

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1862-MA of 2016 (O&M)

DATE OF DECISION: MAY 3, 2017

PUNJAB AGRICULTURAL UNIVERSITY
THROUGH ITS REGISTRAR

...APPLICANT

VERSUS

D.K. CHADHA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.**

PRESENT: MR. O.P. GUPTA, ADVOCATE FOR THE APPLICANT.

M. JEYAPPAUL, J.

CRM-32272-2016

1. There is a delay of 68 days in filing the appeal. We are convinced with the reasons assigned for the delay. Therefore, the delay is condoned and the application is allowed.

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2. Aggrieved by the acquittal of respondent D.K.Chadha, former Storekeeper in the office of Director (Farm) Punjab Agricultural University, Ludhiana who was charged under Sections 406, 409 and 427 IPC, complainant Punjab Agricultural University, Ludhiana through its authorized person has filed the present application praying for special leave to prefer an appeal.

3. It is the case of the complainant that accused who was posted in the Department of Soil, Punjab Agricultural University, Ludhiana failed to hand-over the charge of the official files which were properties of the

Punjab Agricultural University, Ludhiana, to his successor in office when he was transferred from the said Department and relieved of his duties despite the efforts taken by the Department. The Director, Research, Punjab Agricultural University, Ludhiana charge-sheeted the respondent on 26.10.1999 under the signatures of Chancellor, Punjab Agricultural University, Ludhiana. Considering the reply submitted by the respondent to the show cause notice, the Chancellor, Punjab Agricultural University, Ludhiana stopped 4 annual increments with cumulative effect vide order dated 3.3.2004 and also recommended for registration of FIR against the respondent for the loss caused by him to the property of Punjab Agricultural University, Ludhiana. As the complainant failed to make available convincing records/materials, the police refused to register a case against the accused. Thereafter, the competent authority filed private complaint against the respondent.

4. On the side of the complainant, Tarsem Singh Lekhi, Senior Assistant, office of Director (Farm), Punjab Agricultural University, was examined as CW1 and Jugal Kishore was examined as CW2.

5. Learned counsel appearing for Punjab Agricultural University, Ludhiana vehemently submitted that the trial Court failed to consider the evidence of CW1 and CW2 in the background of huge materials produced to demonstrate that the respondent failed to hand over the charge to his successor.

6. Firstly, the complainant is bound to establish that records/properties as adumbrated in the complaint had been entrusted to

the respondent who had the dominion over the said property. Secondly, the complainant is duty bound to establish that the respondent dishonestly misappropriated the property entrusted to him. Thirdly, the complainant is bound to establish that such misappropriation was against the violation of the rules/law in vogue.

7. CW1, the star witness in this case, could not even name the predecessor or the successor of respondent D.K. Chadha. It is his admission that there was no record available with the Department to demonstrate that records/properties referred to in the complaint were entrusted to the custody of respondent at the time when he was posted in the Department of Soil, Punjab Agricultural University, Ludhiana. Despite the fact that the complainant could not convince the police to register a case by making available relevant records to demonstrate *prima facie* that the respondent was entrusted with those records, the complainant could not produce necessary evidence before the trial Court availing the opportunity granted to the complainant to establish that the documents/properties referred to in the complaint were entrusted to the respondent. When there is no material to establish that documents/properties referred to in the complaint were entrusted to the respondent, the question of misappropriation does not arise for consideration.

8. In our considered view, the trial Court has rightly evaluated the evidence on record and come to a conclusion that the complaint failed to bring home the charges framed against the respondent. We do not find

any merit in the application filed by the complainant seeking special leave to prefer an appeal. Therefore, leave sought for is declined and the application is accordingly, dismissed.

(M. JEYAPPAUL)
JUDGE

May 3, 2017
Gulati

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether Reportable : No

Whether Speaking/Reasoned : Yes