

In the High Court of Punjab and Haryana at Chandigarh.

CR.R No. 2892 of 2011

Date of Decision:- November 24, 2017

Achhra Singh

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM : Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Manish Kumar Singla, Advocate, for the petitioner.

Mr. Gaurav Garg Dhuriwala, Sr. Deputy Advocate General,
Punjab.

Gurvinder Singh Gill, J.

1. The present revision petition is directed against judgment dated 15.11.2011 passed by learned Additional Sessions Judge, Sangrur whereby appeal filed by petitioner against trial Court's judgment dated 16.1.2010, challenging his conviction under Section 409 of IPC has been dismissed.
2. The facts, necessary to notice for disposal of this revision petition, are that petitioner had remained Sarpanch of Village Rurki Kalan from the year 1983 to 1998 and during his tenure some part of Panchayat's land had been given to Co-operative Society for raising construction of a godown regarding which allegations were levelled. An inquiry was conducted by Block Development

and Panchayat Officer, Block-I Malerkotla, on whose report dated 24.5.2005, the FIR was lodged. The translated gist of said report reads as follows:

“Achhra Singh had remained Sarpanch of village Rurki Kalan from the year 1983 to 1998. Nirbhey Singh, Mahinder Singh etc. residents of the village submitted a complaint to Director Panchayats, Punjab against Achhara Singh and his wife Smt. Surinder Kaur who had also remained Sarpanch during the year 1998 to 2003. It had been alleged by the aforesaid complainants that ex-Sarpanch Achhara Singh during his tenure had caused loss to Panchayat running into lacs of rupees. He made Co-operative Society take possession of khasra No.323 (1-17-5) when in fact land comprised in khasra No.1355/365 (0-5-6) had already been earmarked for the Society. The loss has been caused on account of the fact that the construction made by Society has been raised on the main-road whereas in case the Society had raised construction on its earmarked land and not on Panchayat land, then the Panchayat could have raised its own construction on the main-road which would have yielded income to Panchayat. As such, the loss caused to the Panchayat is liable to be recovered from the Sarpanch. Former Sarpanch, Achhara Singh who was Secretary of Co-operative Society and who also remained Sarpanch during the period 1983 to 1998, knew that khasra No.1355/365 (0-5-6) had been earmarked for the Co-operative

Society. The Sarpanch, by getting construction raised upon *Shamlat Deh* land of Panchayat situated on the main-road, instead of getting the same raised on land of Society without sanction of the higher authorities had caused loss to Panchayat. He had also got houses of Dharam Singh, Charan Singh and Mukhtiar Singh constructed by way of illegal possession on the land of the Society. The Sarpanch has thus misused his official position and had cheated the entire *Gram Sabha*, village Rurki Kalan and caused loss running into lacs to the Panchayat.”

3. After registration of the FIR, the matter was investigated by police and upon conclusion of investigation, challan was presented against the accused in the Court of learned Judicial Magistrate 1st Class, Malerkotla on 6.9.2005. The learned trial Court framed charges against the accused for offence punishable under Section 409 of IPC on 16.12.2005 to which the accused pleaded not guilty and claimed trial.
4. The prosecution in order to establish its case examined 11 witnesses. After conclusion of prosecution evidence, statement of accused was recorded in terms of Section 313 Cr.P.C. wherein he denied the prosecution case in toto. In defence the accused examined two witnesses.
5. The learned trial Court upon appraisal of the evidence on record found the accused guilty and sentenced him to undergo rigorous imprisonment for 6 months and to pay fine of ₹ 2,000/- vide judgment dated 16.1.2010. The appeal filed by the accused challenging the said judgment was dismissed by

the Court of learned Additional Sessions Judge on 15.11.2011. Aggrieved with the same, the petitioner filed the present petition.

6. The learned counsel for the petitioner while assailing the impugned judgment submitted that even if the allegations regarding raising of construction of a godown, on the land belonging to Panchayat are taken to be correct, still no offence under Section 409 of IPC can be said to be made out as there is no evidence to show that the petitioner had either derived any benefit out of it or had disposed of the property in violation of any trust. The learned counsel has thus prayed for acceptance of the revision petition and for acquittal of the accused by setting aside the impugned judgment.
7. On the other hand the learned counsel representing the State has submitted that the petitioner being Sarpanch of the village was under a bounden duty to protect the land of Panchayat and had no right to dispose of the same without sanction of the higher authorities. The learned State counsel submitted that since the evidence on record clearly shows that the petitioner during his tenure as Sarpanch had given away property to the Society causing loss to the Panchayat, therefore all the necessary ingredients of Section 405 are duly made out rendering the petitioner liable for punishment under Section 409 of IPC. The learned State counsel thus prayed for dismissal of the revision petition.
8. I have considered the rival submissions addressed before this Court and with the able assistance of the learned counsel, have also perused record of the case.

