

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

**CRR No.667 of 2009 (O&M)  
Date of Decision: 25 October, 2017**

Jan Mohamad

...Petitioner

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Mr. Mohd. Arshad, Advocate  
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

**FATEH DEEP SINGH, J.**

The petitioner Jan Mohamad was initially convicted by the Court of learned Chief Judicial Magistrate, Gurgaon through judgment dated 29.11.2007 and sentenced under Section 409 IPC to undergo rigorous imprisonment for 03 years and to pay fine of Rs.15,000/- and in default thereof to further undergo rigorous imprisonment for three months. Appeal preferred by him stood dismissed through impugned judgment dated 24.02.009 by the Court of Additional Sessions Judge, Gurgaon.

Heard learned counsel for the parties and perused the records of the case. The brief allegations are that petitioner Jan Mohamad happened to be driver bearing No 216 with Haryana Roadways Sub-Depot, Ferozpur Jhirka and was deputed on bus bearing registration No. HR26-PA-0117 and was supposed to drive the bus from Punhana to Chandigarh and vice versa. On 23.11.1999 the accused had brought the bus around 7.45 a.m. for getting diesel filled up and 125 liters of diesel was filled in the bus. On checking of the records, it transpired that on 22.11.1999 also while

going to Punhana the petitioner has got 95 liters of diesel, though had covered a distance between Gurgaon to Punhana which was only 176 k.m and for which under the rules only 40 liters diesel needs to have been consumed and had got filled 125 liters of diesel and in the process is alleged to have embezzled 85 liters of diesel.

On the basis of this, complaint Ex.PW1/A along with diesel docket was filed before SHO, City Gurgaon and on the basis of which formal FIR No.955 dated 23.11.1999 under Sections 420,409 IPC was got registered. Upon completion of investigations, challan against the accused was presented.

The prosecution at the trial examined PW1 Lajpat Rai, who proved complaint Ex.PW1/A; PW2 Sunder Lal, Roadways Inspector who detailed diesel so filled in the bus and proved receipt as Ex.PW2/A, PW3 Sohan Lal do not support the prosecution story and, thereafter, PW4 Parkash Chand, was examined, who proved the fact that on 22.11.1999 driver Jan Mohamad had got filled 95 liters of diesel in the bus and on 23.11.1999 he again came and after only 180 Km had got filled 85 liters of diesel on the pretext of going to Chandigarh and proved receipts of the docket Ex.PW4/A and Ex.PW4/b; PW5 Om Parkash, Fitter proved that when he inspected the bus on 23.11.1999 he did not find any leakage and proved his report Ex.PW5/A and writing of the accused Ex.PW5/B, though admitted in his cross-examination of having changed the pipe of the bus proving bill as Ex.DA and, thereafter, PW6 Bir Singh, Battery Attendant stepped into the witness box and proved diesel filled in the bus in question. Consequent thereupon, the impugned findings were recorded after the

accused in his defence simplicitor denied the allegations but did not lead any evidence in defence.

Appreciating the submissions of learned counsel for the parties, it is by no means disputed that the petitioner is a public servant as defined in Section 21 IPC and having been deputed as driver on a bus owned by the State Government. It is well elaborated in the testimony of official witness that 96 liters and 125 liters of diesel was filled in when the accused had driven the bus only for distance of 176 Km and it is well proved by the prosecution witness that no leakage of diesel could be detected at any point of time and the accused had simplicitor denied the allegations in his cross-examination and nor could bring about anything fruitful in his statement under Section 313 Cr.P.C. As per average consumption ought to have consumed 40 liters and which scale of assessment could not be displaced by learned counsel for the petitioner. No worthwhile explanation is coming forth from the side of the accused to rebut the stand of the prosecution that how or in what manner he has put to use this diesel owned by the State when it is not his stand under Section 313 Cr.P.C that there was leakage in the bus on account of which diesel had gone waste. Merely because a pipe has been fitted does not *ipso facto* bears out the loss of diesel on that score. The accused had simplicitor denied the allegations terming the prosecution's allegations to be false and merely by proving receipt of damage of pipe Ex.DA on 23.11.1999 which plea was neither taken at the very inception of the trial and subsequently at belated stage has been raked up. Neither learned counsel for the petitioner could convince this Court how the evidence of the prosecution is unreliable or is

not trustworthy. The accused in the capacity of public servant having been entrusted with diesel, a property and, therefore, dominion over it dishonestly misappropriated the same certainly establishes commission of breach of trust as defined in Section 405 IPC and, therefore, necessary ingredients of entrustment to the accused with the property and dominion over the property and has dishonestly misappropriated the same and disobeyed the rules of the department is certainly proved to have committed criminal breach of trust and being a servant and doing a public service is unable to account for such a shortage of diesel and, therefore, by all means is proved to have committed criminal breach of trust in that capacity.

Learned trial Court as well as learned first Appellate Court have given well reasoned judgment detailing each and every aspects of the evidence and law and have come to a totally justifiable conclusion. Thus, there is no illegality or perversity in the findings so recorded by the two Courts below. The present revision petition being hopelessly without any merits stands dismissed.

**(FATEH DEEP SINGH)**  
**JUDGE**

**October 25, 2017**

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