

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 2656 of 2008

Date of decision : April 21, 2017

Chaman Lal

....Petitioner

versus

State of Haryana

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Kunal Dawar, Advocate, for the petitioner
Mr. Munish Sharma, AAG, Haryana, for the respondent

Fateh Deep Singh, J. (Oral)

The revisionist-petitioner Chaman Lal happens to be a convict by virtue of being held guilty by the court of learned Judicial Magistrate Ist Class, Palwal through judgment dated 10/12.5.2007 under section 409 IPC and was sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs 1000/-, in default of payment of fine to undergo further simple imprisonment for one month. These findings were subsequently upheld by the learned Additional Sessions Judge, Faridabad who through judgment dated 5.12.2008 which is impugned before this Court and by which has upheld the findings of the learned Magistrate and thus dismissed the appeal of the appellant.

Heard Mr. Kunal Dawar, Advocate, for the petitioner and Mr. Munish Sharma, AAG, Haryana, for the respondent/State and perused the records.

The undisputed facts are that on 12.1.1999 on the report of Senior Postmaster, Faridabad, Senior Superintendent of Post Offices, Faridabad conducted a surprise raid and found that the petitioner who was working as Sub Postmaster Hassanpur had embezzled the money of the Post Office and shortage of cash of Rs 83,000/- was found. The matter was investigated by Inspector of Post Offices (P.G.) and before whom the petitioner on 12.1.1999 had made statement confessing that he has misappropriated a sum of Rs 1,30,000/- on 24.12.1998 and undertook that he would made good loss of the same. During verification of the accounts ultimately shortage of Rs 83,000/- was found, on the basis of which complaint dated 23.1.1999 Ex. PW5/A was made to Police Station Hassanpur by PW5 Ramesh Chand Meena, Sub Divisional Inspector (P), Sub Division, Faridabad, on the basis of which FIR No. 9 dated 23.1.1999 under sections 409/420 IPC was registered at Police Station Hassanpur. Upon investigations and conclusion of the same, challan was submitted and charges were accordingly framed to which the accused pleaded not guilty and thus, led to initiation of the trial.

At the trial, the prosecution examined RS Mangla PW1, Usha Sehgal, Assistant Superintendent Post Office PW2, Satya Dev Sharma, Post

Master Hassanpur PW3, Amar Singh Dagar, Retired Inspector PW4, Ramesh Chand Meena, Assistant Superintendent, Post Office, Gurgaon PW5, Deep Chand Verma, Office Assistant, Office of Senior Superintendent Post Office PW6, Ompal Singh Inspector PW7, Ms. Amrit Raj, IPS, Director Posting Services PW8 and thereafter the prosecution closed the evidence.

In his stand taken in his statement accused denied the allegations but did not lead any evidence in defence. This is how the subsequent concurrent findings were recorded by the courts below.

Appreciating the submissions of the two sides, counsel for the petitioner does not disputes the fact that at the relevant time when the offence has been committed, the petitioner was posted as Sub Postmaster, Hassanpur under Post Office, Faridabad and the fact that by virtue of discharge of his official duties on the post of Sub Postmaster he was handling cash, postage stamps, revenue stamps etc. The prosecution through PW8 has proved the fact that on the asking of Post Master the witness had by virtue of his post as Senior Superintendent of Post Office conducted surprise raid and found shortage of Rs 83,000/- and it was on her instructions FIR Ex. PW5/A was got registered by Ramesh Chand Meena. The same is said to be corroborated by Ompal Singh Inspector who has been examined by the prosecution as PW7 and has proved inspection so conducted deducting shortage of Rs 83,000/- in cash and has proved

recovery memo Ex. PW6/F by virtue of which records of the convict were taken into possession. It is through PW6 Deep Chand Verma, Office Assistant the recovery of documents Ex. PW6/F, receipts Exs. PW6/A, PW6/B and PW6/C were deposited by the convict so proved and the confessional statement made by the petitioner before his superiors Ex. PW6/D whereby he has confessed his guilt and has proved details of the shortage Ex. PW6/E and thereby proved attested copies of these documents by virtue of Ex. PW6/G to PW6/J. It is through PW1 RS Mangla, an official of Post Office who proved Ex. PW1/A regarding deposit of Rs 15,000/- by the convict on 25.1.1999 whereas Usha Sehgal, Office Assistant PW2 proved posting of the convict at the relevant time which even otherwise is not put to question by the convict side. PW3 Satdev Sharma, Postmaster Hassanpur has proved receipts Ex. PW3/A to Ex. PW3/D regarding deposit of amount by the convict from time to time and PW5 Ramesh Chand Meena proved complaint Ex. PW5/A which led to the registration of the case.

Learned counsel for the petitioner could not refute by any means this documentary evidence of the complainant side which is an instrumentality of the State. Thus the very essential ingredients of offence of criminal breach of trust punishable under section 409 IPC to the effect that the convict was entrusted with property in the manner of Sub Postmaster and the commission of breach of trust over which he has

dominion in his capacity as public servant and thus the very requirement of section 405 IPC which defines criminal breach of trust punishable under section 409 IPC being a public servant entrusted with cash by virtue of holding charge in a post office, a banking institution by all means the commission of offence is deemed to have been established. Counsel for the petitioner could not controvert the contentions of the learned State counsel that each and every necessary ingredient of the offence stands proved.

Mr. Kunal Dawar on behalf of convict has laid much emphasis on the fact that the petitioner is almost 70 years of age and one of his child is handicapped and the entire family is dependent upon him and since the year 1999 he has suffered agony of this trial and the prosecution and has remained behind the bars for 23 days which is not refuted by the State counsel who has placed on record custody certificate and seeking support from **State of Himachal Pradesh vs Karanvir, 2006(3) R.C.R. (Criminal) 379; Deepak Kumar vs State, 2005(4) R.C.R. (Criminal) 244; Chandgi Ram and another vs State of Haryana, 2006(3) R.C.R. (Criminal) 880 and Dayanand Ramkrishna Shet vs State of Karnataka, 2014 (3) R.C.R. (Criminal) 229**, counsel for the petitioner has sought leniency by seeking benefit of probation or in the alternative sentence already undergone by the petitioner. Learned State counsel has even stoutly refuted these submissions of the counsel for the petitioner submitting that in view of

heinousness of the offence which prescribes sentence up to life term such a concession cannot be granted.

Appreciating the submissions, the convict by virtue of his conduct as public servant who was entrusted to deal with cash a very sacrosanct function in a Post Office where confidence of the public at large is involved and the fact that a single remiss by an employee certainly has its cascading affect on the very institutions of a banking system like the post office which is entrusted with multiple tasking. Certainly to the mind of the Court such a conduct in embezzling the public money by the petitioner certainly does not call for showing any leniency. No doubt the petitioner is a senior citizen and as has been reflected in the findings of the impugned judgment, there is a good case for showing compassion but having regard to the sentence of six months and upheld so by the learned first appellate court already much compassion and leniency has been shown which is in abundance. Though this Court was of the view of awarding harsher punishment to such a person but having regard to the family circumstances, the age and the long period of time through which the petitioner has tracked in arduous travail of legal journey impels this Court to accept the same in view of such impelling reasons.

In the light of what has been detailed and discussed above, counsel for the petitioners even otherwise could not bring about any other arguments. Finding neither any illegality or perversity in the impugned

findings, the revision petition being totally devoid of merit stands dismissed.

The convict-petitioner who is on bail shall surrender before the concerned authorities to serve his remaining substantive sentence.

April 21, 2017
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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>