IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. **CRM-A-1486-MA of 2016**
Date of Decision : November 14, 2018

State of Haryana ....Applicant
Vs.
Rajender Sharma .....Respondent

II. **CRR 261 of 2016**

Mangal Singh ....Petitioner
Vs.
State of Haryana and another .....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present : Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

Mr. Adarsh Jain, Advocate
for accused Rajender Sharma.

Mr. Sushil Jain, Advocate
for the petitioner/complainant.

T.P.S. MANN, J.

Acquittal of Rajender Sharma accused is sought to be challenged by the State of Haryana by filing the aforementioned application under Section 378(3) Cr.P.C. and by complainant Mangal Singh by filing revision under Section 401 Cr.P.C.

Rajender Sharma was tried for committing the offence punishable under Sections 467, 468 and 471 IPC. Vide judgment and order dated 5/6.3.2012, learned Judicial Magistrate 1st Class, Faridabad convicted Rajender

Sharma accused under Sections 406, 467, 468 and 471 IPC and sentenced him to undergo imprisonment for three years besides paying an amount of Rs.12,000/-, in all, as fine. Aggrieved of his conviction and sentence, Rajender Sharma accused preferred an appeal. Vide judgment dated 14.10.2015, learned Additional Sessions Judge, Faridabad accepted the appeal and acquitted him of the charge against him.

According to the prosecution, on 15.2.1997 Mangal Singh, complainant, who was President of Employees Union, Thomson Press, Faridabad submitted written complaint Ex.PW4/A before the police to the effect that Rajender Sharma accused had remained President of the Employees Union from the year 1991 to 1996 and by misusing the said post, he had grabbed an amount of about Rs.5,00,000/- belonging to the Employees Union. With the said money he had purchased Tata 407, three houses, two motorcycles, besides depositing some cash in his bank account and in the FDRs. The complainant, who succeeded him to the post of President of the Employees Union, demanded the statement of accounts from him but he failed to do so. Instead, he extended threats to kill him, besides pointing gun at him. The accused had also some <u>gunda</u> type persons, who possess swords, pistols, knives, etc. Criminal case bearing FIR No.801/90 was already pending against accused Rajender Sharma. Accordingly, the complainant sought taking of action against the accused.

Having heard learned State counsel as well as learned counsel for the complainant, besides, learned counsel for Rajender Sharma-acused, this Court finds that the complainant had filed suit dated 14.2.1997 against the accused for rendition of accounts in which specific allegations were made against the accused and others. However, a day later, i.e. on 15.2.1997, the complainant got registered an FIR against the accused. The suit was filed by the complainant against two other defendants as well. Subsequently, the suit was dismissed under Order IX Rule 8 CPC. Further, the articles recovered from Rajender Sharma accused were not proved to be of the Employees Union. The inference regarding ownership has been drawn by the learned trial Court only on the basis of order of superdari.

Coming to the allegations as claimed by the complainant that the accused had withdrawn some amount of the Employees Union and adjusted it in the account of his daughter, besides allegations regarding depositing of funds in the school of his son and there were allegations of depositing an amount of Rs.50,000/- in the name of Sunita Vinayak by the accused, there is no material to substantiate the said allegations. No bank official has been examined by the prosecution. PW13 S.K. Daswani, Assistant Manager, Vijaya Bank was examined but his testimony was of no relevance. PW4 Mangal Singh complainant did not depose regarding the ownership of the articles which he got released on superdari. In his cross-examination, he deposed that he came to know about the embezzlement in December, 1996 but despite the same, the FIR was registered after more than two months. Further, an enquiry was said to have been conducted into the allegations of embezzlement which culminated in the month of March, 1997 but the FIR was registered much earlier to that. It shows *mala fides* in involving the accused in the case.

PW15 Sunita Vinayak deposed that she did not remember her husband Vijay Kumar Vinayak ever taking any amount, either in cash or through cheque, from the accused at the time of construction of the house.

In order to prove his innocence Rajender Sharma accused had examined 18 defence witnesses.

Randhir Singh, Deputy Superintendent in Labour Court, deposed that it was the General Secretary and the Cashier who would deal with the Employees Union funds whereas the accused, being the President had nothing to do with the same. DW12 Parmod Kumar deposed that he had let out his property on lease and also produced original lease deed Ex.DW12/A. He further stated that the High Court had directed to verify the challan and investigation. On the last page of the challan, there was neither any verification by any senior officer nor his signatures.

From the documents produced in defence it is made out that Mangal Singh and another had purchased a new car after hatching a conspiracy against the accused to put him behind the bars. The deposition of PW13 S.K. Deswal will not be sufficient for the prosecution to prove its case as the said deposition was hit by Section 4 of the Evidence Act. At the same time, the prosecution was duty bound to prove the ownership of articles which was not done. Not one but two applications were filed for <u>superdari</u>. The first one was dismissed on 11.9.1997. Instead of availing the remedy of revision against that order, the complainant filed another application on 27.2.2001.

PW12 SI Balbir Singh, who was the Investigating Officer of the case, did not carry out the investigation in a fair and transparent manner. In his cross-examination, he admitted that he got the certified copy of bank record of Sunita Vinayak from Vijaya Bank and three copies were attached with the investigation file but no such type of certified copies are on record.

DW18 Prithi Pal Chadha ought to have been made a prosecution witness by the Investigating Agency, but it was not done. Instead, he was examined in defence and falsified the prosecution version. Further, Abad Ahmad and Stalan Singh, who had remained office bearers of the Employees Union and had withdrawn the cash from the bank account of the Employees Union were neither made accused nor the prosecuting agency explained the reasons for not doing so. PW18 Ram Kishan deposed about the arrest of Stalan Singh and Abad Ahmad but there is no explanation from the prosecution as to why the investigation was not completed against them. All this shows that the investigation had not been conducted in a fair manner.

In view of the above, no case is made out for any interference in the impugned judgment passed by the learned Additional Sessions Judge, Faridabad whereby Rajender Sharma accused stood acquitted of the charge against him.

The application preferred by the State and the revision preferred by the complainant are without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(HARSIMARN SINGH SETHI)
JUDGE

November 14, 2018
satish

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO