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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.184 of 2016 (O&M)
Date of decision: February 08, 2017

State of Haryana

.....Petitioner

Versus

Subhash Bansal

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Ms. Tanushree Gupta, DAG Haryana.

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A.B. CHAUDHARI, J (Oral)

CRM No.1597 of 2016

Heard.

Application is allowed for the reason stated therein. Delay of 217 days in filing the revision petition, is condoned.

CRR No.184 of 2016

Heard learned State counsel in the present appeal against acquittal, which is taken up for final disposal.

The following are the reasons recorded by the learned Additional Sessions Judge, Mewat, in Part-12 of the impugned judgment and order which read thus:-

"12. Even otherwise, the lower court has rightly appreciated this fact that the Chartered Accountant who had audited the bills of MMS, has not come present in the witness box to prove the alleged report. Moreover, this fact is also quite material to be discussed here that the signature of the accused was not proved by examining any

expert from pay orders allegedly signed by him. If any amount was withdrawn by the accused in the capacity of clerk/cashier, the same was to be signed by his superior officer and unless the signatures of competent authority were made on the vouchers authorising the accountant/clerk/cashier to withdraw a particular amount from treasury and the accused himself alone has no authority for the same. PW5 Angoori main witness of the prosecution has turned hostile. PW6 Jakir Hussain Ex-Sarpanch before whom the alleged confessional statement was made by the accused, got recorded in the presence of Constable Vinod Kumar and SI Vijay Anand, has only stated that he knew the accused present in the court but during his cross-examination, he has admitted that whatever disclosure statement regarding amount of Rs.5 lac made by the accused Subhash, he was not aware about the details of the same. Trial court has rightly discussed the statement of PW4 Santosh Kumar who moved an application Ex.PW2/23 but stating in his cross examination that he even could not state that on what date, he moved such application. Even otherwise, no such date was mentioned in the application Ex.PW2/23 when it was received. He came to know that Subhash has taken loan of Rs.7500/- against his name in the year 2008 whereas accused was terminated from his job in the year 2004 and similarly a letter dated 18.02.2005 he came to know about said loan in the year 2005, his version could not be believed that he became aware in the year 2008."

The prosecution relied on the report made by the Chartered Accountant in order to buttress its claim that the respondent-accused had committed misappropriation while in employment. But then the prosecution ought to have examined Chartered Accountant who prepared the audit report in order to compliance with the principles of natural justice, i.e. for allowing the accused to cross-examine the Chartered Accountant. Not only that the initial burden to prove by non-examination of Chartered Accountant was, obviously, not discharged by the prosecution. In that view of the matter, agreeing with the reasons recorded in Para 12 by the learned Additional Sessions Judge, Mewat in its judgment and order, I find no merit in the present appeal.

Hence, the same is dismissed summarily.

(A.B. CHAUDHARI)
JUDGE

February 08, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No