

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

CRR No.2273 of 2017 (O&M)
Date of Decision: October 12, 2017

Baljinder Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sant Pal Singh Sidhu, Advocate
for the petitioner.

Ms.Simranjeet Kaur, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Baljinder Singh against respondent State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 07.12.2016 passed by learned Judicial Magistrate Ist Class, Ferozepur, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of 34 months and to pay fine of ₹6000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month under Section 409 IPC and also challenging the judgment dated 13.06.2017 passed by learned Addl. Sessions Judge, Ferozepur, vide which appeal filed by petitioner was dismissed. However, the sentence imposed upon the petitioner was reduced and he was directed to undergo rigorous

imprisonment for a period of two years instead of 34 months. The sentence of fine was kept the same.

From the record, I find that challan was presented against petitioner in case FIR No.120 dated 11.06.2012 under Sections 420, 406, 465, 468, 471 and 201 IPC. The brief facts of the case as noted down in the judgment passed by learned JMIC, Ferozepur, are as under:-

“2. The brief facts of the prosecution case are that one letter was written on 04.05.2012 by the Deputy Commissioner Ferozepur to Senior Superintendent of Police, Ferozepur against Baljinder Singh Ex-Sarpanch Gram Panchayat Gulam Hussainwala Block Ferozepur for misappropriating the funds issued under the scheme of MP LAND. The funds were generated for the development of Gram Panchayat Village Gulam Hussain Wala by the then MP Mr. Jora Singh Mann. These funds were meant for the construction of streets and drains, construction of out fall drain and wall of pond etc and for that purpose a sum of Rs. 12,00000/- was received by the accused through cheques on various dates but the accused committed breach of trust in respect of Rs. 8,59,601/- out of Rs. 12,00,000/-. He was directed to deposit the embezzled amount, but he did not deposit the same. After thorough investigation, the present case bearing FIR No. 120 dated 11.06.2012 Under Sections 420, 406, 465, 468, 471 and 201 IPC was registered. The investigation was conducted. During investigation, relevant documents were taken into police possession and statements of witnesses were recorded. After completion of investigation, challan was presented against the accused under Sections 420, 406, 465, 468, 471 and 201 IPC.”

On presentation of challan against the petitioner, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the petitioner was charge-sheeted under Sections 409 and 201 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW1 Kashmir Chand Reader to Deputy Commissioner, Ferozepur, PW2 Balwinder Singh Panchayat Secretary, PW3 Waryam Singh Panchayat Secretary, PW4

Jaswinder Singh Panchayat Secretary, PW5 ASI Gurbachan Singh PW6 Lachhman Dass Asstt Engineer, Office of BDPO Ferozepur and PW7 Bhupinder Singh Asstt. Research Officer, office of Deputy Economic and Statical Advisers Ferozepur.

In the statement under Section 313 Cr.P.C., the accused denied all allegations and pleaded his innocence.

Learned JMIC, Ferozepur, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Ferozepur, vide judgment dated 13.06.2017, with the modification in sentence, as stated above.

Aggrieved from the above-said judgments, present revision petition has been filed by the petitioner.

Notice of motion was issued. Learned State counsel appeared and contested the revision petition.

At the time of arguments, learned counsel for the petitioner argued that prosecution has failed to prove the guilt of the accused and reasonable doubt exists in the prosecution version. The embezzlement has not been proved by leading cogent evidence and the concurrent findings given by both the Courts below are perverse and against the law.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. The findings of fact given by both the Courts below are based on evidence produced by the prosecution. The embezzlement has been duly proved and there is nothing on the record to show that the accused-petitioner, who was Sarpanch, has done development

by spending the amount so received.

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

From the record, I find that PW-1 Kashmir Chand, Reader to Deputy Commissioner, mainly deposed regarding letter Ex.P1 which was marked to Senior Superintendent of Police, Ferozepur, for taking action against Baljinder Singh. PW-2 Balwinder Singh, Panchayat Secretary mainly deposed that in the year 2008, he was posted as Secretary in the village Gulam Hussainwala. At that time, accused Baljinder Singh @ Babbu was Sarpanch of Gram Panchayat and at that time, MP LAD funds were generated for the development of Gram Panchayat Village Gulam Hussainwala. These funds were meant for construction of streets, drains, construction of out all drawn, wall of pond etc. In the very start of resolutions, the cheques were released even imposingly to the respective parties supplying the raw material like bricks, cement, concrete etc. but no satisfactory work was being done by respective rural head namely Baljinder Singh, the then Sarpanch. It is further deposed by this witness that ultimately, when he declined to release further cheques and asked the accused to get the work accomplished with respect to the previously released funds, no further progress was assured and then he deposited the whole panchayat record to BDPO as he was not satisfied with the work done by the accused. PW-3 Waryam Singh, Panchayat Secretary, produced the summoned record. PW-4 Jaswinder Singh, Panchayat Secretary also deposed as per prosecution version. PW-5 ASI Gurbachan Singh, is the Investigating Officer. PW-6 Lachman Dass, Retd. Assistant Engineer, mainly proved his report prepared by him by visiting the spot and deposed

Sarpanch Baljinder Singh for the construction of street, drain, wall of chapper, outfall drain etc. Out of the said amount, for the construction of drains, ₹2 lakhs was released out of which, accused spent only ₹1,32,165/- and ₹67,835/- was embezzled. Similarly, for the outfall drain work, amount of ₹2 lakhs was released to the accused, out of which, ₹1,20,334/- was sent on works and amount of ₹79,666/- was embezzled, and for the construction of wall of pond outfall drawn, amount of ₹2 lakhs was released to accused, out of which, ₹87,900/- was spent on works and amount of ₹1,12,100/- was embezzled. Again, for the construction of street, drains, amount of ₹6 lakhs was released to the accused, out of which, no amount was spent on development by the accused and amount of ₹6,00,000/- was embezzled by the accused. I have gone through the cross-examination of this witness and there is nothing in the cross-examination, which may make his statement unreliable.

The perusal of the evidence on record shows that the findings given by both the Courts below are correct and as per evidence. The Court below have appreciated the evidence in right perspective. At the time of arguments, 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. This is a revision petition and in the revision petition, this Court is not to re-appreciate the evidence like Court of an appeal. The witnesses have proved the case of the prosecution beyond reasonable doubt. The accused has not produced even a single witness to show that out of ₹6 lakhs, he has spent any amount or he has constructed any drain, street etc. to prove the defence version. The prosecution has duly proved its case and the

findings given by both the Courts below are correct and as per law. The witnesses are reliable witnesses. They are official witnesses and they have no enmity or motive to depose against the accused. Rather, from the cross-examination, it looks that accused is admitting receiving of amount from the MP fund but no evidence has been produced on the record to show that this amount has been spent by the accused on the required works.

In view of the above discussion, I find that the judgments of conviction and order of sentence 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 the present revision petition, the same is dismissed.

October 12, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No