

In the High Court of Punjab & Haryana at Chandigarh.

CRM-A-1378-MA-2015

Date of decision:24.11.2017.

Parveen Rajgariya

..... Applicant.

VS.

Narender Aggarwal and another

..... Respondents.

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Sudhanshu Makkar, Advocate for the applicant.

MAHABIR SINGH SINDHU,J.

Applicant-Parveen Rajgariya, one of the complainants, has filed the present application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for grant of special leave to file an appeal against the judgment dated 01.06.2015 passed by learned Judicial Magistrate, 1st Class, Bhiwani, vide which respondent No.1 has been acquitted of the charges under Sections 406, 467 and 471 of Indian Penal Code (for short "IPC").

2. Brief facts of the case are that there were five complainants and the allegations are that name of respondent No.1 was proposed as President of Lions Club, Bhiwani (hereinafter to be referred as Club) for the year 2008-2009 but he was not appointed. After proposing his name, he started representing himself to be the President of the Club and collected membership funds from the various members for the year 2008-09 till 30.06.2008, without any right as the period of working committee for the year 2008-09 was to start with effect from 01.07.2008. The Club was also having a Fixed Deposit Receipt (FDR) for an amount of ₹72,068/- in the Indian Overseas Bank, Bhiwani and maturity date of which was 26.09.2010; but respondent No.1 represented himself as President of the Club and

closed the account with Indian Overseas Bank. Thereafter on 08.07.2008, respondent No.1 opened a new account with Punjab National Bank in the name of Lions Club, Bhiwani and the amount of abovementioned FDR got transferred in this account. It is further alleged in the complaint that from 08.07.2008 to 11.07.2008, respondent No.1 deposited a sum of ₹1,55,225/- in favour of the Club and on 12.07.2008, he withdrew an amount of ₹88,000/- through cheque. It is further alleged that again on 08.08.2008, he withdrew an amount of ₹1,40,000/- from Punjab National Bank through self-cheque. Thus, respondent No. 1 had withdrawn an amount of ₹2,28,000/- from Punjab National Bank which stood deposited in the name of Club; but he used the said amount personally without any authority and never accounted for the same despite repeated demands by the other members of the Club and that led to filing of a private complaint on 13.07.2009. Thereafter, preliminary evidence was recorded and accused-respondent No.1 was summoned for commission of an offences under Sections 406, 467 and 471 IPC. Pre-charge evidence was recorded and on the basis thereof, respondent No.1 was charge-sheeted for the commission of offences punishable under Sections 406, 467 and 471 IPC to which he pleaded not guilty and claimed trial. Respondent No.1 vide his statement dated 10.02.2015, submitted that he does not want to further cross-examine any witness in the after charge evidence.

3. Statement of the accused, under Section 313 Cr.P.C, was recorded in which he raised the plea of false implication and examined six witnesses and brought on record documentary evidence to support his defence.

4. Learned trial Court after taking into consideration the material available on record, acquitted respondent No.1 of the charges.

5. Hence, the present application for seeking special leave to appeal.

6. Perusal of the record reveals that CW1-Parveen Kumar reiterated the allegations made in the complaint. During his cross-examination, he admitted that the letter has been received in Indian Overseas Bank for approval of signatures of

respondent No.1, Dr. Devender, Secretary and Sh. Anand Sangwan, Treasurer and on the basis thereof approval letter, signatures for conducting the account have been changed. It is further stated that this letter bears the signatures of Parveen Rajgariya (Former President) and Parvesh Gupta (Former Secretary). It is further stated that Club was disaffiliated in July, 2008 from International USA and, thereafter, respondent No.1 started collecting membership funds and deposited the same in another bank and withdrew the amount that led to closure of the bank account. This witness has also stated that legal notice was also sent to respondent No.1 and he was asked to refund an amount of ₹2,28,000/- but he did not respond to the same. This witness has further stated that highest power of the Club is in USA and accounts are conducted from USA but he voluntarily stated that accounts of Bhiwani Club are not conducted from USA and some part of the membership funds goes to USA. This witness has admitted that Parmod Rajgariya was his brother and he has also admitted the contents of legal notice. This witness has also stated USA International Lions Club did not take any disciplinary action against respondent No.1. He has further admitted that account of Lions Club is a joint account and for withdrawing the amount, signatures of President are required. He has also stated that respondent No.1, Dr. Devender Vohra, Secretary and Sh. Anand Sangwan, Treasurer got bank account closed from Indian Overseas Bank and had withdrawn the entire amount and again they opened an account with Punjab National Bank and deposited the amount in this new account. He has not disputed that the complainants did not give any notice to Dr. Devender, Vohra Secretary and Sh. Anand Sangwan, Treasurer in this regard. This witness has categorically admitted that with regard to the irregularities regarding maintenance of account, they did not lodge any report to the police. CW1 has also admitted that all the transactions and record of the Club are maintained by the Treasurer.

