

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

CRR No.906 of 2009

Date of decision: 31st October, 2017

Lal Singh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sarfraj Hussain, Advocate for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

The revision petitioner Lal Singh who was tried in case bearing FIR No.9 dated 04.04.1994 under Sections 409, 420 IPC pertaining to Police Station State Vigilance Bureau, Gurgaon was initially held guilty for commission of offence under Section 409 IPC by the Court of learned Chief Judicial Magistrate, Narnaul through judgment dated 07.09.2005 and was sentenced to undergo rigorous imprisonment for a period of 3½ years and to pay a fine of Rs.15,000/- and in default of payment of fine to further undergo rigorous imprisonment for 150 days. The appeal against the impugned judgment of conviction was too dismissed by the Court of learned Additional Sessions Judge, Narnaul through impugned judgment dated 13.03.2009 and that is how the present revision petition has come about.

Heard Mr. Sarfraj Hussain, Advocate for the petitioner; Mr. Munish Sharma, Asstt. Advocate General, Haryana representing the respondent/State and perused records of the case.

The allegations in brief against the petitioner are that the present case was got registered on the complaint of one Chander Shekhar, Inspector when complaints were made regarding misconduct by the petitioner Lal Singh who happens to be Sarpanch of village Kothal Kalan and had embezzled Rs.56,000/- during the period of November – December, 1992 and had even not recorded entries of Rs.15,000/- received from one Kirori and Rs.9700/- from Desh Raj regarding auction of certain articles and had also received Rs.10,000/- under the Jawahar Rojgar Yojana which too stood embezzled.

Upon investigations and presentation of challan, prosecution examined PW1 Desh Raj, Clerk from the office of Cooperative Bank, PW2 Desh Raj son of Sheo Lal, PW3 Daya Ram, PW4 Hardwari Lal, PW5 Rohtash, PW6 Murari Lal DSP (Retd.), PW7 Deepak Yadav BDPO Narnaul, PW8 Chander Singh Inspector (Retd.), PW9 Ramotar Retired Gram Sewak, PW10 Rameshwar Dayal, PW11 Moti Lal, PW12 Ram Chander, PW13 HC Hoshiyar Singh, PW14 DSP Shiv Dayal, PW15 Balbir Singh Inspector (Retd.), PW16 Maharaj Singh DSP and PW 17 Om Parkash, and in the process proved documents Ex.PW1/A, Ex.PW1/B, Ex.PW1/C, Ex.PW1/D, Ex.PW8/A, Ex.PW14/A,

Ex.PW14/B, Ex.PW15/A. The accused denied the allegations and in his statement under Section 313 Cr.P.C. took the plea that he has spent money on development works, and in his defence examined DW1 Jasram SDO who proved measurement book as Ex.DW1/A leading to passing of the impugned judgment.

Appreciating the submissions, the very factum that at the relevant time the petitioner was Sarpanch of the village and therefore covered under the definition of 'public servant' as defined under Section 21 of the IPC. It is the case of the prosecution proved through various prosecution witnesses that Rs.15,000/- were received by the petitioner being Sarpanch of the Gram Panchayat as sale price of pullies (hassock) and Janti trees. The factum of entrustment of Rs.10,000/- for Jawahar Rojgar Yojana has been well elicited by PW1 Desh Raj Clerk of the Cooperative Bank and the accused has brought about through DW1 SDO Jasram, measurement book Ex.DW1/A which reflects that payment for laying stones was done during tenure of the petitioner.

Learned counsel for the petitioner Mr. Sarfraj Hussain could not controvert the submissions of the learned State counsel that during his tenure as Sarpanch the accused petitioner was entrusted with an amount of Rs.15,000/- for the sale of pullies (hassock) and Janti trees and Rs.10,000/- on account of Jawahar Rojgar Yojana. It is well proved through testimony of PW1, an official of the Bank, that Rs.10,000/- was

withdrawn by the accused and therefore it was obligatory for him to have proved it to the satisfaction of the Court that the said amount was used for the purpose of the village for which the amount was meant. Though through DW1 Jasram SDO the accused has sought to bring about measurement book Ex.DW1/A to prove that Rs.6575/- was paid as labour charges and that stones valued at Rs.10,000/- were put. Learned Court below took a serious note of the fact that Ex.DW1/A is neither attested and is a sole entry nor any resolution for expending this amount has been shown in the records of the Gram Panchayat and a categorical averment has been made by PW7 that when he demanded record of the Jawahar Rojgar Yojana the accused failed to produce any such record and rather a suggestion has been put to this witness that the accused did not withdraw the amount, invariably leads to irresistible conclusion that the amount was received by the accused as proved through documentary evidence of official of the Bank and remained with him and it was for the accused to explain where and in what manner the same was spent. On the other hand, it has been rightly concluded and argued by the learned State counsel that how the entry Ex.DW1/A in the measurement book was made when the accused had taken stand that he did not withdraw the amount and therefore, this self-contradictory stand undermines the stand of the accused and proves that all was not well. Furthermore, as has been pointed out during the cross-examination of PW17, a suggestion has been

put that no auction in respect of pullies (hassock) and Janti trees took place, quite in contradiction to the earlier stand of the defence and which is well elaborated by none other than PW3 Daya Ram, on the basis of which an auction resolution was also passed. Furthermore, PW4 Hardwari Lal has proved this fact of embezzlement of the amount of auction and which is further corroborated by none other than PW5 Rohtash. The deposition of PW8 Chander Singh Inspector (Retd.) bears out that Rs.10,000/- was withdrawn by the accused but was never entered into cash book and Rs.31,424/- were shown as cash in hand, are matters of serious consequence, and therefore, non-reflection of these amounts in the records of the Panchayat invites serious consequences and holds out that all was not well with the running of affairs of the Gram Panchayat, together with the arguments that the own stand of the accused taken in statement under Section 313 Cr.P.C. bears out that he claims that he has spent the entire amount on development works of the village, thus, in sharp contradiction to his earlier stand while cross-examining the prosecution witnesses. Thus, in the light of this self-contradictory stand, the defence of the accused certainly stands demolished and invariably leads to the fact that it is none but the accused petitioner who has embezzled the amount of funds of the Gram Panchayat. The trial Court and so the learned first appellate Court have taken the correct approach and rightly appreciated the evidence, and therefore neither any illegality

much less perversity is made out in the impugned findings, which stand upheld. The revision petition being without any merit stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

October 31, 2017
rps

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