

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

**CRR No.3762 of 2016
Decided on: 15.09.2017**

Sewa Ram Yadav

....Petitioner

Versus

Bijender Kumar @ Vijay Kumar Yadav and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Tapan Kumar Yadav, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting-aside the judgment dated 15.07.2014 passed by the trial Court vide which the respondent/accused was acquitted in FIR No.199 dated 10.09.2007 registered under Sections 419, 468 and 471 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Sector 40, Gurgaon and the judgment dated 06.06.2016 whereby the appeals filed by the State of Haryana as well as the petitioner/complainant were also dismissed.

Brief facts of the case are that the complainant was Administrator in Hari Public School, Rewari since 2003, previously, name of the school was Hari Singh Parag Public School. One Vijay Kumar was working as a Secretary-cum-Head Master of the school prior to 2006 and he was in-charge of the school records including attendance register, payment register, etc. He was removed from the post of Head Master on account of his old age and on this account he had a grudge against the school and he has taken the records of the school. He had a complaint before the EPF Commissioner, Gurgaon

regarding non-payment of his provident fund. He has submitted photocopies of the records before the EPF Department which he has prepared by way of forgery as he had taken out the seal of the school and signed certain documents in the capacity of Head Master. Thus, he mis-represented himself as Head Master of the school and forged the documents of the school and used the same for his own benefits despite the fact that he has retired from the school.

On registration of the FIR, the respondent/accused was challaned and the report under Section 173 Cr.P.C. was submitted before the Court and the petitioner was charged for the offences under Sections 419, 467, 468 and 471 IPC.

The prosecution examined PW1 – SI Preet Singh (Retired) who proved certain documents regarding signature and handwriting of accused – Bijender @ Vijay Kumar, FSL Report and various other documents. PW2 – Bal Kishan Batra stated that he was posted as Assistant EPF Commissioner and the documents Exs.P1 to P5 were produced before him by the accused. However, this witness in his cross-examination stated that he has not made the statement Ex.D1 recorded by the police under Section 161 Cr.P.C. and further denied that on 03.10.2010 he has suffered the aforesaid statement under Section 161 Cr.P.C. This witness further stated that the record produced by the accused was already attested and the accused has not attested the documents in front of him. PW3 – Mahender deposed that on 27.08.2007 he along with Sewa Ram and their counsel were present in the office of EPF Commissioner where the accused presented certain documents. Sewa Ram – PW4 deposed that he was Administrator of

Hari Singh Public School since 2003 and accused has made a complaint in the EPF Office against the school and the accused produced five documents before the EPF Commissioner which were not attested and on the asking of the Commissioner, the accused took out the old stamp and attested the same despite the fact that he had retired and, thus, he has misused the stamp and forged the documents. He has also identified the documents Ex.P1 to Ex.P5 which were allegedly attested by the accused. In cross-examination, this witness admitted that in his complaint Ex.PW4/A he has not mentioned that the seal was in the name of the Principal of the school. He further admitted that in FIR No.166 dated 28.05.2007 registered under Section 381 IPC was registered against the accused by one Mahender Singh and the accused has already been acquitted in that case.

PW5 – SI Jagdish partly conducted the investigation and proved certain documents which he had taken in possession. PW6 – Hari Om stated that he was MHC in Police Station Sector 40, Gurgaon and ASI Jagdish has deposited certain documents with him for sending the same to FSL, Madhuban. EHC Tara Chand appeared as PW7 and stated that MHC Hari Om gave him certain documents for depositing the same in FSL, Madhuban. PW8 – Tilak Raj stated that he is Sanction Supervisor at EPF Office, Gurgaon and police has taken in possession documents signed by the accused – Bijender Kumar. PW9 – Constable Mukesh Kumar, one of the member of the investigating team also deposed on the line of PW5 – Jagdish Kumar. PW10 – SI Bijender Singh proved the opinion of D.A. Office, Gurgaon vide Ex.PW11/A and PW11 – Sultan Singh Head Constable proved the letter endorsed by

Bijender Singh SI for registration of the FIR as Ex.PW4/A. Subsequently, the statement of accused was recorded under Section 313 Cr.P.C. and he denied the allegations.