7. CW2-Gaurav Solanki, Clerk, Punjab National Bank, deposed that on 12.07.2008, an amount of ₹88,000/- was withdrawn by way of self-cheque but he

did not bring the said cheque in the Court and he was also not able to disclose as to who got the cheque encashed for an amount of ₹88,000/-. This witness has also proved that as per record, the account was opened with Punjab National Bank by Sh. Anand Sangwan (Treasurer) Narender Aggarwal (President)-respondent No.1 and Dr. Devender Vohra (Secretary) of Club and to prove the same, documents Ex. D1 to Ex.D3 were produced on record. This witness has further stated that none raised any objection regarding opening of bank account.

8. CW3-Rohit Kumar, Clerk, Indian Overseas Bank, deposed that Club had opened a saving bank account and fixed deposit account in their bank. This witness has also stated that on 26.03.2007, FDR for an amount of ₹72,068/- was renewed and, thereafter, this account was closed on 17.07.2008 on the basis of a request letter of respondent No.1 and Anand Sangwan. This witness has also stated that on 17.07.2008, FDR was withdrawn as pre-mature and ₹80,450/- were deposited in the saving bank account in favour of the Club and he produced a letter Ex. CW3/B according to which Anand Sangwan is the Treasurer of Club. This witness has also stated that for operating the bank account of the Club, the account holder person has to obtain approval letter from the previous account holder and for this purpose, former account holder and present account holder should be present. He has further admitted that former account holder could give in writing to the bank and there is no requirement to come present personally for giving his consent in the bank regarding operation of the bank account.

9 In view of the above, it is clearly established that respondent No.1 was well-authorized to use the funds of the Club in view of the approval letter already received by the Indian Overseas Bank. As per the testimony of CW1, it is the Treasurer who takes care of the all transactions and record of the Club and as per the approval letter, respondent No.1 and Treasurer were entitled to operate the bank account; but the present complaint has been filed only against respondent No.1-Narender Aggarwal and there is no complaint against Treasurer and thus,

learned trial Court rightly observed that this is only on account of personal vendetta that the present complaint has been filed.

10. Even on the factum of mis-appropriation of funds also, there is no evidence at all as CW1 in his cross-examination admitted that bank account maintained with the Indian Overseas Bank was closed and money was withdrawn and that amount stood deposited with the Punjab National Bank in new account. Therefore, the charge of misappropriation is not made out by any stretch of imagination.

11. Even CW2 has also failed to prove that an amount of ₹88,000/- was withdrawn by respondent No.1 as the cheque was not produced. Still further neither any complaint was made to the police nor any FIR was registered and straightway, the present complaint has been filed and thus without any cogent reason by-passed the police for the reason best known to complainants. Even the allegation that respondent No.1 collected the funds from the membership of the Club is not proved as no such member has been examined by the complainants to prove the same. Thus the allegations are based on surmises and go unsubstantiated.

12. In the opinion of this Court, the learned trial Court rightly came to the conclusion that bank account was operated by respondent No.1 and Anand Sangwan, Treasurer, on the basis of duly authorized approval letter furnished by the Former President and he was fully entitled to operate the bank account with Indian Overseas Bank to withdraw the amount and the action performed by respondent No.1 regarding bank accounts was perfectly legal and the accounts were duly maintained by Treasurer. Still worse to the case of the complainant that even the former President Parmod Rajgariya, has not been examined for the reasons best known to them.

13. In view of the above, the view taken by the learned trial Court is the possible view and there is no material available on record to take another view in

the matter. Consequently, the present application seeking special leave to file an appeal is declined and the same is rejected.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

24.11.2017.
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No