IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-234-2014(O&M)
Date of decision:-22.11.2017

Punjab State Civil Supplies Corporation Ltd.

...Petitioner

Versus

State of Punjab and another

...Respondents

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

Present: Mr.R.S. Pandher, Advocate
for the petitioner.

Ms.Samina Dhir, DAG, Punjab.

Mr.M.L. Saggar, Senior Advocate
with Ms.Arman Saggar, Advocate
for respondent No.2.

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H.S. MADAAN, J.

Accused Vijay Kumar was tried by Judicial Magistrate Ist Class, Zira, who vide judgment dated 12.5.2011 convicted him for offence under Section 408 IPC sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for one month.

Briefly stated, the facts of the case as per prosecution story are that District Manager, PUNSUP, District Ferozepur had submitted a complaint addressed to SSP, Ferozepur for registration of FIR against Vijay Kumar son of Walaiti Ram, PDC, PUNSUP, Ferozepur (under suspension). In the said application, he had contended that Vijay Kumar was posted at Makhu PUNSUP Centre vide order dated 6.1.1993 of District Manager, PUNSUP, Ferozepur and he joined there on 1.12.1992; that Pakhar Singh, Inspector Grade-1 was already posted at the said centre as Incharge; that Pakhar Singh and Vijay Kumar jointly purchased wheat of crop year 1994-95 and 1995-96 and sent joint charge certificate making delivery of some wheat to FCI; that Pakhar Singh, Inspector, however, died on 15.7.1996; thereafter Vijay Kumar PDC alone remained in custody of wheat stock; that vide order dated 22/23.7.1996 by District Manager, PUNSUP, Ferozepur Sh.Balwant Singh, Inspector Grade-1 was posted as Incharge of Makhu Centre in place of Pakhar Singh and Vijay Kumar, PDC was directed to hand over the charge of Makhu Centre to Balwant Singh, Inspector Grade-1; that it was also directed that Vijay Kumar would take joint charge with Balwant Singh, Inspector Grade-1; that for that purpose a committee was constituted comprising Salim Jabera, DDM(F) Ferozepur, Amarjit Singh, Field Officer and Amrit Lal, Senior Auditor, Ferozepur; that Vijay Kumar had handed over charge of the essential commodities like sugar, soap etc. but did not do so as regards wheat stock and himself delivered wheat to FCI and private parties despite formation of various committees; that Vijay Kumar, PDC handed over charge of 3693 bags weighing 2605.95.700 quintals of wheat to Partap Singh, Inspector Grade-1 and Piare Lal, Inspector Grade-II during the period 28.3.1998 to 31.3.1998 and wheat stock became NIL at Makhu, PUNSUP Centre; that for the purpose of conducting audit of PUNSUP, Makhu Centre, a three member committee comprising of Amrit Lal Mehta, SA, Inderpal Johar, Auditor and Krishan Dhingra, Senior Assistant Accounts was constituted, which after conducting the audit submitted its report on 23.2.1998, that was further examined by Accounts Branch and submitted reports dated 27.2.1998/2.3.1998; that the Accounts Branch also submitted its supplementary report dated 10.4.1998; that as per the reports of Accounts Branch, Vijay Kumar, PDC along with Pakhar Singh had purchased and stored 360966 bags weighing 342488.30 quintals of wheat of crop year 1994-95 and both of them had delivered to FCI 33400 bags weighing 31481.10 quintals during period 4/94 to 6/94; that the opening balance as on 1.8.1994 was 327566 bags weighing 311007.20 quintals; that from 8/94 to 2/96 they had booked seepage of 719 bags and excess of 2506.03 quintals and so on the date of death of Pakhar Singh the closing balance was 138853 bags weighing 131402.10 quintals and Vijay Kumar, PDC alone was in custody of the wheat; that Vijay Kumar from 9/96 to 1/97 delivered 136478 bags weighing 126918.58 quintals of wheat, thus the closing balance in 1/97 with Vijay Kumar was 4055 bags weighing 4485.52 quintals of wheat crop during the year 1994-95. The details of purchases made and delivery of bags of wheat have been given in that application, coming to conclusion that there was shortage of 9419 bags weighing 13811.11 quintals valued at Rs.93,90,306.00 at FCI rates which Vijay Kumar, PDC had embezzled and caused wrongful loss to PUNSUP. The total shortage, which has been worked out came to

1122.94.300 quintals of wheat valued at Rs.7,62,382/- said to have been embezzled by accused Vijay Kumar, PDC, the worth of stock being Rs.93,90,306.00 plus Rs.1,34,757/- plus Rs.7,62,382 totalling Rs.1,02,87,445/-. After taking opinion from Deputy D.A.(Legal), formal FIR for the offence under Section 409 was registered. The matter was investigated and accused was arrested in this case on 9.11.2000.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court, copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Zira finding that offence under Section 408 was disclosed against the accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as twelve witnesses, namely PW1 Om Parkash, Senior Assistant Office, PUNSUP, Ferozepur, PW1 (wrongly mentioned, in fact PW2) K.C. Sandhi, Deputy Manager, PUNSUP, Chandigarh, PW2 Harmesh Kumar, Deputy District Manager Field, PUNSUP Sangrur, PW3 Hakam Singh, Deputy D.M., Ferozepur, PW4 Rajinder Singh, Inspector Grade-1, Talwandi Bhai, PW6 Krishan Kumar Dhingra, PW7 Naresh Kumar, Record Keeper Office, PUNSUP, Ferozepur, PW8 Ramesh Kumar, Senior Assistant Office, Investigating Officer, PW10 Amrit Lal

Mehta, Senior Auditor, PUNSUP Ferozepur, PW1 Major Singh, Retired Reader, Civil Courts, Zira, PW12 Kewal Singh, Retired Inspector.