In defence, the respondent/accused examined DW1 – Satpal Gehlot, Superintendent, Office of Director School Education Department, Panchkula who proved the record regarding permission granted by the Director for changing the name of the school vide Ex.D1 on 20.02.2007. Thereafter, the trial Court vide its judgment dated 15.07.2014 discharged the respondent/accused holding that the prosecution has not produced sufficient evidence to prove the guilt of the respondent/accused. Thereafter, the State of Haryana as well as the present petitioner/complainant filed separate appeals which were clubbed and dismissed together vide judgment dated 06.06.2016.

No revision has been filed by the State of Haryana and the petitioner/complainant alone has filed the present petition.

The Lower Appellate Court while dismissing both the appeals has recorded the following findings:-

“22. Now the first question arises as to when the accused had committed the offence of impersonation and had represented him to be the Head Master of the School when he was already retired.

23. We have the deposition of Balkishan Batra who was examined as PW2 who has denied that police had recorded his statement under Section 161 of Cr.P.C. Though he is said to have handed over the record of V.K. Yadav to the Investigating Officer. He also admits that the record produced by accused was attested earlier. The accused did not attest any paper in his presence by affixing the seal.

24. Prosecution examined Mahinder Singh as PW3 who has deposed about putting the signatures and affixing of seal by the accused upon the papers at the instance of inquiry officer and handed over the same to the I.O. He had moved the complaint against V.K. Yadav regarding documents on the basis of which case was registered against V.K. Yadav and V.K. Yadav was acquitted in that very case.

25. In so far as deposition of Mohinder Singh is concerned, it is clear that the accused had placed on record the copy of judgment in criminal case FIR No.166 dated 28.05.2007 under Section 381 IPC, P.S. Model Town, Rewari in which the FIR was got registered against V.K. Yadav by Mohinder Singh in which V.K. Yadav was acquitted by the Court.

26. Sh. Sewa Ram who is administrator of the school is deposing against the accused because he is the Administrator of the school. The impartial witness in this case is Bal Kishan Batra who has deposed that the accused had produced the documents before him which were already attested. It means that the deposition of PW– Mohinder Singh and Sewa Ram cannot be considered because B.K. Batra, the Assistant PF Commissioner has deposed that the documents were already attested which were produced by V.K. Yadav. It is also clear that an inquiry was held against Hari Singh Prag Public School Distt. Rewari on the complaint of V.K. Yadav on the complaint by one Manoj Kumar son of Pat Ram, resident of Tehrki, Rewari and the employees provident fund office had held the inquiry against the school as is revealed from Ex.DY. The complaint against the school was dated 03.08.2006 whereas the instant case against the accused was moved by Sewa Ram Yadav, Administrator, Hari Singh Public School on 01.09.2007. It appears that the case was

got registered against the accused because the school considered that the complaint against the school was lodged at the instance of V.K. Yadav, before the Provident Fund Organization. Even as per Ex.PX, though it has been fixed that there is no divergence observed between standard and questioned signatures and the aforesaid similarities in writing habits are significant and sufficient and can not be attributed to accidental coincidence and when considered collectively, they lead to the opinion that the person who wrote red enclosed signatures stamped and marked SI to S4 & signature in the red enclosed parts marked A1 to A12, A12/1, A13 to A15 also wrote the red enclosed signatures similarly stamped and marked Q1 to Q5.

In opinion No.1: it has been observed that it has not been possible to fix the authorship of Q6, Q7 in comparison with the specimen writings marked S5 to S7 and admitted writing as in the red enclosed parts marked A1 to A12, 12/1, A13 to A15 and the report is by Assistant Director (Documents) Forensic Science Laboratory, Haryana Madhuban (Karnal).

