

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Revision No. 2222 of 2013

Date of Decision: 27.11.2018

Paramjit Singh

... Petitioner(s)

Versus

State of Punjab and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Nakul Sharma, Advocate
for the petitioner(s).

Mr. D.S.Sukarchakia, Deputy Advocate General,
Punjab for respondent No.1.

Ms. Vertika H. Singh, Advocate
for respondent No.2.

Shekher Dhawan, J.

Present revision petition is challenge to the judgment dated 20.05.2013, passed by the learned Additional Sessions Judge, Ferozepur, whereby appeal filed against the judgment dated 19.02.2010, passed by the learned Additional Chief Judicial Magistrate, Ferozepur acquitting the petitioner of the charges, was accepted.

Facts relevant for the purpose of decision of the case that petitioner was working as Cashier of Ferozepur Central Co-operative Bank, Branch Guru Har Sahai (hereinafter referred to as “the Bank”). On 14.05.1999, Surjit Singh had collected a sum of Rs.1,21,980/- and on 18.05.1999 a sum of Rs.1,69,850/- from the members of the Ranjitgarh

Agricultural Service Society Limited (hereinafter referred to as “the Society”). A total sum of Rs.2,91,830/- was deposited with the petitioner being a Cashier of the Bank. However, the said amount was not credited in the account of the bank and as per allegations, petitioner had misappropriated the same. A complaint in this regard was sent by the Assistant Registrar of the Society on 29.06.1999 and thereafter, reminder was issued on 05.11.1999 and on that basis FIR No. 11 was registered on 28.01.2000 under Section 409 IPC at Police Station Guru Har Sahai. Investigation was carried out and challan under Section 409 IPC was presented in the Court. The charge under Section 408 IPC was framed by the learned trial Judge and after trial, petitioner was acquitted of the charges. The State had filed an appeal and the learned Sessions Judge, Ferozepur, vide impugned judgment dated 20.05.2013, accepted the same and remanded the matter back to the learned trial Judge on the ground that even charge was not framed as per the correct provisions of law and in fact charge should have been framed under Section 409 IPC and not under Section 408 IPC. The learned Sessions Judge also observed in his detailed judgment that the stand of the prosecution has been seriously jeopardized as the charge was not framed as per the correct provisions of law.

Learned counsel for the petitioner, while arguing the matter, contended that the learned Appellate Court has not considered the correct proposition of law and the charge was but to be framed under Section 408 IPC only as petitioner was only an employee of the Society. On this point, learned counsel for the petitioner placed reliance upon the judgment

Kesari Chand 1987(1) RCR (Criminal) 297 , wherein it was observed as under:-

“The President and the Secretary of the Co-operative Society are not 'public servants' within the meaning of clause twelfth (b) of Section 21 of the Indian Penal Code, and to whom the provisions of Section 409, Indian Penal Code, are not attracted, because the co-operative society is not a 'Corporation' established by a State Act in whose service or pay they supposedly are, or are assumed to be.”

On the same point, reliance was placed upon the judgment rendered by the Hon'ble Division Bench of this Court in ***State of Haryana v. Hans Raj 1996(1) RCR (Criminal) 266***.

While arguing on this point, learned counsel representing the respondent-State has taken a stand that petitioner was not working as an employee of the Society, rather he was working as Cashier of the Bank and with regard to employees working in the Bank, provisions of Section 409 IPC will come into picture and the learned Sessions Judge has rightly remanded the matter to the learned Court below and the present revision petition is liable to be set aside.

Having considered the submissions made by learned counsel for the parties and relevant facts of the case, this Court is of the considered view that the matter in controversy was around the point whether an employee of the Co-operative Bank would be covered under the definition of Section 409 IPC or not in the light of the provisions of the Banking Regulation Act, 1949 (hereinafter referred to as “the Act”). For ready reference, Sections 408 and

“408. Criminal breach of trust by clerk or servant.—

Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

409. Criminal breach of trust by public servant, or by banker, merchant or agent.—*Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

Relevant provisions on this point would also be under Section 3 of the Act, which is reproduced as under:-

“3. Act to apply to co-operative societies in certain cases.-

Nothing in this Act shall apply to.-

- (a) a primary agricultural credit society;*
- (b) a co-operative land mortgage bank; and*
- (c) any other co-operative society, except in the manner and to the extent specified in Part V.”*

More so, Section 56 of the Act further clarifies that the Act would be applicable to the Co-operative Societies, Co-operative Bank, State Co-operative Bank, Central Co-operative Bank and Primary Co-operative Bank as well. For ready reference, relevant extract of Section 56 of the Act is being reproduced hereunder:-

“56. Act to apply to co-operative societies subject to modifications.-- The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation, to banking companies subject to the following modifications, namely:--

(a) throughout this Act, unless the context otherwise requires,--

(i) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank;

(ii) references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);

(b) in section 2, the words and figures "the Companies Act, 1956 (1 of 1956) and" shall be omitted;

(c) in section 5,--

(i) after clause (cc), the following clauses shall be inserted, namely:--

(cci) "Co-operative bank" means a state co-

*operative bank, a central co-operative bank
and a primary co-operative bank”*

More so, it was clarified that words “bank”, “banker”, “banking” or “banking company” cannot be used by any other business and for that purpose Section 7 of the Act would be relevant and the relevant extract thereof reads as under:-

“7. Use of words "bank", "banker", "banking" or "banking company".--- (1) No company other than a banking company shall use as part of its name or in connection with its business any of the words "bank", "banker" or "banking" and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.”

The above referred provisions of the law makes it ample clear that Section 408 IPC deals with criminal breach of trust by Clerk or servant of the Co-operative Society and Section 409 IPC would be applicable and breach of trust by a public servant or in the way of its business as a banker. In the case in hand, a sum of Rs.2,91,830/- was entrusted to the petitioner in the way of his business as a banker and the complainant is a Co-operative Bank and is covered under the Act. That way, learned Sessions Judge has rightly held that the charge has not been framed as per the correct provisions of law, though challan was presented against the petitioner for the commission of offence punishable under Section 409 IPC and the matter was rightly remanded back to the learned trial Court. Thus, there is no illegality in the impugned judgment dated 20.05.2013 calling for any interference by

this Court while invoking its revisional jurisdiction. Hence, present revision petition stands dismissed.

(Shekher Dhawan)
Judge

November 27 2018
“DK”

Whether speaking/reasoned	:Yes/No
Whether reportable	: Yes/No