

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

**CRR-1361-2015 (O&M)
Date of decision: 27.02.2018**

Baldev Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

Ms. Nimrata Kaur, Advocate for
Mr. Sunil Agnihotri, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Present revision petition is filed challenging the judgment dated 23.10.2013 passed by the trial Court, acquitting respondent No.2-accused in FIR No.277 dated 14.12.2002 under Section 409 of the Indian Penal Code (for short 'IPC'), registered at Police Station Tanda as well as the judgment dated 17.12.2014 passed by the lower appellate Court, vide which the appeal filed by the petitioner was also dismissed.

Brief facts of the case are that on a written complaint given by Joginder Pal, Assistant Registrar, Co-operative Society, Dasuya, against

respondent No.2-accused Gian Singh, the aforesaid FIR was registered with the allegations that during the period 1992 to 1993, the accused was posted as Secretary of the Co-operative Agriculture Service Society, Alampur and he was entrusted with Rs.3,76,710/- and instead of depositing the said amount in the account of the Co-operative Society, he misused the same. On the basis of the complaint, an inquiry was conducted and thereafter, the FIR was registered against the respondent-accused. On completion of the investigation, report under Section 173 Cr.P.C. was submitted and the trial Court framed charge under Section 409 IPC.

In support of its case, the prosecution examined PW1 Gurdip Singh, Inspector Audit Co-operative Society, who deposed that he had conducted the audit of the society for the period 01.04.1992 to 31.03.1994 and found that there was embezzlement of an amount of Rs.3,95,851.10/-, as per the cash book and other record of the society and the same was committed by the accused Gian Singh. This witness further stated that he has submitted a report to the Audit Officer of the Co-operative Society and thereafter, an inquiry report dated 24.09.1997 was submitted by the said Audit Officer against accused Gian Singh.

PW2 Shangara Singh deposed that he had taken the loan from the society and has returned the same through accused Gian Singh and he had made entries in his passbook, however, the statement of this witness was deferred to enable him to bring the passbook, but this witness never turned again. PW3 Charanjit Singh, Secretary of the Co-operative Society, Alampur also deposed on the same lines. PW4 Sukhwant Kaur, PW5 Baldev Singh and PW6 Lakhwinder Singh were the villagers, who stated that they had paid the amount

to accused Gian Singh and the same was not deposited in the account of society. Thereafter, statement of the accused under Section 313 Cr.P.C. was recorded, in which he denied all the incriminating evidence put to him. In his defence, respondent No.2-accused examined Malkiat Singh, Inspector Audit as DW3, Jatinder Singh as DW4 and Gurdev Singh as DW5. These witnesses proved on record the audit report pertaining to the period 05.07.1982 to 31.03.1992 as well as some relevant record of the society and daily register. DW5 Gurdev Singh stated that recovery amount of Rs.10,56,000/- was kept in suspense account, as per day book Ex.DW5/A.

Thereafter, the trial Court vide its judgment dated 23.10.2013 acquitted the respondent-accused of the charge under Section 409 IPC. The appeal filed by the petitioner was also dismissed by the lower appellate Court vide judgment dated 17.12.2014.

Learned counsel for the petitioner has submitted that the finding recorded by both the Courts below, that the prosecution has failed to prove on record the cash book, passbook etc. relating to the record of the society for relevant period and therefore, no embezzlement is proved, is incorrect, in view of the fact that the prosecution witnesses have proved on record the documents and as per the audit report Ex.PW1/C, an amount of Rs.3,95,851/- was found due against the respondent-accused. It is further submitted that the Courts below have not appreciated the document Ex.PW1/C, which is having 17 heads giving all the details of the embezzled amount, on the basis of which the audit was conducted and the Courts below have wrongly disbelieved this document. Counsel for the petitioner has further submitted that the Courts below have wrongly held that the accused is not a public servant and therefore, provisions

of Section 409 IPC are not applicable, whereas the respondent-accused being a Secretary of the Co-operative Society, drawing the salary, acquires the status of a public servant.

In reply, learned counsel for respondent No.2 has submitted that both the Courts below have rightly held that the prosecution has failed to prove on record any document that the respondent-accused has committed any embezzlement and the audit report Ex.PW1/C does not prove any embezzlement on the part of the accused.

After hearing learned counsel for the parties and going through the copy of evidence supplied by them, I find no merit in the present petition, for the following reasons: -

(a) A perusal of the evidence led on record shows that the original record, on the basis of which audit report Ex.PW1/C was prepared, has never been produced on record. A bare perusal of this report shows that the accused has allegedly embezzled an amount of Rs.3,95,851/- and as per 17 heads mentioned in this report, specifying the amount embezzled by the accused, is not proved, as the other record of the society including the cash book, daily book and passbook etc., forming basis of such audit, were never produced on record of trial Court.

(b) Even otherwise, the entire prosecution case is based on this report Ex.PW1/C and it being a report, prepared on the basis of original record of the society, which was never produced before the trial Court, it cannot be taken as a document per-se admissible to held the respondent-accused guilty. The passbooks of the customers, who have allegedly made the payment to the respondent-accused, have also not been produced on record. Therefore, there is

no evidence to prove that the report Ex.PW1/C was a correct report based on the original documents, which were never produced before the trial Court.

(c) Both the Courts below have recorded a finding that the prosecution has even failed to prove that at the given time, accused Gian Singh was holding the post of Secretary in the Society, as the allegations against him are that he has committed embezzlement during the period 1992 to 1993. In the absence of his letter of appointment or letter of posting, which is not proved on record, it could not be proved that he was working as Secretary of the Society at the relevant time.

(d) The argument raised by counsel for the petitioner that as per termination letter Ex.PW16/A, vide which the services of Gian Singh were terminated, proves that he was working as Secretary of the Society, however, it nowhere proves that at the relevant time, he was working as Secretary of the Society. Documents Annexures P-1 and P-2, on which counsel for the petitioner has relied upon, are placed on record for the first time in the present revision petition and admittedly, these documents were neither part of the report under Section 173 Cr.P.C. nor were exhibited or put to the accused while recording his statement under Section 313 Cr.P.C. and therefore, the same cannot be relied upon, while deciding the present petition, in exercise of the revisional jurisdiction.

(e) Both the Courts below have recorded a finding, after properly scrutinizing the statements of PW4 to PW7, the account holders with the Co-operative Society that they had paid certain amount to the respondent-accused but for the relevant period, neither the cash books or daily registers were produced.

(f) It may be noticed here that two prosecution witnesses i.e. PW5 Baldev Singh and PW7 Malkiat Singh were declared hostile by the prosecution, as they failed to support the prosecution version. Similarly, PW5 Baldev Singh, in his cross-examination, has admitted that the original record of the society has not been placed on the judicial file.

(g) Both the Courts below have rightly recorded a finding that the President and Secretary of a society are not public servant within the meaning of Clause 12 (b) of Section 21 IPC, therefore, the provisions of Section 409 IPC are not attracted, as a Co-operative Society is not at par with a Corporation established by the State.

In view of the reasons recorded above, I find no merit in the present petition, as the prosecution has failed to prove its case against the respondent-accused, therefore, finding no illegality or irregularity in the impugned judgments passed by the Courts below, the present petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

27.02.2018
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No