27. But this Court fails to understand that the accused had been the Principal of the school. He is not a fictitious person. In fact he was former Head Master of the school. He was removed. As principal, he was having the seal with him of Head Master and we can not believe the evidence of PW Mahinder Singh and PW Sewa Ram Yadav because PW B.K. Batra had clearly stated that photo copies were already attested. The case of stealing of documents by the accused belonged to the accused, could not be proved by the school and it appears that the application was given against the school by one Manoj in the office of employees PF Commissioner for holding the inquiry. The complainant took that this complaint was

lodged by the accused that is why they got registered the case against the accused.

28. This court fails to understand what wrongful loss has been caused to the complainant because it is not proved that the accused had impersonated himself some other person than he was and how he had forged the vaulable security. Thus, the instance case is the result of personal vendetta of the complainant school.

*29. Reliance can also be placed upon **2015(1) 48 CALT 786 (Pun. & Haryana HC) titled as Rohtas versus State of Haryana** wherein the Hon'ble High Court has observed that generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. It was further held that in absence of any manifest illegality, perversity and miscarriage of justice, the High Court would not be justified interfering with the concurrent finding of acquittal of the deceased merely because on re-appreciation of evidence.*

*30. Even otherwise, this appeal is time barred because it has been held by the Hon'ble High Court in **2013(2) RCR (Criminal) 1005 (P&H) titled as M/s Tata Steel Ltd. versus M/s. Atma Tube Products Ltd. and others with CRM No.547-MA of 2011(O&M), titled as Kesar Singh versus Dheeraj Kumar** that in case of acquittal where appeals lies to the High Court, the limitation is 90 days from the date of order and where the appeals lie to any other Court, the limitation is sixty days from the date of order. It will also exclude the time requisite for obtaining the certified copy of the order appealed against.*

31. So, taking into consideration all the facts and circumstances of the case and also the evidence and record, this Court is of the view that there is no illegality

and perversity in the findings arrived at by the learned Judicial Magistrate Ist Class, Gurgaon. The findings of learned Judicial Magistrate Ist Class, Gurgaon is perfectly legal and does not call for any interference. Therefore, the appeal preferred by Sewa Ram Yadav, the Administrator of school and the appeal filed by State of Haryana through learned PP for the state against the order of acquittal stand dismissed.

Lower court record along with copy of this judgment be sent. A copy of this judgment be kept in connected appeal also. Consign the appeals file to the records.”

Counsel for the petitioner has submitted that it is proved from the record that the respondent/accused has forged the documents Ex.P1 to Ex.P5 by using the seal of the school and posing him as Principal of the school, though, he has retired much prior and has produced the same before the EPF Commissioner for claiming his dues and, thus, has committed the offence punishable under Sections 419, 468 and 471 IPC.

After hearing counsel for the petitioner, I find no force in the present revision petition.

Firstly, PW2 – Bal Kishan Singh, before whom the documents were allegedly produced has denied that the police has recorded his statement under Section 161 Cr.P.C. and stated that the record produced by the accused was already attested and the accused did not attest any paper in his presence. Secondly, the seal which was allegedly used by the respondent/accused was never produced before the trial Court and it is not the case of the prosecution that the seal so used in the aforesaid documents was recovered from the possession of

the respondent/accused. It is also not proved that the documents Ex.P1 to Ex.P5 produced by the accused before the EPF Commissioner were false or forged documents and, therefore, the provisions of Sections 467 or 468 or 471 IPC are not at all attracted in the present case. It has also not been proved by the prosecution that any wrongful loss was caused by the accused to the complainant as it is not proved that the accused impersonated himself to be some other person, thus, it is proved that he has not forged the documents. Both the Courts below have recorded the finding that it is a case of personal vendetta on the complaint of school as the respondent/complainant was previously a teacher/principal of the school and his services were terminated on account of his old age as per the version given in the FIR itself.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

15.09.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No