

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

(i) Crl. Appeal No.S-2386-SB of 2003 (O&M)

Ujagar Singh

...Appellant

VERSUS

State of Punjab

...Respondent

(ii) Crl. Appeal No.S-2387-SB of 2003 (O&M)

Ujagar Singh

...Appellant

VERSUS

State of Punjab

...Respondent

(iii) Crl. Appeal No.S-2388-SB of 2003 (O&M)

Ujagar Singh

...Appellant

VERSUS

State of Punjab

...Respondent

Date of Decision: November 12, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.T.S.Sangha, Sr. Advocate with
Mr.J.S.Lalli, Advocate
for the appellant.

Mr.Pawan Sharda, Sr. Deputy Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

in case FIR No.70 dated 16.05.1988 under Sections 120-B, 467, 465, 471, 409 IPC and Section 13(2) of the Prevention of Corruption Act by the police of Police Station Giddarbaha. All the challans were consolidated vide order dated 08.04.1993 passed by learned trial Court.

The present appeals have been filed by the appellant Ujagar Singh against respondent State of Punjab, challenging the judgment of conviction dated 11.12.2003 and order of sentence dated 12.12.2003 passed by learned Addl. Sessions Judge, Faridkot, whereby he was held guilty and convicted under Sections 120-B, 467, 465, 409 and Section 13 (2) of the Prevention of Corruption Act in each challan (challan No.3, 4 and 5) and sentenced to undergo rigorous imprisonment for a maximum period of three years along with fine and default sentence. All the sentences were ordered to run concurrently under each challan separately.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge, Faridkot, are as under:-

“2. Briefly stated, the prosecution story almost in all the five challans is that originally, First Information Report was recorded on the report dated: 16.5.1988 made by Inspector Mohan Singh of Vigilance Bureau, Muktsar to the officer Incharge of Police Station, Gidderbaha, who reliably came to know that Sarvshri Simranjit Singh JE (since deceased) and Ujagar Singh Sub Divisional Officer while posted in Canal Lining Sub Division No.3 Gidderbaha in the year 1986 misappropriated 3837 bags of cement while executing work at RD No.103577-106000, 106000-108000, 47000-48000, 48000-49000, 49000-50,000, 46000-47000 of Lambi Distributory and RD Nos.63000-64000, 78402-79492, 77000-78402, 72000-73000, 63550, 62000-63000, 70752-72000, 62000-63000, 63000-64000 of Sukhchain distributory and have thus caused loss to the Government of an amount of Rs.1,72,665/-. Besides this, they had also not accounted for lacs of bricks under their charge. Inspector Mohan Singh also in his report reported that these accused had tampered with the record and thus a prima-facie case under Section 409, 467, 471 and 120-B of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act is found to have been made out against these

accused. On the basis of the above report made by Inspector Mohan Singh formal First Information Report No.70 dated 16.5.1988 under the above offences was registered at Police Station Gidderbaha by SI/SHO Joginder Lal. The investigation was conducted by Inspector Mohan Singh, who took into police possession record of the department and formally arrested Ujagar Singh SDO on 14.12.1988 and Simranjit Singh (since deceased) on 15.12.1988. During investigation, Harbans Singh SDO was also found guilty for misappropriating the above said bags of cement alongwith other accused but he died during the investigation and proceedings against him stood abated.

3. As mis-appropriation of the cement bags relates to the years 1982 to 1986 therefore, five challans were prepared separately. Challan No.1 pertains to the year 1982 and the allegations made are against JE Simranjit Singh (since deceased) and Harbans Singh (died during the investigation) who at the relevant time were incharge of the work. In challan No.2 the matter relates to the year 1983 and the charge sheet was prepared against Harbans Singh and Simranjit Singh accused only. In challan No.3, mis-appropriation relates to the year 1984 and the charge sheet was accordingly, prepared against Harbans Singh SDO, Ujagar Singh and Simranjit Singh JE, who were responsible for the work done by them. In challan No.4, the mis-appropriation relates to the year 1985 and charge was accordingly prepared against Ujagar Singh and Simranjit Singh accused who were responsible for the work done by them during that period. In challan No.5, the matter relates to the year 1986. Accordingly, challan against Ujagar Singh SDO and Simranjit Singh JE was prepared and presented in the court for trial. After the completion of investigation, all the five challans were presented before the Court for trial.”

