

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

(1)

CRR No.705 of 2016 (O&M)

Sham Lal

...Petitioner

Versus

State of Punjab

...Respondent

(2)

CRR No.1833 of 2016 (O&M)

Rajinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

Date of Decision: January 31, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Virender Partap Singh, Advocate
for the petitioner (in CRR No.705 of 2016).

Mr.D.S.Pheruman, Advocate
for the petitioner (in CRR No.1833 of 2016).

INDERJIT SINGH, J.

Both the above-mentioned revisions are taken up together
being arisen from same FIR.

The revisions have been filed by the petitioners Sham Lal and
Rajinder Singh against respondent State of Punjab, challenging the
impugned judgment of conviction and order of sentence dated 17.01.2014

passed by learned Addl. Chief Judicial Magistrate, Pathankot, vide which the petitioners were convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of ₹1000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of 30 days each under Section 409 read with Section 120-B IPC and further to undergo rigorous imprisonment for a period of three years and to pay fine of ₹500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of 30 days each under Section 193 read with Section 120-B IPC and also to undergo rigorous imprisonment for a period of two years each under Sections 177 and 203 read with Section 120-B IPC each and also challenging the judgments dated 09.11.2015 and 13.03.2016 passed by learned Addl. Sessions Judge, Pathankot, vide which appeals filed by petitioners Sham Lal and Rajinder Singh were dismissed respectively. However, the petitioners were acquitted of the charges framed under Section 411 IPC by learned ACJM, Pathankot. All the sentences were ordered to run concurrently.

From the record, I find that the challan was presented against petitioners in case FIR No.20 dated 11.05.2012. The brief facts of the case as noted down in the judgment passed by learned ACJM, Pathankot, are as under:-

“The above named accused have been sent up by the SHO, Police Station Taragarh to face trial in case FIR No.20 of 11.05.2012 under Sections 397, 398, 182, 196, 197, 203, 177, 380, 420, 409, 120-B, 34 of IPC and 25 Arms Act, PS Taragarh on the allegations that on 11.5.2012 at about 8.00 AM, accused Sham Lal in criminal conspiracy with accused Rajinder Singh opened the safe of the Gurdaspur Central Cooperative Bank, Branch Taragarh (herein referred as the Bank) and dishonestly misappropriated an amount of Rs.35,80,900/- and being cashier of the bank accused Sham Lal was entrusted with this amount but they misappropriated the same and took away

the amount in his car bearing No.PB-06H-5852 and furnished false information that some unknown persons using weapons have looted the bank and both accused fabricated false evidence by inflicting simple injuries on the forehead of Sham Lal with a blade so as to give the event colour of robbery and Sham Lal gave false information respecting the offence and in account of Rs.35,80,900/- was been recovered from them. Accused were arrested and investigation of the case was initiated. Statements of the witnesses were recorded and after completion of necessary formalities of the investigation, challan against the accused was prepared and presented in the Court.”

In support of its case, prosecution examined PW-1 Kaushal Khajuria, PW-2 Suresh Kumar, PW-3 Shashi Bhushan, PW-4 Narinder Kumar, PW-5 Pardeep Kumar, PW-6 Dr.Nipun Mahajan, PW-7 SI Subash Chander, PW-8 Inspector Vipan Kumar and PW-9 Anil Kumar, Junior Assistant office of DTO.

Statements of the accused under Section 313 Cr.P.C. were recorded. They denied the correctness of the evidence and pleaded themselves as innocent. In defence, accused examined DW-1 Sanjiv Singh, DW-2 Suresh Kumar, DW-3 Vijay Kumar, DW-4 Gajinder Singh, DW-5 Balbir Raj, DW-6 Gurdeep Singh and DW-7 Mandeep Singh.

Learned ACJM, Pathankot, after appreciating the evidence, convicted and sentenced the petitioners as stated above. Appeals were filed by the petitioners and the same were dismissed by learned Addl. Sessions Judge, Pathankot.

Aggrieved from the above-said judgments, present revision petitions have been filed.

At the time of arguments, learned counsel for the petitioners argued that no offence is made out against the petitioners. At the most,

offence under Section 380 IPC is made out against accused-petitioner

Rajinder Singh. It is also argued that the safe has a double lock; one of the key remains with the Bank Manager and other with the Cashier and it cannot be opened alone by the Cashier. Learned counsel for the petitioners further argued that no action has been taken against the Manager of the Bank. It is further contended that there is also one Peon in the Bank and one Sweeper on contract engaged by the Bank but no action has been taken against them.

I have learned counsel for the petitioners and have gone through the record including the lower Court record.

From the record, I find that the findings have been given by both the Courts below after appreciating the evidence in right perspective. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Courts below. Nothing has been pointed as to how the findings are perverse or against the evidence. Nothing has been pointed out as to how the findings are illegal or against the law.

Sham Lal petitioner was posted as Cashier in the Bank in question from where amount of ₹35,80,900/- has been stolen. This amount has been recovered from the present petitioners i.e. more than ₹20 lakhs from petitioner Rajinder Singh and ₹13,75,000/- from petitioner Sham Lal. Secondly, it is duly proved by the PWs that Sham Lal was posted as Cashier in the Bank and petitioner Rajinder Singh was posted in Bank at Pathankot. The injury which the petitioner Sham Lal has alleged as given by robbers is 5cm sharp linear cut at frontal area and it is clear that it may have been caused by a blade etc. and robbers will not give such type of injury and

injury was not so serious that Sham Lal remained lying in the Bank to show

that it was a case of robbery. Rather, the amount in question has been taken away by petitioners Sham Lal and Rajinder Singh from whom the money has been recovered. Dr.Nipun Mahajan has also been examined by the prosecution to prove its case. The Branch Manager has also been examined in the present case.

The perusal of the statements of the PWs shows that there is nothing in their cross-examination which creates any doubt in the prosecution version or make their statements unreliable. The mere fact that the Branch Manager was not present on the day of occurrence in the Bank and there are only main two persons, who were running the Bank i.e. Sham Lal, Cashier and Suresh Kumar, Branch Manager and if the Manager had given the keys to the Cashier to run the Bank in his absence, the Manager cannot be held criminally liable for embezzlement etc. There is no mens rea of the Manager to commit any offence. It is in the evidence that earlier the Manager was suspended, enquiry was conducted and departmental action was also taken. There is nothing on the record to show any involvement of the Manager in the commission of the offence. Furthermore, there is also no evidence on the record to show that Peon and Sweeper are involved, in any way, in the commission of the offence. In no way, Rajinder Singh can be held liable only under Section 379/380 IPC.

I have gone through the judgments passed by the Courts below and said Courts have given concurrent findings of fact regarding guilt of the accused. This is a revision petition and this Court is not to re-appreciate the evidence like Court of an appeal. As the findings are neither perverse nor illegal nor any material evidence has been misread or left out to be

considered by the Courts below, therefore, the impugned judgments passed

by both the Courts below are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in both the revisions petition, the same are dismissed.

January 31, 2017
Vgulati

Whether speaking/reasoned
Whether reportable

(INDERJIT SINGH)
JUDGE

Yes
No