

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

CRR-827-2004

Date of decision:-27.9.2017

Mohinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.P.S. Mann, Advocate
for the petitioner.

Ms.Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 22.3.2004 passed by learned Additional Sessions Judge, Jalandhar vide which the judgment and order of sentence dated 14.7.1995 passed by learned Judicial Magistrate Ist Class, Nakodar convicting accused Mohinder Singh for the offence under Section 409 IPC and sentencing him for that offence were upheld, whereas the appeal filed by accused-convict was dismissed.

The accused-convict – Mohinder Singh, who is petitioner before this Court prays that the revision be accepted, the impugned judgment of his conviction and order of sentence passed by Judicial Magistrate Ist Class, Nakodar and judgment in appeal by learned Additional Sessions Judge, Jalandhar be set aside and he be acquitted of

the charge framed against him.

Briefly stated, the facts of the case as per prosecution story are that District Manager, PUNSUP, Jalandhar had submitted a complaint to the police contending therein that accused Mohinder Singh was employed as a driver in their department; that he was put on duty on truck No.PUQ-7807; that on 7.6.1985, he was directed to take consignment of 666 tins of palm oil from CWC, Ludhiana and to deliver 300 tins at Nakodar, 200 tins at Shankar and 155 tins at Lohian, however, accused did not deliver 200 tins of palm oil at Shankar and misappropriated the same; that furthermore on 28.1.1986, he was required to transport 666 tins of palm oil from Ludhiana delivering the same at Nakodar and Shankar; that he had delivered only 366 tins at Nakodar, whereas misappropriated 300 tins which was required to be delivered at Shankar; that in that way, he had misappropriated 200 tins of palm oil on 11.6.1985 and 300 tins of palm oil on 28.1.1986 of the total value of Rs.93,375/-. On the basis of this complaint, FIR was registered for the offence under Section 409 IPC with Police Station Nakodar. The matter was investigated. Accused was arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Nakodar, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Nakodar finding that charge for offence under Section 409 IPC was disclosed against the

accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as twelve witnesses, namely, Kartar Singh, Senior Assistant as PW1, Vinod Kumar, Clerk as PW2, Bhan Singh, Sub Inspector as PW3, Chaman Lal, Chowkidar as PW4, V.N.Mukhtai as PW4/5, Puran Chand, Inspector as PW6, Ranjit Singh Sandhu, Additional Manager as PW7, Roshan Lal son of Gobind Ram as PW8, Gurdial Kapur, Inspector as PW9, Keshav Kishan, Senior Assistant as PW10, Narain Dass, Senior Assistant as PW11 and Kewal Krishan, Senior Assistant as PW12. The prosecution also produced in evidence copies of the stock register of Shanker as well as Jalandhar, T.A. Bill of the accused submitted him, claiming T.A for the month of June, 1985 and January, 1986, reports of the auditors of PUNSUP and other relevant record.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case. Further he pleaded that his case as put to the PWs is that the tins to be delivered at Shankar were not received by the official there and that he had delivered the same at main depot at Jalandhar against the signatures of Chaman Lal, Chowkidar.

In defence evidence, accused examined Dayal Chand, Clerk of PUNSUP as DW1, Gurdial Kapoor as DW2, Kewal Singh, Octroi

Clerk as DW3, Chaman Lal as DW4, Nachhater Pal, Deputy District Manager as DW5 and also tendered in evidence original vouchers as Ex.DA, Ex.DB, Ex.DC to Ex.DE.

After hearing arguments, learned Judicial Magistrate Ist Class, Nakodar vide judgment dated 14.7.1995 convicted accused Mohinder Singh for the offence under Section 409 IPC and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for three months. The appeal preferred against the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Nakodar was also decided against the accused by learned Additional Sessions Judge, Jalandhar, which left petitioner – accused Mohinder Singh aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Punjab besides going through the record and I find that there is no merit in the revision petition.

A perusal of the record goes to show that accused does not deny that he was working as a driver in PUNSUP, which is a State Government undertaking, thus he is covered by definition of public servant under Section 21 IPC.

Now comes a question as to whether he was entrusted with tins of palm oil. PW2 Vinod Kumar, who was posted as Clerk in PUNSUP Centre, Lambra deposed that he had not received 200 tins of

palm oil from accused, whereas PW8 Roshan Lal from PUNSUP Department, Ludhiana deposed that accused was entrusted 666 tins as those were loaded in his truck No.7807. Accused had appended his signatures Mark PW8/A and release order Ex.PW8/B has been issued, which goes to prove the entrustment of 666 tins of palm oil to accused by PUNSUP Department, Ludhiana. According to the case of accused, he was entrusted with 666 tins of palm oil on 10.6.1985 and similar number on 27.1.1986 out of total 1332 tins. The accused has not been able to account for 500 tins of palm oil. The plea taken by him is that he had delivered 500 tins to Chaman Lal but from the evidence adduced by the prosecution and other facts and circumstances of the case, it comes out that he had misappropriated 200 tins of palm oil on 11.6.1985 and 300 tins of palm oil on 28.1.986, total being 500 tins worth Rs.93,375/- but accused has tried to show that he had delivered 500 tins of palm oil to Chaman Lal relying upon documents Ex.DA to Ex.DC summoning him as a defence witness when his statement had already been recorded as PW4. However, Chaman Lal denied his signatures on such documents. It comes out that the gate pass proved in evidence shows that accused was entrusted 200 tins of palm oil on 12.6.1985 and he had taken out those property from PUNSUP Depot, Jalandhar. PW4 Chaman Lal, Chowkidar – cum - Helper and PW3 Bhan Singh, Inspector posted at PUNSUP have deposed that on 28.1.1986, 300 tins of palm oil were not given and on 10.6.1985, 200 tins of pall oil were not given to them. The log book maintained by the accused in his capacity a driver also corroborated the prosecution story and goes against the defence version. Essential

ingredients of offence under Section 409 IPC i.e. accused in his capacity as public servant being entrusted with property i.e. tins of palm oil and his committing criminal breach of trust in that regard with respect to 500 tins stood established on record.

The judgment of conviction and sentence passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

However, as regards the sentence part, the accused is said to have deposited a sum of Rs.93,375/- the value of short fall with the department. His services have already been dispensed with vide order dated 3.12.2004. Presently, he is stated to be aged about 58 years. He has already undergone 2 months and 4 days of imprisonment in this case as revealed from the custody certificate placed on file.

I find that ends of justice would be squarely met if the petitioner is sentenced to imprisonment already undergone by him, while in custody in the present case, whereas the part of conviction relating to payment of fine is kept as intact. Therefore, the impugned judgments are upheld as regards conviction part qua the petitioner.

However, as far sentence part is concerned, the same is modified and the petitioner is sentenced to imprisonment already undergone by him as mentioned supra. Whereas the sentence regarding payment of fine and in default of making payment of fine remains intact.

As such the revision petition challenging the impugned judgments stand disposed of with above modification in sentence.

Necessary intimation be sent to the quarter concerned.

27.9.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No