On presentation of challans, copies of challan and other documents were supplied to the accused under Section 207 Cr.P.C.

The perusal of the record shows that in two of the challans i.e. challan No.1 and 2, accused were Simranjit Singh and Harbans Singh. Harbans Singh had already died. Later on, Simranjit Singh also died pending trial and proceedings against him were also abated. In the present cases bearing challans No.3, 4 and 5, charges were framed under Sections 120-B, 467, 465, 471, 409 IPC and Section 13(2) of the Prevention of

Corruption Act against present appellant along with Simranjit Singh, to which they pleaded not guilty and claimed trial. Simranjit Singh died during the pendency of the trial, therefore, proceedings against him were abated in these cases also.

In support of its case, prosecution examined as many as 23 witnesses. At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded his innocence. He further pleaded that he has no conspiracy with JE Simranjit Singh, rather, he had written letters Ex.D1/A to Ex.D1/15 for non-submissions of monthly account regularly. He also pleaded that works were done by the contractors according to the sanctioned estimate. The entries in the various books and statements from the year 1982 to 1984 do not relate to his tenure as he joined in the Lining Division in May 1984. Accused tendered into evidence office order dated 09.11.1982 and closed his evidence. No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant, as stated above.

At the time of arguments, learned senior counsel for the appellant argued that none of the material witnesses has deposed against the present appellant. There is no allegation regarding any connivance and conspiracy between Simrajeet Singh JE and present appellant. He further argued that the witnesses have deposed regarding embezzlement, misappropriation and entrustment, only against Simranjit Singh JE, who has already died and proceedings have been abated against him. There is no

cogent evidence on record showing any tampering of the record by the

appellant or entrustment to the present appellant or regarding misappropriation or embezzlement. The present appellant has wrongly been convicted and sentenced by learned trial Court. Learned counsel for the appellant, therefore, argued that there being merit in all the appeals, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is sufficient evidence on record to show misappropriation, entrustment etc. and present appellant being the supervisory authority, has approved the vouchers, bills etc. and is also liable for the offences for which he has been convicted. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record minutely and carefully.

From the perusal of lower Court record, I find that prosecution examined firstly PW-1 Malkiat Singh, who brought the record including MAS (material at site) and deposed as per the record regarding bricks etc. In the chief-examination, this witness stated that he cannot identify the signatures of accused Simranjit Singh JE or Ujaggar Singh and this witness was got declared hostile. This witness was cross-examined by learned Public Prosecutor and in the cross-examination, he stated that in fact he has not worked with accused and as such, cannot identify their signatures, during the period said work has been done. Similar was reply with regard to the stock register entries purported to have been signed by both the accused. In cross-examination, this witness deposed that his signatures or initial are

further stated that whatever record was given to him, he checked the same. He has no personal knowledge otherwise. He also deposed that he is not concerned with the division in question. PW-2 Gurmit Singh in his chief-examination, has stated that for the return of material as mentioned in his statement, Simranjit Singh JE was responsible to whom initially the material was issued for the works. Ex.PK/1 is the detailed statement showing the material received by Simranjit Singh JE from other JEs and brick kilns from June 1986 to December 1986 but no stock account was submitted by him so far. He also stated that details of the material was worked out from the accounts (monthly) from June 1986 to December 1986. According to statement Ex.PK/1, 8,19,000 bricks, 2410 cement bags and 2610 empty bags of cement were not returned by Simranjit Singh JE to the department and this amounts to embezzlement of the said material by Simranjit Singh JE. He also stated that accused Simranjit Singh JE embezzled 6091 bags of cement valued at ₹2,74,095/-, 16,55,068 bricks valued at ₹5,56,103/- and 2610 empty cement bags valued at ₹2610/-. In cross-examination, this witness stated that Ujagar Singh was not joined when the reports and statements were prepared which are described in his examination-in-chief. He also stated in cross-examination that he did not inspect the works because he was not Incharge of the works when these works were executed. The reports were prepared from the record and not after inspection of the works. He also stated that works were done in 1982, therefore, it was not possible to inspect the same at this stage. The perusal of statement of PW-2 shows that he is only deposing against Simranjit Singh JE regarding embezzlement of the material, which has not been returned by him to the

The other material witness is PW-4 Jhangi Ram, SDC, who stated in his chief-examination that he cannot identify signatures of Ujaggar Singh but he can recognize signatures of Simranjit Singh JE. He also stated in his chief-examination that Ex.PX is the statement showing workwise material issued and work done by Simranjit Singh JE and it consists of six pages. Similarly Ex.PX/1 was prepared by him showing 7,57,933 bricks and 2341 cement bags which were in excess of the requirement and were required to be returned by Simranjit Singh JE. In cross-examination, he stated that accused Ujaggar Singh was not having any stores under his charge for keeping the material issued to him. Canal lining works were undertaken through private contractors. He also stated that he has deposed regarding shortage of material on the basis of the record and has no personal knowledge of the same and he never visited the spot. He also stated that no departmental enquiry or administrative action was taken pertaining to these shortages. PW-7 Swinder Singh, SDO, Vigilance Bureau Punjab, is another material witness, who stated in his chief-examination that he found material on the basis of consumption and issuance regarding bricks, cement and empty bags etc., which showed that Simranjit Singh JE has shown consumption of excessive material as per statement Ex.PAA/1 consisting of two pages. According to his statement, Simranjit Singh JE embezzled 8,36,068 bricks and 3681 cement bags. In addition to this, Simranjit Singh JE received/issued material from June 1986 to December 1986, for which no stock account was submitted. He also deposed in chief-examination that Simranjit Singh JE committed embezzlement of ₹7,55,498/- as mentioned/given in statement Ex.PAA/1. The perusal of this evidence also

misappropriation, embezzlement etc. by the present appellant Ujaggar Singh. PW-9 Sukhvinder Kaur, Senior Clerk, Office of Canal Lining Division, is also one of the material witness, who stated that intends were issued by Simranjit Singh JE and approved by appellant Ujaggar Singh. She also stated that indent No.1553 dated 20.11.1984 contains overwriting, indent No.1581 and 1584 have been left blank, indent No.1568 does not bear any date under the signatures of accused Ujaggar Singh. This witness was later on got declared hostile by the Public Prosecutor and was cross-examined. PW-21 Gobind Singh, SDC, office of Sub Divisional Officer, in cross-examination stated that Ex.DA/2 and Ex.DA/3 are the letters in his writing, which are signed by Ujaggar Singh. He identified the signatures of Ujaggar Singh on Ex.DA/1 to Ex.DA/12. He also admitted that all these letters carry dispatch number and date of the department. This PW has proved the defence documents that present appellant was writing to the department that Simranjit Singh JE is not submitted monthly reports. PW-23 Gurmit Singh, DSP (Retd.) deposed in his cross-examination that he did not collect the evidence with regard to any conspiracy between Ujaggar Singh and Simranjit Singh JE.

The perusal of total evidence on record including statements of material witnesses and other official witnesses, I find that there is not an iota of evidence to show that present appellant Ujaggar Singh was ever entrusted material i.e. bricks, cement or empty cement bags nor there is any evidence on record that present appellant misappropriated or embezzled the same. Even, PW-23 DSP Gurmit Singh has stated that he has not collected any evidence regarding conspiracy of present appellant with Simranjit Singh

amount/stock or was in conspiracy with Simranjit Singh JE. Rather, the prosecution evidence shows that all the allegations regarding embezzlement, misappropriation, entrustment etc. have been levelled against Simranjit Singh JE only. Mere fact that some indents have been approved by the present appellant and there is some negligence on his part, at the most, departmental action can be taken but it will not prove criminal offence regarding embezzlement, misappropriation or under Section 13(2) of the Prevention of Corruption Act or criminal conspiracy etc. In the criminal cases, the prosecution is to prove the guilt of the accused beyond reasonable doubt. In the present case, reasonable doubt exists in the prosecution case and benefit of doubt is always to be given to the accused. Therefore, by giving benefit of doubt to the present appellant Ujagar Singh, he is acquitted of the charges framed against him in all the cases.

Keeping in view the above discussion, I find that the judgment of conviction dated 11.12.2003 and order of sentence dated 12.12.2003 passed by learned Addl. Sessions Judge, Faridkot, are not as per evidence and law and the same are set aside.

Therefore, finding merit in all the appeals, the same are allowed.

Since, appellant Ujagar Singh is on bail, his bail/surety bonds stand discharged.

November 12, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No