With that the prosecution evidence stood closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

In defence evidence, accused examined DW1 Ramesh Puri, Senior Assistant, District Office, PUNSUP, Ferozepur and DW2 Joginder Singh, Senior Assistant, PUNSUP Office, Ferozepur, besides tendering documents.

After hearing arguments, learned Judicial Magistrate Ist Class, Zira convicted and sentenced the accused as mentioned supra.

Feeling aggrieved, the accused preferred an appeal against the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Zira, which was assigned to the Court of learned Additional Sessions Judge, Ferozepur, who vide judgment dated 8.9.2012 accepted the appeal, set aside the judgment of conviction and order of sentence passed by the trial Court and acquitted the accused of the charge framed against him.

The reasons given by learned lower Appellate Court for arriving at such decision are as under:

(i) The prosecution has been unable to prove that Vijay Kumar was custodian of the stock along with Pakhar Singh and as a matter of fact Vijay Kumar was to help

Pakhar Singh in his work and while Pakhar Singh died in the year 1996, the embezzlement was prior to year 1994, whereas physical verification was done in the year 1997.

(ii) PW4 Rajinder Singh stating that when he was suspended, charge was with Bhajan Singh and after his suspension Bhajan Singh was handed over the possession of wheat stock after counting and after obtaining the signatures. This witness stating in the cross-examination that after death of Pakhar Singh charge was handed over to him and on his suspension charge was handed over to Bhajan Singh and he took the charge of wheat giving his signatures as a token thereof.

(iii) PW6 Krishan Kumar Dhingra, Auditor during his cross-examination stating that no opportunity was given to Vijay Kumar to be present before him and that procurement of the year 1993-94 was done by Pakhar Singh and further there was no deficiency of the wheat crop. This witness further stating that wheat for the year 1995-96 was purchased by Pakhar Singh and it is duty of the Field Officer to check the stock and physically verify whether the stock is properly stored and is being properly treated. PW6 admitting that there is no report by supervisory officer that accused had misappropriated the stock and that entire record for the crop year 1993-94, 1994 and 1995-96 regarding wheat was maintained by Pakhar Singh deceased and Vijay Kumar had not maintained any record during the life time of Pakhar Singh regarding the said wheat crop.

(iv) In verification report Ex.PW12/A, it being recorded that regarding the crop year from 1994 to 1998, the wheat was entrusted to private parties and Vijay Kumar was only to assist the Inspector and his responsibility cannot be fixed directly.

(v) In Ex.PW8/C, it is clearly recorded that in Makhu Centre, Pakhar Singh would be Incharge and Vijay Kumar would join him. Vide Ex.PW8/D, Vijay Kumar was given as additional charge as PDC at Makhu Centre. As per Ex.P6/C there was shortage of 13811.11.000 valuing Rs.93,9,306.02 for the crop year 1994-95 and 1995-96. Pakhar Singh having died on 15.4.1996, there is ample evidence to show that before that entire work was done by Pakhar Singh as he was Incharge of the Centre.

The lower Appellate Court in para No.39 of the judgment has observed as under:

Prior to the death of Pakhar Singh, there was shortage of wheat worth Rs.93,90,306.02 paise as per

Ex.P6/C, then how Rs.1,02,86,445/- can be embezzled by Vijay Kumar. Hence, the prosecution has failed to establish on record that only Vijay Kumar was entrusted with the wheat of the year 1994 and he has embezzled the same. Hence, prosecution has failed to prove the charge against the appellant beyond any shadow of doubt and as such the findings of the trial Court in holding the appellant – accused as guilty are not sustainable and as such the trial Court has committed error while passing conviction and sentence order and as such the same are liable to be reversed and appellant-accused deserves acquittal.

Feeling aggrieved, the complainant has filed the revision petition in this Court. It has not been filed within time. There is delay of 410 days in filing of revision petition, although an application under Section 5 of the Limitation Act has been filed seeking condonation of delay for the reason that complete documents of the case file were not available as the same were lost. But I find the reasoning given to be least satisfactory.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Here though the complainant – petitioner has moved such application but no satisfactory or plausible explanation has been given. Therefore, I do not see any reason to accept the application and to condone the delay of 410 days in filing the revision.

I do not find any justifiable reason for condonation of delay in filing the revision petition. The revision petitioner having unable to cross the barrier of limitation is bound to be dismissed on that score. However, on merits also , the petitioner does not have any case.

I do not find any illegality and irregularity in the judgment passed by the learned lower Appellate Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law. It can certainly be not termed as perverse or having been passed against settled principles. There is no error apparent on the fact of it. The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

Finding no merits in the petition, the same stands dismissed.

22.11.2017 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No