

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

CRM A-619-MA of 2016

Date of Decision : March 20, 2018

Nityanand

.....Applicant

VERSUS

Smt. Ashalata

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present : Mr. S.K.Yadav, Advocate
for the applicant.

T.P.S. MANN, J.

Complainant-Nityanand has filed the present application under Section 378(4) of the Code of Criminal Procedure (hereinafter referred to as “**Cr.P.C.**”) for grant of leave to appeal against the judgment dated 8.2.2016 passed by learned Judicial Magistrate 1st Class, Mahendergarh vide which the accused/respondent stood acquitted of the charges under Sections 409/420/467/468/471 IPC.

According to the complainant, he is resident of village Nautana, Tehsil and District Mahendergarh. During development scheme for the period 2005 to 2010, the accused/respondent was the Sarpanch whereas Arjun Singh was the Panchayat Secretary.

There were eleven other members of the Panchayat. During the course of her tenure, the accused/respondent undertook the development work in the village and streets were made pucca. The material so required was purchased from Raju Sadabahar Road Lines vide bill dated 25.7.2009 for Rs. 71,700/-. The payment was to be made after passing resolution in the meeting of the Gram Panchayat. However, on 3.8.2009, the accused/respondent called the meeting of the Gram Panchayat in which only five members came present. Without there being requisite quorum, the accused/respondent proceeded to pass resolution No.1 for making payment of Rs. 71,700/- to Raju Sadabahar Road Lines from the bank account by way of a cheque and copy of the resolution was also forwarded to the Manager, CCB, Kanina. However, while preparing the copy of resolution No.1 dated 3.8.2009 on the letter pad of the Gram Panchayat, the name of Kamal Singh, Member Panchayat was manipulated and his signatures were also shown to have been appended in Hindi whereas accused/respondent No.1 as well as the Panchayat Secretary put their signatures on the copy of the resolution certifying that copy of resolution was correct as per original. However, Kamal Singh, Member Panchayat had neither put his signatures on the original resolution dated 3.8.2009 nor thumb marked the same. In this manner, the accused/respondent

and the Panchayat Secretary forged copy of resolution No.1 dated 3.8.2009 and misappropriated the Panchayat funds. The complainant had moved an application against the accused/respondent and the Panchayat Secretary before the Deputy Commissioner but no action was taken against them. He then filed the present complaint.

On the basis of preliminary evidence, the Ilqa Magistrate summoned the accused/respondent only for the aforementioned offences whereas complaint against the Panchayat Secretary was dismissed. The accused/respondent put in appearance which was followed by recording of pre-charge evidence by the Ilqa Magistrate. On its basis, the accused/respondent was charged for the aforementioned offences to which she pleaded not guilty and claimed trial.

In after-charge evidence, the complainant himself stepped into the witness box as CW1 and, thereafter, the after-charge evidence was closed. The statement of the accused/respondent under Section 313 Cr.P.C. was recorded wherein she denied all the incriminating circumstances appearing against her and pleaded her innocence.

After hearing learned counsel for the parties and on going through the evidence available on the record, learned Judicial Magistrate 1st Class, Mahendergarh acquitted the

accused/respondent of the charges against her.

Learned counsel for the applicant has submitted that the trial Court erred in acquitting the accused/respondent of the charges against her and as there was overwhelming evidence on the record to prove her guilty, there was no reason in fact or in law with the trial Court to acquit her.

The submissions made by learned counsel for the applicant have been considered but the same do not warrant a favourable consideration.

Though the complainant while stepping into the witness box as CW5 testified regarding the involvement of the accused/respondent but the same is found to be insufficient to establish the guilt of the accused/respondent beyond shadow of doubt. He admitted in his cross-examination that he remained Sarpanch of the village during 2000-05 and there was political rivalry inter-se between him and the accused/respondent. He also admitted that the bill in question regarding the payment of Rs. 71,700/- was required to be signed by the Panchayat Secretary. He stated that he did not know as to who had recorded the resolution. He could not identify the handwriting of the accused/respondent and also of the Panchayat Secretary. He did not know as to what was the construction carried out at the spot vide resolution No.1. He also did not know as to whether the

material was brought by the Gram Panchayat. He also did not know for which purpose the amount was withdrawn from the bank. He could not state whether the Panchayat Secretary put his signatures and altered the fulfilling of the quorum. He also could not depose about the accused/respondent forging the documents. He did not examine any other inhabitant of the village nor prove the forgery and fabrication of documents by the accused/respondent for releasing the amount in favour of Raju Sadabahal Road Lines. There is also no material on the file to establish that by the act of the accused/respondent, wrongful loss was caused to him or wrongful gain caused to the accused/respondent. Even no other member of the Gram Panchayat appeared before the trial Court to support the case of the complainant. He went on to admit that Panchayat Secretary put his signatures only after the quorum was complete. The complainant also failed to prove that there was some inducement on the part of the accused/respondent and that the said inducement was made fraudulently or dishonestly with a view to deceiving the complainant. Thus, it is not a case of cheating of a third party.

The complainant and the accused/respondent belong to the same village. During the year 2000-05, the complainant remained the Sarpanch of the village. Though he knew the

various formalities as well as the rules and the regulations for passing a resolution but he filed the present complaint only on 17.1.2011, more-so, when the term of the accused/respondent as the Sarpanch of the Gram Panchayat had come to an end in the year 2010.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal.

The application is without any merit and, therefore, dismissed.

Leave to appeal is declined.

**(T.P.S. MANN)
JUDGE**

March 20, 2018
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**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No