

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 944 of 2017 (O/M)
Date of decision : 14.11.2017

Kiran Pal

..... Revisionist

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Keshav Pratap Singh, Advocate, for revisionist.

Mr. R.K. Makkad, DAG Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH J.

This is revision against the judgment dated 16.12.2016, passed by the learned Additional Sessions Judge, Ambala, affirming the judgment of conviction and order of sentence dated 21.3.2012, passed by the learned Special Railway Magistrate, Haryana, Ambala Cantt., vide which present revisionist was held guilt under Section 409 IPC and was sentenced to undergo rigorous imprisonment for two years and fine of Rs. 2,000/-, in default thereof, to undergo further simple imprisonment for one month.

The facts of the case are that present revisionist was working as Moharar Malkhana, Government Railway Police, Ambala Cantt. In compliance of order/letter No. 20254-56, dated 20.5.2005, issued by Superintendent of Police, Railway, Ambala Cantt., a committee consisting of Kuldeep Singh, Deputy Superintendent of Police, Government Railway Police, Ambala Cantt., Gurbachan Singh, Inspector and Surjit Lal, Inspector, was constituted, which submitted its report on 3.7.2005. The

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committee checked the case property lying in the Malkhana at Government Railway Police, Ambala Cantt. It was found that UGC Kiran Pal is working as Moharar for last many years. During the course of checking, many items were found missing. It was also found that many articles were old one regarding which, the cases have already been decided, but the same have not been disposed of. Even the higher officers did not pay any attention to check up the Malkhana, nor any note was given. From time to time, many Moharars Malkhana were posted and they were transferred after some time. It was also found that many years back, there were floods in Ambala and the Police Station of Railway Police, Ambala Cantt. was flooded, due to which water logging had taken place in GRPS, Ambala Cantt., as a result of which one Constable Ram Chander, resident of Delhi, died. The room, in which case property was kept, had collapsed. After removing the debris, many items were recovered. Thereafter, in August, 2004, on 3.8.2004 again, there were floods in Ambala, as a result of which, again building of Police Station, Government Railway Police, Ambala Cantt. was flooded and many items lying in the Malkhana were destroyed, regarding which immediate Inspector Satpal, vide letter No. 238-5D, dated 28.2.2005, had sent the report that as a result of the flood, 211 items of the NDPS Act have been destroyed. The committee came to the conclusion that present revisionist was negligent, as a result of which these items were destroyed in flood. Therefore, departmental action was recommended against him. The departmental action was also recommended against Inspector Satpal. It was also found by the committee that Malkhana Register was also not properly maintained and no superior officer took care of same. Rather, same came to the notice of authorities on account of news item appeared in the newspaper, which

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compromised the secrecy of the police. On the basis of said report, FIR No. 121, dated 6.7.2005, under Section 409 IPC at Police Station GRP Ambala Cantt. was registered against revisionist. The investigation was carried out. It was found that the committee has prepared the report of case properties from the year 1972 to year 2001. Total items are 211, which were found missing. During the investigation, the lists of the missing items (Ex.P4 to Ex.P6) were prepared. It was found that 1538.125 kgs. poppy husk (as per list Ex.P4), 173.730 kgs. opium (as per list Ex.P5) and 17.375 kgs. charas, 368.800 kgs. ganja, 6 grams smack (as per list Ex.P6), were missing. The sanction for prosecution (Ex.P11) was obtained. The record (Annexure-P-7/A) regarding posting of revisionist was also taken into possession. After investigation, challan was presented in Court.

The then learned Special Railway Magistrate, Haryana, Ambala Cantt. framed the following charge on 3.4.2007 :-

“ I, Phalit Sharma, Special Railway Magistrate, Haryana, Ambala Cantt, do hereby serve you (Kiran Pal) with following chargesheet :-

That you, on or about the 06.07.2005, within the are of railway station, Ambala Cantt, P.S. GRP, Ambala Cantt, being in any manner entrusted with property of various cases lying in Mal Khana being Mal Khana Incharge and in that capacity committed criminal breach of trust with respect to case property and that you thereby committed an offence punishable under Section 409 IPC and within cognizance of this Court.

And, I hereby direct that you be tried by this Court on the said charge sheet.”

In support of its case, prosecution examined SI Ram Chander (PW1), HC Wailati Ram (PW2), HC Ashwani Kumar (PW3), HC Harkesh Singh (PW4), Surjit Lal, DSP (Retd.) (PW5), Jee Ram Inspector(Retd.)

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(PW6), SI Arjun Dev (PW7), Dr. M. Ravi Kiran (PW8) and Mam Chand Inspector (Retd.) (PW9).

When examined under Section 313 Cr.P.C., accused pleaded innocence and did not lead any evidence in defence.

After going through the evidence and hearing the prosecution and accused, the learned Special Railway Magistrate, Haryana, Ambala Cantt., convicted and sentenced the accused as aforesaid and his appeal was dismissed by the learned Additional Sessions Judge, Ambala, as discussed above.

I have the learned counsel for revisionist, the learned State counsel and have minutely gone through the lower Court file.

