

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 3127 of 2009 (O&M)
Date of Decision: 28.1.2019

Rameshwar Parshad

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Shobit Phutela, Advocate
for the petitioner.

Mr. H.S.Sullar, DAG, Punjab.

HARNARESH SINGH GILL, J.

Petitioner had faced the trial qua commission of offence punishable under Section 409 of the Indian Penal Code, 1860 ('IPC' for short) in FIR No. 76 dated 20.4.2002, registered at Police Station Ropar. Trial Court vide judgment/order dated 29.7.2008 ordered the conviction and sentence of the petitioner under Section 409 IPC. Aggrieved against the said judgment/order of his conviction and sentence, petitioner preferred an appeal which was dismissed by the Appellate Court vide judgment dated 31.8.2009. Hence, the present petition by the petitioner.

FIR in question was ordered to be registered against the petitioner on the complaint dated 12.4.2000 made by Chief Judicial Magistrate, Ropar to Senior Superintendent of Police, Ropar. The contents

of the complaint were that the petitioner was working as Naib Nazir, Malkhana and had joined his duty on 15.2.1996. The petitioner was entrusted with the case properties of the cases pending in various Courts and his duty was to maintain the case properties in his custody under lock and key and to produce the same in the Court where the relevant cases were pending. It was alleged that in case State versus Daljit Singh etc., FIR No. 31 dated 13.6.1998, registered under Sections 124-A, 153-A and 120-B IPC, Police Station Sohana, two wireless sets were deposited with petitioner-Rameshwar Parshad, Naib Nazir, Malkhana (Judicial) on 1.8.1998 and entry in this regard was made by him at Sr. No. 3 dated 1.11.1998 and the same was countersigned by the then Chief Judicial Magistrate, Rupnagar. The said case property was required, during trial, pending in the Court of Additional Sessions Judge, Rupnagar. An application dated 10.1.2002 was moved to the Court that the case property i.e. wireless sets were deposited in the Judicial Malkhana Ropar and direction was sought from the Court to produce the case property.

Accordingly, on 10.1.2002 Additional Sessions Judge passed the order issuing directions to the complainant to arrange the production of the case property in the Court and order was also made to the petitioner to produce the wireless sets in the Court of Additional Sessions Judge, Ropar. The petitioner reported that the auction was held and the case properties were lying out of order in a haphazard manner and he was trying to find out the same and his co-worker Sanjiv Negi was not present on his seat and the case property will be searched and later on it will be produced in the Court. But neither the said wireless sets were found nor produced in the Court.

After preliminary enquiry, regular inquiry was initiated against

the petitioner under the orders of District and Sessions Judge, to be conducted by the Additional District and Sessions Judge wherein it was observed that the alleged case property was misappropriated which was under the custody of the petitioner. Accordingly, FIR in question was registered.

After completion of investigation and necessary formalities, challan was presented against the petitioner.

Charge was framed against the petitioner under Section 409 IPC. The accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined 09 witnesses during trial. PW-1 Sh. Ravinder Singh, who was Chief Judicial Magistrate deposed that two wireless sets were not produced, being case property with petitioner Rameshwar Parshad, Malkhana Moharar and complaint Ex. P5 was moved to Senior Superintendent of Police and FIR was registered.

Ex. PW3/A i.e. the attested copy of Malkhana register, produced by PW-3 Rajesh Vohra shows that at Sr. No. 3 dated 1.8.1998 there was an entry of FIR No. 31 dated 13.6.1998 under Sections 124-A, 153-A and 120-B IPC, registered at Police Station Sohana which carries entry of two wireless sets.

In the statement recorded under Section 313 Cr.P.C., the petitioner/accused denied the prosecution case and abjured the trial and pleaded false implication.

In defence, the accused examined two witnesses.

The trial Court convicted the petitioner and sentenced him under Section 409 IPC to undergo rigorous imprisonment for three years along with fine of Rs. 5,000/- and in default of payment of fine, to undergo

rigorous imprisonment for two months. The appeal preferred by the accused was dismissed on 31.8.2009 by Sessions Judge, Rupnagar.

Learned counsel for the petitioner has submitted that ingredients of Section 409 IPC are not satisfied.

It is further submitted that at one point of time Sanjiv Nagi worked in Malkhana and in the absence of petitioner-Rameshwar Parshad, Sanjiv Nagi used to sit in Malkhana and Malkhana was never locked. He has placed reliance on ***Harcharan Singh versus State of Punjab 1998 (4) R.C.R. (Criminal) 616*** and ***Janeshwar Das Aggarwal versus State of U.P. 1981 AIR (SC) 1646***.

On the other hand, the learned State counsel has argued that the petitioner has been rightly convicted. It is the duty of Malkhana Moharar to keep case property in safe custody which was entrusted to him.

I have given thoughtful consideration to the points raised by both the sides.

As per the present case, the case property was entrusted to the petitioner being incharge of Malkhana, Naib Nazir. The two wireless sets were the case property in FIR No. 31 dated 13.6.1998 under Section 124-A, 153-A and 120-B IPC registered at Police Station, Sohana in case State Vs. Daljit Singh etc. and attested copy of the same is already on record of the trial Court as Ex. PW3/A.

Thus, the case of the petitioner cannot be equated with the case law referred by the counsel for the petitioner as in ***Janeshwar Das Aggarwal's*** case (supra) as there was no evidence at all to show that entrustment was made or there was any document in the nature of list of charge to show that physical charge of articles was handed over.

Similarly, in the case of **Harcharan Singh** (supra), shortage occurred while he was Store-keeper but there was nothing further regarding entrustment.

For proper adjudication of the matter, provisions of Sections 405 and 409 IPC need to be taken into consideration which read as under:-

405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust.”

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 1 [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.

Thus, in the present case there is clear cut misappropriation of two wireless sets that were entrusted to the petitioner as a case property. Petitioner, being incharge of Judicial Malkhana, was duty bound, as a public servant, for the proper safety of wireless sets. By not doing so petitioner has committed criminal breach of trust.

Consequences of non-availability of two wireless sets from the Malkhana in the possession of the petitioner cannot be compensated at any

cost. Moreover, vide Ex. P3 petitioner reported that due to auction, wireless sets could not be traced. Vide Ex. P4, preliminary enquiry, the petitioner was held responsible for loss.

The regular enquiry report dated 28.2.2004 imposing penalty of withholding five annual grade increments with cumulative effect is a matter of departmental proceedings.

Thus the Courts below, after appreciating the evidence led on record, have rightly ordered the conviction of the petitioner under Section 409 IPC. There is no illegality or perversity in the findings given by both the Courts below regarding conviction of the petitioner. Thus, no interference of this Court is required, as far as both the judgments passed by the Courts below are concerned. Accordingly, judgment of conviction and sentence of the petitioner, passed by the Courts below, are upheld.

The petition is dismissed.

The petitioner is on bail. He is directed to surrender before the Court of Chief Judicial Magistrate concerned within a week from the date of passing of this order to undergo remaining part of sentence. Copy of this order be sent to the Courts below.

(HARNARESH SINGH GILL)
JUDGE

January 28, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes