

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.2973 of 2009 (O&M)

Date of decision: 08.04.2019

Prithi Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.K. Handa, Advocate
for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

ANIL KSHETARPAL, J. (ORAL)

Petitioner is in the revision petition against the judgment of conviction and order of sentence passed by the trial Judge affirmed in appeal by the Additional Sessions Judge, Kaithal.

The petitioner was working as Clerk with Sakra Cooperative Credit and Service Society, Village Sakra. He admittedly received Rs.2,87,843/- from the various members of the Society on 4th & 5th May, 2000. It is the case of the prosecution that the aforesaid amount has been embezzled/misappropriated by the petitioner. On the other hand, defence of the petitioner is that the aforesaid amount was handed over to Karam Singh, Secretary of the Society. The petitioner also lodged a counter complaint on which case was not registered but on the intervention of High Court, FIR was registered but the petitioner failed to convince the Court in the aforesaid case.

Both the Courts have laid much stress on the fact that entrustment of the amount of Rs.2,87,843/- is not disputed and the petitioner has failed to prove that the aforesaid amount was paid to Karam Singh, Secretary of the Society as alleged by the petitioner.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Although, this Court is conscious of the fact that in revision petition, the evidence cannot be re-appreciated unless the judgments passed are result of material irregularity, however, after hearing arguments, this Court is of the view that the judgments passed by both the Courts below are suffering from patent error and therefore, require to be corrected by this Court in revision. The reasons for the conclusion are as under:-

1. Ex.P-22 is original receipt book on which the petitioner had issued receipts to various persons who had come to deposit the amount of Rs.2,87,843/-. On the reverse page of the counterfoil of receipt No.90374 dated 05.05.2000, Karam Singh admittedly had made calculation of the amount of Rs.2,87,843/- which he admitted while appearing in evidence. It is not explained that if Karam Singh has not received the aforesaid amount, why he made calculation with his own hand.

2. The prosecution has not produced on record any evidence to prove that previously the payment received by the petitioner was being handed over to Secretary of the Society-Karam Singh against any receipt.

3. Still further, three receipts bearing No.90375, 90376 and 90377 are issued by Karam Singh, the Secretary of the Society. Once the Court examines cash book which has been produced on file, it is apparent that all

entries in the cash book have been made by Karam Singh. In the entries made on 04.05.2000, total amount of Rs.81,055/- is entered to have been received whereas there was a previous balance of Rs.56,270/- and amount of Rs.1,37,300/- was deposited by Karam Singh in the bank on 04.05.2000 and Rs.25.17 was balance amount. On the next day, as per cash book, total receipt is Rs.62,340/- which have been received by Karam Singh i.e. against receipts No.90375, 90376 and 90377. After adding the previous cash in hand, the total amount came to Rs.62,365.17. However, in the cash book, what is apparent from Ex.P-12/A that only Rs.20,000/- was deposited by Karam Singh whereas Rs.42,365.17 was kept as cash in hand. On 06.05.2000, once again there is an entry of cash in hand i.e. Rs.42,365.17 which is carried forward. There is no explanation as to why Karam Singh did not deposit the entire amount of Rs.62,365.17 in the bank on 05.05.2000 but choose to deposit only Rs.20,000/-.

4. Still further, the attendance register which is Ex.P-H clearly proves that the petitioner was present on 05.05.2000 in which he has been shown absent from 1.30 PM to 5.00 PM. It is alleged by the prosecution that on 06.05.2000, the petitioner was not present rather absent. However, against entry of 06.05.2000, the petitioner has entered the time at which he entered the office of the Society and signed against the date. There is no explanation as to how the petitioner has signed the attendance register on 06.05.2000. Both the Courts have relied upon the fact that the petitioner had given in writing that he has embezzled the amount and he would pay back. The petitioner has alleged that the aforesaid writing was taken by Karam Singh after putting him in illegal confinement.

It is apparent from the facts which have been noticed above

that the prosecution failed to establish the case against the petitioner beyond reasonable doubt. Once the prosecution failed to establish that the petitioner ever deposited any amount in bank himself or made an entry in the cash book, then onus lay on Karam Singh who was the then Secretary of the Society to explain as to how the calculation of Rs.2,87,843/- has appeared in his handwriting on the reverse page of the counterfoil of receipt No.90374. Still further, three subsequent receipts are in the hand of Secretary-Karam Singh. When he appeared in evidence as PW-8, he has admitted that the calculation is in his handwriting. In such circumstances, both the Courts have erred in convicting the petitioner.

Hence, the judgments passed by the Courts below are set aside.

The criminal revision petition is allowed.

The petitioner shall stand acquitted and the bail bond submitted by the petitioner shall stand discharged.

08.04.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No