

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1038 of 2019 (O&M)
Date of Decision: 12.7.2019

State of Haryana

.....Applicant

Vs.

Saravjit Kaur and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. Parveen Bhadu, AAG, Haryana.

HARNARESH SINGH GILL, J.

1. State has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 11.1.2018 passed by the learned Additional Sessions Judge, Karnal vide which the appeal filed by the accused-respondents, challenging the judgment of conviction dated 5.8.2015 and order of sentence dated 6.8.2015, passed by Judicial Magistrate Ist Class, Karnal in case FIR No. 43 dated 12.2.2011 under Sections 420, 467, 468, 471, 409, 506, 120-B/34 of the Indian Penal Code, registered at Police Station Butana, has been allowed and they have been acquitted of the charges framed against them.

2. As per the prosecution case Ram Dia, Member Panchayat had filed a complaint alleging that respondent No. 1-accused was the Sarpanch of Gram Panchayat of village Nigdhu and respondent No. 2-accused was the husband of respondent No. 1. Respondent No. 2 had been looking after and managing all the affairs of the Gram Panchayat on behalf of his wife

(respondent No. 1). It was alleged that the accused-respondents had been misappropriating the funds of Gram Panchayat and many complaints in this regards were given to Deputy Commissioner, Karnal but no action was taken by the authorities. It was further alleged that in the month of January 2011, the complainant along with other members of Gram Panchayat including Ramesh Kumar, Member Panchayat while checking the accounts of Gram Panchayat, found that the respondents had withdrawn the amount of Rs. 4212/- on 6.8.2010 and Rs. 2268/- on 24.10.2010 from the said account showing that Puran Singh had worked with the Gram Panchayuat on muster-roll. However, said Puran Singh, who was the uncle of complainant, had died on 5.8.1993 i.e. 17 years prior to the withdrawal of the said amount. On asking, the respondents could not give satisfactory reply. Accordingly, on the basis of the complaint filed by Ram Dia, the FIR in question was lodged against the respondents.

3. After completion of investigation and necessary formalities, challan was presented against accused-respondents.

4. Charges were framed against the accused-respondents under Sections 409, 420, 467, 468, 471 read with Section 120-B IPC to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution had examined as many as 12 witnesses.

6. Complainant Ram Dia while appearing as PW-1 had proved the documents Ex. PW1/B to Ex. PW1/E and the application moved by him to BDPO Karnal as Mark-A to authenticate his version which was duly supported by PW-3 Kaptan Singh. Prosecution had also examined PW-8 Shubham Kumar, Chowkidar of the village to prove the date of death of

Puran Singh, who was reflected to have worked with the Gram Panchayat in the muster-roll and that the amount was withdrawn by the respondents for the development work.

7. After taking into consideration the evidence on record and hearing the counsel for the parties, the trial Court vide judgement dated 5.8.2015 convicted the accused-respondents under Sections 409, 420, 467, 468, 471 read with Section 120-B IPC and vide order dated 6.8.2015 sentenced them as under:-

<i>Sections</i>	<i>Imprisonment</i>
<i>409 read with Section 120-B IPC</i>	<i>To undergo simple imprisonment for a period of three years and to pay a fine of Rs. 500/- each.</i>
<i>420 read with Section 120-B IPC</i>	<i>To undergo simple imprisonment for a period of three years and to pay a fine of Rs. 500/- each.</i>
<i>467 read with Section 120-B IPC</i>	<i>To undergo simple imprisonment for a period of three years and to pay a fine of Rs. 500/-each.</i>
<i>468 read with Section 120-B IPC</i>	<i>To undergo simple imprisonment for a period of three years and to pay a fine of Rs. 500/- each.</i>
<i>471 read with Section 120-B IPC</i>	<i>To undergo simple imprisonment for a period of three years and to pay a fine of Rs. 500/- each.</i>

8. In default of payment of fine, they were to further undergo simple imprisonment for a period of three months. All the sentences were ordered to run concurrently.

9. Aggrieved against the said judgment and order, the accused-respondents preferred an appeal. Complainant Ram Dia also preferred an appeal seeking enhancement of the sentence awarded to the accused-respondents. Both the appeals were taken up together by the Appellate Court and vide a common judgment dated 11.1.2018, the appeal filed by the accused-respondents was allowed and they were acquitted of the charges framed against them, whereas the appeal filed by the complainant was

dismissed.

10. It has been argued by the State counsel that respondent No. 1, being Sarpanch of the village, along with her husband i.e. respondent No. 2 had misappropriated the panchayat funds. Apart from that, there were other complaints against the respondents as they had withdrawn the amount of Rs. 4212/- and Rs. 2268/- from the account of Gram Panchayat by showing Puran Singh working with the Gram Panchayat on muster-roll whereas the said Puran Singh had died on 5.8.1993. The said evidence had been placed on the record, but the same was ignored by the Appellate Court. It has further been argued that the respondents had hatched a conspiracy and caused unlawful loss to the Gram Panchayat and the public at large by withdrawing the said amount by putting the thumb impressions of a dead person. Learned State counsel has further laid stress on the statement of Chowkidar of the village, namely Shubham Kumar (PW-8) who had proved the copy of birth and death register as Ex. PW-8/A wherein the date of death of Puran Singh was recorded as 5.8.1993.

11. We have heard learned State counsel but do not find any merit in the present application seeking leave to appeal.

12. It is a case in which the main allegation against the respondents is that they had affixed the thumb impressions against entry No. 3 of Puran Singh in the muster-roll regarding disbursement of the amount of Rs. 4212/- in August and Rs. 2268/- in October. The muster-roll Ex. P1, was prepared by the Gram Sachiv. The said document was only counter signed by the Sarpanch which was verified by the Panch of the concerned ward. Other than this, all the Panches of the Gram Panchayat had signed the said muster-roll.

13. It is a case in which the other members of the Gram Panchayat, who were signatories to the muster-roll (Ex. P1), had not been arrayed as accused. Even complainant Ram Dia had also put his thumb impressions on the said muster-roll regarding which the question had been raised. As far as the statement of prosecution witness PW-2 Kaptan Singh is concerned, he had contested the election against respondent No. 1. On the complaint moved by the complainant, the Deputy Commissioner had marked the enquiry to Sub Divisional Officer (Civil), Karnal, who had conducted a detailed enquiry and on the basis of said enquiry, the Deputy Commissioner, Karnal passed the order dated 31.5.2012 (Ex. D1) vide which the respondents were exonerated of the charges levelled against them.

14. Even as per the FSL report, the thumb impressions of respondent No. 1 and Dasa Ram were not matchable. The investigating officer in his cross-examination admitted that he had not recorded the statement of Dasa Ram. Moreover, being husband of the Sarpanch of Gram Panchayat i.e. respondent No. 1, no fault can be attributed to respondent No. 2.

15. Apparently, the Appellate Court has held that the thumb impressions of respondent No. 1-Sarvjit Kaur (Sarpanch) had not been proved and the respondents had been convicted on the basis of presumption.

16. Thus, after considering the above facts, we are of the considered opinion that the Appellate Court has rightly acquitted the respondents. Learned State counsel could not point out any material illegality or perversity in the impugned judgment of acquittal. Nothing has been shown as to the misreading and misinterpretation of the evidence by the learned Appellate Court, while passing the impugned judgment.

17. Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

July 12, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes