

Criminal Revision No.4305 of 2016

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

Criminal Revision No.4305 of 2016
Date of Decision: 03.07.2018

Surinder Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Ms. Avin Kaur Sandhu, Advocate, for
Mr. H.P.S. Sandhu, Advocate, for the petitioner.
Mr. Amandeep S. Gill, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

This petition is directed against the judgment of conviction and order of sentence dated 23.12.2013 of the trial Court, whereby petitioner has been convicted under Section 406 IPC in case FIR No.117 dated 02.04.2008 registered under Sections 406, 420 and 201 IPC at Police Station Phase 1, Mohali, and sentenced to undergo rigorous imprisonment for six months and to pay fine of ₹300/-. In default of payment of fine to further undergo rigorous imprisonment for three days and the judgment dated 04.11.2016 of the First Appellate Court, affirming the judgment aforesaid of the trial Court.

According to prosecution, Gurbachan Singh, when did not succeed in his business of selling motor spare parts/car accessories at Mohali, sold out his goods to the petitioner on heavy discounted rates.

Initially, petitioner paid some amount to the complainant, but later on

Criminal Revision No.4305 of 2016

became dis-honest. Finally, an amount of ₹94,975/- was pending against the petitioner, which he did not pay and accordingly he was booked and challaned under Section 406 IPC.

The trial Court after holding trial, held the petitioner guilty under Section 406 IPC and sentenced him as above vide impugned judgment of conviction and order of sentence dated 23.12.2013.

Being aggrieved, petitioner filed appeal, which too was dismissed vide impugned judgment dated 04.11.2016 by the First Appellate Court, affirming the judgment of conviction and order of sentence aforesaid.

Learned counsel for the petitioner contends that both the Courts below failed to appreciate that matter in dispute between the petitioner accused and the complainant was of civil nature. The complainant knowing that the limitation to file a suit for recovery has expired, intentionally lodged false FIR against the petitioner, giving it a criminal colour. Lone independent witness examined by the complainant turned hostile and, therefore, both the Courts below ought to have acquitted the petitioner. For how much amount offence of criminal breach of trust was committed by the petitioner was not disclosed by the complainant. The complainant has simply filed his complaint before the police in order to help him to recover some amount from the petitioner and not for lodging any FIR against the petitioner. Therefore, the police has illegally registered a case against the petitioner. Petitioner is a first time offender.

On the other hand, learned State counsel supported the judgment of conviction and order of sentence, submitting that petitioner has rightly been convicted, therefore, present petition is liable to be dismissed.

Criminal Revision No.4305 of 2016

both the sides, this Court finds that instant petition is completely devoid of any merit for the reasons to follow.

Complainant Gurbachan Singh as PW2 has produced document Ex.PW2/A before the trial Court showing transaction in between him and the petitioner-accused in the year 2003, which bore the signatures of the petitioner. Signatures of the petitioner on the said document were got compared by the police from his specimen signatures through Forensic Science Laboratory, Punjab and vide report Ex.EXPX it was reported that signatures in question and the specimen signatures are of one and the same person.

In the instant case, in a span of 15 years, despite conviction of the petitioner, he never intended to pay money to the complainant nor made any such effort which proves his *mens rea* that from the very beginning he had illegal intention to commit criminal breach of trust and defraud the complainant. The *mens rea* of the petitioner in committing criminal breach of trust is proved from the fact that he sold the goods entrusted to him by the complainant and misappropriated the sale proceeds and thereafter kept on dilly-dallying the payments to the complainant either on one pretext or the other. Not only this, the petitioner just kept on making false promises to the complainant.

It is needless to mention here that in a case of criminal breach of trust, it is always the choice of the complainant either to exhaust civil remedy or to initiate criminal action against the accused. Considering this aspect of the matter, no fault can be found in the action of complainant

Gurbachan Singh for lodging criminal complaint against the petitioner.

Criminal Revision No.4305 of 2016

not suffer from any illegality or perversity.

Dismissed.

CJM, Mohali is directed to issue warrants of arrest against the petitioner to serve the remaining sentence.

July 03, 2018
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No