At the very outset, it comes out that in the report under Section 173 Cr.P.C., the details of missing case property was given as detailed above (as per lists Ex.P4 to P6). The learned Special Railway Magistrate, Haryana, Ambala Cantt., while framing charge, has merely stated that accused was entrusted with 'certain properties lying in the Malkhana' being Malkhana Incharge and in that capacity, he has committed criminal breach of trust with respect to case property. However, the details of said case property have not been mentioned, regarding which criminal breach of trust has been committed. The details of said case property are given in lists Ex.P4 to Ex.P6 and aggregate of each category of case property is also mentioned. In the absence of details regarding case property, which were entrusted and misappropriated, the charge framed by the lower Court is defective and resulted in miscarriage of justice. It also comes out that regarding same report, three different FIRs were registered against revisionist, which were tried separately.

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Now, the question would arise as to whether for the defective charge, the case should be remanded back or this Court should proceed with the matter ? For that purpose, this Court will proceed to go through the case file and see whether there is substance in the allegations, levelled against revisionist ?

As per the posting record (Ex.P7/A), revisionist was posted in the Malkhana on 22.12.1995 and was suspended from service on 13.1.2006. Later on, he was recorded to be dismissed from service with effect from 10.8.2007, which means that from year 1995 onwards, revisionist remained Incharge of the Malkhana. Now, look at the list Ex.P4, which shows that these pertain to the cases registered from the year 1975 to year 2001. List Ex.P4 is regarding poppy husk weighing 1538.125 kgs., which was found missing. Similarly, regarding opium, list Ex.P5 shows the cases registered from year 1972 to year 2001, wherein one case is of 10.7.1995 and the other is of 1.11.2001. The total missing opium is 173.730 kgs. Similarly, as per list of charas Ex.P6, the cases were registered from the year 1977 to year 1996 and one case is of 10.11.2001 regarding 5 gram missing charas. The total missing charas is 17.375 kgs. Regarding ganja, the cases were registered from year 1985 to year 2001 and one case is of 26.10.2001 regarding 365 kgs. ganja. The case regarding 6 gram smack was registered on 14.3.2001.

Revisionist was posted as the Head Malkhana in the year 1995. Therefore, regarding case property deposited before year 1995, prosecution was required to prove that before the year 1995, said case property was in the Malkhana and was entrusted to Kiran Pal (revisionist) when he took over the charge for the first time on 22.12.1995. Infact, the report of committee

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(Ex.PW5/2) itself shows that earlier there was flood in Ambala, as a result of which Railway Police Station was flooded and one Constable Ram Chander had also died due to flood. The room where the case property was stored had fallen down and after removing the debris, many items were found in damaged condition. Again on 3.8.2004, there was flood in Ambala and again building of Railway Police Station was flooded and many case properties were destroyed.

In this case, it has not come on record as to which case property was destroyed, as a result of flood which occurred on 3.4.2004 and prior to that as well. The fact that prior to 2004, in the flood one Constable died, goes to show the magnitude of flood. It also comes out that even the building of Malkhana had collapsed and many items were destroyed. It goes to show that many items were destroyed in flood, which occurred prior to 2004 and many items were destroyed in the floods on 3.4.2004.

Now, question is as to whether revisionist can be held guilty for offence of misappropriation of the said case property mentioned in the lists Ex.P4 to Ex.P6, which is prior to flood of 3.8.2004 and a flood before that and findings can be recorded that he has criminally misappropriated those articles ?

I am of the view that guilt of accused has not proved beyond all reasonable doubts. The prosecution has relied upon the disclosure statement (Ex.PW9/B), in which revisionist admitted that he had sold poppy husk, ganja, opium etc. to some addicts and that he has deliberately reported that case property of 211 cases has been destroyed in the flood. Such disclosure statement cannot be relied upon under Section 27 of the Evidence Act since no recovery was effected in pursuance thereof. When the flood had occurred

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before 2004 and then on 3.8.2004, the department should have carried out a thorough inquiry to find out, which articles were lying in the Malkhana and which articles were damaged/destroyed/washed away due to flood. Infact, the Incharge of Police Station had reported that the case property of 211 cases has been destroyed in the floods. In the criminal cases, the burden to prove the charge is of higher standard i.e. proving the case beyond all reasonable doubts. It is sufficient for accused, if he is successful in raising reasonable doubt about the prosecution case. In this case, prosecution should have proved that the articles mentioned in lists Ex.P4 to Ex.P6 were entrusted to revisionist when he joined duties on 22.12.1995 and that he has criminally misappropriated the same and not destroyed due to floods, which in case of first flood resulted in the collapse of the building of the Malkhana, resulting in destruction of many articles and death of one constable and at the time of second flood on 3.8.2004 likely to result in destruction of the case property lying in Malkhana. Unluckily, the evidence was not critically examined by the learned Special Railway Magistrate, Haryana, Ambala, as well as by the learned Additional Sessions Judge, Ambala. The poppy husk, smack, opium, ganja and charas from its nature can be damaged or destroyed or washed away due to floods. Therefore, I am of the view that prosecution could not prove that the articles mentioned in lists (Ex.P4 to Ex.P6) were criminally misappropriated by present revisionist. Once, this Court comes to the conclusion that offence under Section 409 IPC is not proved, then on account of defective charge, the case need not be remanded to trial Court and can be decided by this Court.

In view of foregoing discussion, revision is allowed. The judgment dated 16.12.2016, passed by the learned Additional Sessions

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Judge, Ambala, and the judgment of conviction and order of sentence dated 21.3.2012, passed by the learned Special Railway Magistrate, Haryana, Ambala Cantt. are hereby set aside and revisionist stands acquitted of charge framed against him under Section 409 IPC. Revisionist be released forthwith, if not required in any other case.

(KULDIP SINGH)
JUDGE

14.11.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes