

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

CRR-757-2009 (O&M)

Date of decision :16.08.2017

Om Parkash

..... Petitioner

Versus

State of Haryana

..... Respondent

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

Present : Mr. S.S. Walia, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

Reply by way of affidavit of Sh. Anil Kumar, HPS, Deputy Superintendent of Police, State Vigilance Bureau, Hisar filed today in the Court to the effect that as per record amount of ₹11,420/- the loss caused by petitioner-Om Parkash to the Department has not been deposited by him.

This revision petition is directed against judgment dated 01.08.2003 and order of sentence dated 02.08.2003 passed by the Trial Court

vide which the revision-petitioner was convicted for offence under Section 409 of the Indian Penal Code ("IPC" - for short) and he was sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of ₹200/- and in default of payment of fine to further undergo imprisonment for 07 days as well as judgment dated 18.12.2008 vide which the appeal filed by the accused-convict was dismissed.

The accused-convict has impugned the judgments / orders passed by both the Courts below praying that those be set aside by way of acceptance of the revision petition and he be acquitted of the charge framed against him.

Briefly stated facts of the case are that complainant-Baljeet Singh, Inspector Forest Department had addressed a written complaint to Station House Officer, State Vigilance Bureau, Haryana, Hisar against Om Parkash posted as Forest Guard, Harita Bir Block, Mangali; Under orders of Director General, State vigilance Bureau Haryana, Case No.7 dated 17.03.1993 was registered at Hisar. Inspector Partap Singh from State Vigilance Bureau, Hisar investigated the matter and forwarded a report to Director General State Vigilance Bureau Haryana and then a decision was taken that a case be registered under the provisions of IPC against the employees, who had prepared muster rolls. As such, FIR in question was registered against the petitioner. During the course of investigation, it transpired that the out of 309 trees 122 had been auctioned, whereas 71 trees were standing at the spot and one had got damaged, in that way 108 trees were deficient towards Om Parkash Forest Guard, Harita Bir Block and ₹600/- as cost with compensation of ₹315/- total ₹915/- was found to be recoverable. It had come out that both said Forest Guards cut the trees illegally and disposed those off; that out of 55 labourers employed, there were thumb impressions of 39, but those were not matching with the thumb

impressions of labourers, in that way the two Forest Guards had prepared false muster rolls.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Hisar. Accused - Om Parkash and Mangtu Ram were sent up to face trial.

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

Learned Judicial Magistrate Ist Class, Hisar finding that charge for offence under Section 409 IPC was disclosed against the accused, charge-sheeted the accused for the said offence, to which, they 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 10 witnesses as per following details:-

Ramesh Kumar	PW-1
Surender Makkar	PW-2
Mahender Singh	PW-3
Ram Murti	PW-4
Dhup Singh	PW-5
Mehar Singh	PW-6
Partap Singh	PW-7
Ram Singh	PW-8
Rattan Singh	PW-9
Jagdish Chander	PW-10

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

The accused did not lead any evidence in defence.

After hearing arguments learned trial Court convicted both the accused for offence under Section 409 IPC and sentenced them as mentioned supra. Both the accused had preferred appeal against said judgment of conviction and order of sentence but remained unsuccessful, as such, accused - convict - Om Parkash has preferred the present appeal.

I have heard learned counsel for the revision petition, learned State counsel, besides going through the record and I find that there is no merit in the revision petition. The accused-convict does not dispute that he was posted as Forest Guard in Harita Bir Block, Mangali at the relevant time and was responsible for preparation of maintenance of muster roll recording attendance of labourers who were employed by the department. It is specific case of the complainant that out of 55 employees shown on muster roll, 39 of them used to append their thumb impressions but those were found to be fake, in that way accused was guilty of preparing false muster rolls. Furthermore, out of the total trees in the forest area under his control 109 trees were found to be missing and could not be accounted for by the accused-convict.

Learned counsel for the revision-petitioner has attacked the judgments passed by Courts below contending that there was no eye-witness of the alleged cutting of the trees at the instance of the petitioner, no pictures etc. were proved in evidence by the prosecution to show that trees had in fact been cut. Furthermore, the complainant himself had not appeared in the witness box, no documents were proved in evidence to show that how many

trees were there in the forest area when the petitioner was given charge thereof, since only in that eventuality the petitioner could be held responsible for the loss.

On the other hand learned State counsel argued that the prosecution has led enough evidence to prove its charge; the number of trees standing in the forest area under control of the petitioner and trees actually found present there was a matter of record, therefore, there was no necessity of examining any eye-witness, who might have seen cutting of trees from said area, no pictures etc. of the remaining trunk were needed to be proved as documentary evidence; Since Baljeet Singh-complainant had expired, as such, his statement could not be recorded and further the requisite record has been proved in evidence.

After hearing rival contentions, I find that the arguments advanced by learned counsel for the revision petitioner do not have any merit and the State counsel has successfully countered such arguments of learned counsel for the petitioner.

