch of Village Chirwari from the years 1991 to 1994. After his turn, Lekh Raj son of Shiva Lal became Sarpanch, who was present in Court. He had handed over the entire record to him which includes cash book, day to day register, lease register, receipt book, bank passbook and other documents. He also stated that during his tenure, he had spent Panchayat funds in proper manner. He further stated that he had neither brought any original document nor he had seen it. He had no knowledge about the Panchayat record like cash book, Patta register, day to day register etc. PW-10 Rajesh Kumar, SI, Model Town, Rohtak mainly stated that he was posted as Investigating Officer in Economic Cell. He had arrested accused Lekh Raj on 25.2.2008, who during custody, got recovered ₹14,357/-, which he had misappropriated from Panchayat, which were taken into police possession and proved the recovery memo. PW-11 Narinder Kumar Sangwan, Retired BDPO, Palwal, mainly deposed that he remained posted as BDPO. He had given one certificate to the Police regarding Lekh

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Raj, who remained Sarpanch of Gram Panchayat from 1995 to 2000. In cross-examination, this witness stated that he had written accusation in Ex.PW.11/A from the FIR. He had given same version in this letter, but he did not know the contents. He had not held any inquiry. He had not given any report.

From the above discussed evidence in detail, I find that no PW had deposed anything regarding entrustment, misappropriation or embezzlement against the accused/petitioner. There is not an iota of evidence against the accused to prove the embezzlement of the public funds. There is nothing on the record to prove the record of the Panchayat to show the entries or to show the cash in hand with the Sarpanch, which had been embezzled. There is also no witness produced to show that what are the procedure and the rules and as to how these books are maintained, who produced these figures, from where the funds came and where it were to be deposited. There is not even a single word from any witness on these facts. Both the Courts below have misread the evidence and the findings given by the Courts below are perverse. Therefore, the judgments passed by the Courts below are not as per evidence and law and the judgment dated 11.2.2016 passed by the learned Additional Sessions Judge , Palwal, and the judgment and order dated 11/12.3.30214 passed by the learned Additional Chief Judicial Magistrate, Palwal, are set aside.

Finding merit in the present criminal revision petition, the same is allowed. The accused/petitioner is acquitted of all the charges framed against him.

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The sentence of imprisonment of the petitioner was suspended and he was released on bail vide order dated 6.5.2016 passed by this Court. As the petitioner is on bail, therefore, his bail bonds and surety bonds shall stand discharged.

September 16, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No