

CRR-878-2016

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

**CRR-878-2016 (O & M)
Date of Decision: 08.09.2016**

Jitender Singh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. R.K.Handa, Advocate,
for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

INDERJIT SINGH, J.

Petitioner, Jitender Singh has filed this revision petition against State of Haryana under Section 401 Cr.P.C. challenging the impugned judgment of conviction and order of sentence dated 09.02.2015 passed by learned Judicial Magistrate Ist Class, Panchkula, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month under Section 409 IPC and also challenging the judgment dated 05.02.2016 passed by learned Additional Sessions Judge-I, Panchkula vide which appeal filed by the petitioner was dismissed.

It is mainly stated in the revision petition that both the

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impugned judgments passed by the courts below are against the law and the same are liable to be set side. It is also stated that the petitioner is in govt. service; married person; law abiding citizen and has been falsely implicated in the present case.

Notice of motion was issued in this revision. Learned State counsel has appeared on behalf of the respondent-State and contested this revision. Record of courts below was also summoned.

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

From the record, I find that challan was presented against accused, Jitender Singh, Pawan Tyagi, Mahesh Kumar, Gur Partap Singh and Jai Deep @ Jai Bakshi in FIR No.20 dated 12.01.2010, P.S. Sector-5, Panchkula. The brief facts of the case, as noted down in the judgment passed by learned Judicial Magistrate Ist Class, Panchkula, are as under:

“Brief facts of the prosecution case sans unnecessary details are that on dated 12.01.2010, Station House Officer, P.S.Chandimandir, moved a complaint Ex.PW 9/A mentioning therein that a case bearing FIR No.249 dated 10.11.2009, under Sections 379/380 IPC, P.S.Chandimandir was got registered by HC Jitender Singh regarding theft of service pistol and 10 live cartridges. The investigation of that case was earlier conducted by SI Kartar Singh and thereafter by the complainant. It is further pleaded that on investigation, it was found that service pistol 19 Colk No.EYG402 and ten live cartridges 9 mm were allotted to HC Jitender Singh on 19.12.2005, when he was posted in Sector 5, Panchkula, in the year 2005. Thereafter, HC Jitender Singh was transferred to District Ambala on his

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promotion, but HC Jitender Singh had not deposited the service pistol as well as cartridges in question in his office at Panchkula. Thereafter, two reminders were issued to the Superintendent of Police, Ambala, for directing HC Jitender Singh to deposit the aforesaid service pistol as well as cartridges, but despite that HC Jitender Singh had not deposited the same. It is further alleged in the complaint that a departmental enquiry was ordered to be initiated against HC Jitender Singh on 16.11.2009 and during departmental enquiry, it was found that HC Jitender Singh intentionally not deposited the aforesaid pistol as well as cartridges in the department. Thereafter, the FIR lodged by HC Jitender Singh was found false and a cancellation report was submitted in that FIR. Lastly, it was maintained that HC Jitender Singh had misappropriated the service pistol as well as cartridges and therefore, the present complaint has been filed for taking necessary action against HC Jitender Singh.”

Learned Judicial Magistrate Ist Class, Panchkula, after appreciating the evidence convicted and sentenced the petitioner, as stated above, under Section 409 IPC, however, sentenced co-accused namely Mahesh Kumar and Pawan Tyagi under Section 411 IPC. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Panchkula, vide impugned judgment dated 05.02.2016.

Aggrieved from the above said judgments, the present revision petition has been filed.

At the time of arguments, learned counsel for the petitioner mainly argued that at the most, the petitioner can be held negligence in not

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depositing the weapon with the department, but no criminal offence of misappropriation or embezzlement is made out.

Perusal of the record shows that on 19.12.2005, when the petitioner was posted at Panchkula, he was entrusted with service pistol 19 Colk No.EYG402 and ten live cartridges. It is the case of the prosecution which has been duly proved that the petitioner was transferred to Ambala on 13.10.2006 on promotion, but he did not deposit the service revolver and cartridges, allotted to him while posted at Panchkula. This fact is not disputed by learned counsel for the petitioner. As per the law, the petitioner was supposed to deposit the pistol as well as cartridges, allotted to him, on his transfer from Panchkula. The reminders were also issued to the petitioner in this regard. In the year 2009, when enquiry was also started against the petitioner by the department, he got the FIR registered regarding theft of pistol and cartridges. However, the said version of the petitioner was found to be untrue as per the evidence and ultimately cancellation report was submitted regarding the same. Perusal of the judgments passed by the courts below shows that the petitioner had not deposited the service pistol and cartridges in the year 2006 at Panchkula and the same amounts to misappropriation and embezzlement. The entrustment has been duly proved and misappropriation and embezzlement has also been proved. During the investigation, pistol was recovered from the co-accused.

There is nothing on record to show as to why service pistol was not deposited by the petitioner in the year 2006 and as to why he had not given any cogent explanation immediately regarding the theft of service pistol and cartridges. Even the version given by the petitioner regarding

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theft of service pistol and cartridges was found to be false and cancellation report was submitted in this regard.

From the evidence on record, I find that the judgments 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. No illegality has been committed while passing the impugned judgments. This is a revision petition and in the revision petition, this Court is not to re-appreciate the evidence, like Court of an appeal and this Court is only to see whether any finding is perverse or some material evidence has not been considered. At the time of arguments, learned counsel for the petitioner failed to point out as to which material evidence has been misread or which material evidence has not been considered by the courts below. From the above discussion, I find that concurrent findings recorded by the courts below are correct and as per law, therefore, the same do not warrant interference.

Finding no merit in the present revision petition, the same is dismissed.

08.09.2016

parveen kumar

**(INDERJIT SINGH)
JUDGE**

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