9. It is undisputed that the petitioner had remained Sarpanch of village Rurki Kala during the period 1983 to 1998. It is also not in dispute that it was during his tenure that a godown was raised in the village on land belonging to the Panchayat. Before proceeding further, it will be apposite to bear in mind the definition of criminal breach of trust, as contained in Section 405 of IPC which reads as follows :

“405. Criminal breach of trust.—

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

10. The controversy in the present case can be narrowed down to the short and precise question as to whether the petitioner had derived any benefit by allowing construction of a godown to be raised on the Panchayat land or had disposed of the property in violation of any trust. A translated gist of Ex.D-1, which is a resolution dated 17.11.1984 of the Panchayat when the decision was taken by the Panchayat for the first time for giving the land to the Co-operative Society, reads as follows:

“Today, on 17.11.1984, meeting has been held under the
presidentship of Sarpanch Acchra Singh at 10.00 AM at

Dharmshala of the village. Quorum is complete. Following resolutions have been passed:-

Resolved that - The government has given financial aid to the Cooperative Society at Rurki Kalan. For construction of godown, Cooperative Society is in need of the land. Therefore land measuring two kanals from Khasra No.324, is being given to the Cooperative Society by the Gram Panchayat, for above said purpose. Gram Panchayat has total 8 acres of land and after giving two kanals land for godown, the remaining area would still be more than 50%. On this land, seed and other goods of necessity etc. will be stored. The same can be supplied to the villagers at appropriate time. Report of the Patwari and copy of the jamabandi are attached. It has been resolved that the same be sent to Director Panchayat, Punjab, Chandigarh for necessary approval with a request that the Gram Panchayat be given permission to give two kanals of land from Khasra No.324, to the Cooperative Society of the village, as per government instructions, so that sale-deed of the same be executed in the name of the Society and financial aid given by the government be used in time.

Sd/- Achhra Singh, Sarpanch

Sd/- Pritam Singh

Sd/- Kesar Singh

Sd/- Sohan Singh

Sd/- Gobinder Singh

Sd/- Manjit Kaur

Sd/- Ranjit Kaur ”

11. A perusal of the aforesaid resolution shows that the aforesaid decision was not taken by the petitioner alone but was taken by the Panchayat with its complete Quorum. The construction which was raised on the Panchayat land for the purpose of godown was for use of the villagers. In fact the prosecution witnesses, themselves, also admit that all have benefited from the godown. PW-2 Mohinder Singh, Member Panchayat during cross-examination has stated that the godown is being used by all the members of the Society and not by the accused. He further stated that by raising construction of godown the accused had not gained personally. The decision regarding raising of the construction having been taken by the entire Panchayat by way of a resolution, passed by the Panchayat when the members were present in full Quorum and there being nothing on record to show that the accused had derived personal gains on account of construction of said godown, it certainly cannot be said that the accused had dishonestly misappropriated or converted the Panchayat land to his own use. Rather it transpires that the godown is for benefit of the villagers at large. Even the beneficiary is not a private person but is Co-operative Society of the village.
12. In any case, there is nothing on record to show that ownership of the land in question has been permanently transferred in favour of the society. No such sale-deed or document indicating transfer of land has been brought on record by the prosecution. Though as per the resolution dated 17.11.1984(Ex.D-1), it had been resolved that matter be sent to higher authorities for approval but since no such approval has been brought on record, therefore, it certainly amounts to irregularity in procedure. But the said irregularity, in the absence

of any personal gain of the petitioner would not attract an offence under Section 409 of IPC, more particularly when even the beneficiary is not a private person but is a Co-operative Society of the village and as per resolution, the decision had been taken to avail financial aid given by the government, in time, for construction of godown so as to avoid lapsing of funds.

13. It also needs to be added that the prosecution for the alleged criminal breach of trust was lodged highly belatedly i.e after more than 20 years of the occurrence. It is not the case that the alleged offence was not in the knowledge of the other villagers or the complainant as the godown which was raised on the main-road could not have escaped notice of villagers and complainant. Further the decision to give land to Society was not taken in a clandestine manner and was taken by the Panchayat by way of a resolution in a meeting of members with its complete Quorum.
14. In view of the aforesaid discussion, the findings of the trial Court as well as of the Appellate Court regarding the accused having committed offence punishable under Section 409 of IPC cannot sustain. The revision petition, accordingly, merits acceptance and is hereby accepted. The conviction of the petitioner is set aside and he is acquitted of the charges framed against him.

November 24, 2017
mohan

(Gurvinder Singh Gill)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No