A perusal of record goes to show that PW-1 Ramesh Kumar, Clerk had brought the relevant record in terms of which Mahender Singh, Forest Guard had taken charge from Om Parkash Forest Guard. However, Om Prakash was absent from duty at that time when Mahender Singh had taken over the charge vide report Ex.PA, however, shortage of trees was detected in that respect report Ex.PA/1 was prepared. Government letters Ex.PC and Ex.PD were proved by PW-5 Dhup Singh, Inspector also corroborate that fact.

PW-2 Surender Makkar had also categorically stated that while he was posted as Clerk in establishment branch of DFO Office in the year 1990-91, he was custodian of the files pertaining to charge, as such, in terms of the record which remained in his possession on 08.11.1990, Om Parkash

Forest Guard had taken charge from Mangtu Ram Forest Guard vide charge report Ex.PB. Om Parkash had found deficiency of trees towards Mangtu Ram inasmuch as total 440 trees were found to be deficient; that on 18.07.1991 Mangtu Ram Forest Guard had taken over the charge of Om Prakash as Om Prakash had gone absent. He further proved charge report of Mahender Singh Ex.PA and shortage report Ex.PA/1 in view of which 132 trees were found to be deficient. He had further stated that Om Parkash had taken charge from Mangtu Ram in the year 1980 and had intimated DFO Hisar about deficiency of trees. Then trees were counted as per register, in the year 1991 and 06 trees were found to be deficient towards Mangtu Ram and total trees 108 found deficient towards Om Parkash. In that way ₹11,420/- was to be recovered from accused Om Parkash and ₹915/- towards Mangtu Ram. This witness had categorically stated that accused had disposed of total trees 115 and they have not deposited the amount of trees in the Government account.

PW-3 Mahender Singh also supported those lines giving details of the disposed of trees which were found to be missing adding that trees were cut after auction and statements were recorded in the register.

PW-4 Ram Murti, Forest Guard besides stating that in January 1988 he had given charge to Mangtu Ram proving charge report Ex.PW4/A. He further proved calculation register of the year 1987-88 Ex.PW5/E and Ex.PW5/F.

PW-5 Dhup Singh, who was posted as Block Officer on 08.11.1990 proved his report recording deficiency of trees towards Om Praskh and Mangtu Ram as Ex.PW5/A. He stated that accused Om Prakash remained absent after disposing trees of the forest then charge was assumed by Mahender Singh Forest Guard who had prepared report Ex.PW5/B detecting deficiencies of 132 trees. This witness stated that as per register

Ex.PW5/E and Ex.PW5/F trees had been correctly shown at the spot.

PW-6 Mehar Singh, DFO also supported the case of prosecution story on material aspects.

PW-7 Partap Singh, DSP who was posted as Inspector, State Vigilance Bureau, at the relevant time, deposed regarding Investigation conducted by him stated that during inquiry 108 trees were deficient and muster roll of the labourers were found to be forged one.

PW-8 Rai Singh DSP deposed regarding arrest of accused Om Parkash in this case.

PW-9 Rattan Singh Clerk, DFO lent support to the case of prosecution.

PW-10 Jagdish Chander, who in the year 1995 was posted as Inspector, State vigilance Bureau, Hisar and had conducted investigation in this case to some extent deposed in that regard proving various documents.

Thus the prosecution had successfully proved that Om Parkash accused-Forest Guard responsible for safeguarding the forest within his jurisdiction had dishonestly cut trees and disposed those off without depositing the amount of those trees. The guilty intention of Om Parkash-petitioner is further proved from the fact that when the shortage was detected he went absent from duty. The amount towards cost of trees had been worked out and a calculation report prepared in that regard duly proved by PW-5 Dhup Singh. Keeping in view the nature of allegations and overwhelming evidence oral as well as documentary brought on file by the prosecution, non-examination of Baljeet Singh-complainant does not affect the case of prosecution. Furthermore, as has been mentioned in Para No.31 of the judgment passed by the Magistrate it was for the reason that Baljeet Singh had expired and besides, submitting a written complaint he had not done anything else as regards this case.

Thus the prosecution had successfully proved its charge against the accused beyond the shadow of reasonable doubt. The judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law.

The public servant is supposed to perform his duties with utmost devotion and dedication, he is required to protect the interest of State and if such public servant starts misappropriating the property entrusted to him in his capacity as a public servant it amounts to a very serious crime which cannot be taken lightly. The petitioner has not deposited the amount of loss caused by him to the Department. Merely because the incident is quite old and the petitioner has become aged does not mean that such type of offences can be taken lightly. Therefore, the judgment does not call for interference as regards the conviction and sentenced part.

There is no illegality or infirmity in the judgment, as such, the same is upheld.

The appeal is found to be without merit, hence it stands dismissed.

The petitioner is stated to be on bail under order of this Court vide order dated 05.05.2009. Such order granting bail to the petitioner is withdrawn and Chief Judicial Magistrate, Hisar is directed to ensure that the petitioner is arrested immediately and sent to Central Jail-I, Hisar to undergo the remaining sentence.

Intimation in this regard be sent to the quarter concerned.

16.08.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No / Yes**
2. Whether speaking / reasoned? **No / Yes**