

CRR-950-2016 (O & M)

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

CRR-950-2016 (O & M)

Date of Decision: 06.04.2017

Dhoom Singh

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. D.S.Adlakha, Advocate,
for the petitioner.

INDERJIT SINGH, J.

The present revision has been filed by petitioner-Dhoom Singh against respondents-State of Haryana and Sunny Kumar under Section 401 Cr.P.C. challenging the impugned judgment dated 30.11.2015 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhari whereby appeal filed by the petitioner against the judgment dated 28.07.2014 passed by learned Judicial Magistrate Ist class, Yamuna Nagar at Jagadhari, acquitting respondent No.2-Sunny Kumar, was dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

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From the record, I find that challan was presented against respondent No.2 by the police of Police Station City Yamuna Nagar in FIR No.213 dated 15.05.2008. The brief facts of the case, as noted down in the judgment passed by learned Judicial Magistrate Ist Class Yamuna Nagar at Jagadhari, are as under:

“Brief facts of the prosecution case are that the accused was an account in Sangam Cooperative House Building Society Ltd. Yamuna Nagar. The complainant Dhoom Singh son of Ranjit Singh, resident of Gadi Road Old Hamida, Yamuna Nagar has taken a loan of Rs.1,00,000/- in the year 1994-95 from Sangam Cooperative House Building Society Ltd. Yamuna Nagar for the construction of his house. He has been paying the installments from time to time against receipts. Some of the installments were paid by him to Sandeep Kumar, the President of the Society. He also handed over 14 cheques to the present accused in the year 1999 for payment of the installments. Accused used to himself full-up the cheques. The complainant could not deposit the installments for a period of four years due to loss in his business. The accused used to visit him along with the officers of the society and used to press for payment of the installments and told the complainant that either he deposit the installments otherwise his house shall be auctioned for sale. In February 2007, accused came to the complainant and told that the government has launched a scheme for the payment of loan amount by defaulters. As per the scheme the

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penal interest of Rs.1,50,000/- standing against the complainant can be exempted if he will deposit the loan, prior to 31.03.2007. That on 28.03.2007, the complainant visited the office of the society. He sought his account from the accused. The accused informed him that a sum of Rs.2,66,600/- were due against the complainant and he asked him to bring the amount on the next day in the morning as he was to leave for the head Office of Societies at Panchkula at 10.00 a.m. On 30.03.2007, at about 9.30 a.m., complainant went to the office of society accompanied by Rajesh Kumar son of Sh. Madan Lal, resident of Hamida Yamuna Nagar. Accused alone was sitting in the office of the society. The complainant handed over a sum of Rs.2,67,000/- to the accused in the presence of Rajesh Kumar and he issued the No Dues Certificate on the Letter Head of the Society and endorsed his signatures on the certificate. The accused also undertook to return the original documents from the Head Office Panchkula within 15 days. He affixed the stamp of the society on the letter head and also put his signature in his presence. After about one month the complainant contacted the accused for return of the original documents of his house but he kept on putting off the matter on one pretext or the other. The complainant got suspicion and he issued the legal notice to the accused. Accused gave the reply to the said legal notice that he has not issued the No Dues Certificate. At this, the complainant approached the head office

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of the Housing Federation, Panchkula to make the enquiries and he came to know that in his account only Rs.32,000/- have been deposited instead of the fact that he had already deposited Rs.45,000/- through installments. The complainant repeatedly contacted the accused to return the original documents but of no avail. The accused has embezzled the cash amount received from him. The complainant moved an application to the Superintendent of Police, Yamuna Nagar on 29.01.2008. This application was entrusted to the Economic Cell for enquiry. After obtaining the report of the Economic Cell and the opinion of the Deputy District Attorney, the present case has been registered under Section 406 and 420 IPC on 15.5.2008. During investigation, the accused was arrested on 21.06.2008. Investigating agency recorded statements of witnesses. On completion of formalities of investigation, challan under Section 173 Cr.P.C. was prepared by SHO and forwarded to the court.”

To prove its case, the prosecution examined as many as 12 witnesses and at the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. wherein he denied the allegations levelled by the prosecution and pleaded innocence. The accused also examined Ram Chander as DW 1 and Rishi Pal, Clerk as DW 2.

Learned Judicial Magistrate Ist Class, after appreciating the evidence acquitted the accused vide judgment dated 28.07.2014. An appeal was filed by the petitioner challenging the said judgment which

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was dismissed by learned Additional Sessions Judge vide impugned judgment dated 30.11.2015.

Aggrieved from the above said judgment, the present revision petition has been filed.

From the record, I find that the findings given by the courts below are correct, as per evidence and law. Nothing has been pointed out as to how these findings are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the courts below. Nothing has been pointed out as to what illegality has been committed by the courts below.

Learned trial Court while appreciating the evidence in right perspective held that comparison of signatures on receipt Ex.PW 3/A with document Ex.PW 3/E is not plausible and does not seem reasonable. The signatures on the document Ex.PW 3/E are not the admitted signatures of accused Sunny Kumar. The letter Ex.PW 3/E was not procured by the investigating officer during the investigation, rather the letter was given by PW 5 Tara Chand himself who deposed that the letter was written to him regarding his suspension from the society and issued to him by accused Sunny Kumar and the letter contains the signatures of accused Sunny Kumar. The trial Court also held that the accused was working as an accountant in the society and the document containing his signature can be easily available. The testimony of PW 5

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Tara Chand was not found to be trustworthy as number of criminal cases for cheating and misappropriation of funds are registered against him. The trial Court also held that the prosecution has failed to explain the material improvements made by the complainant in his different complaints. The presence of eye-witness PW 6 Rajesh Kumar in the incident is also not proved beyond all reasonable doubts. The conduct of complainant that he discussed the payment of his loan amount with the accused alone also seems unrealistic as the complainant has deposed himself that he was used to give his installments to Sandeep Kumar, President of the Society and took the receipts of payments from him. The complainant has further not discussed about the payment of Rs.2,67,000/- with Sandeep Kumar or any other official of the Society. Even the complainant could not tell the fact as to whether he made the payment to the accused on 29.03.2007 or on 30.03.2007. The accused has taken the plea of alibi and produced DW 1 in his defence to show that he was present in the office of Housing Society Federation at Panchkula. The trial Court also held that the prosecution has failed to explain the existence of two different receipt/No Dues Certificate on the file. The receipts Ex.DW/C and Ex.PW 3/A are materially different with each other.

Perusal of the findings given by the courts below which are concurrent shows that in no way, the same can be held as perverse or against the law. Therefore, the findings given by the courts are upheld.

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Resultantly, finding no merit in the present revision, the same is dismissed.

06.04.2017

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes
Whether reportable	:	No