

S.No.217

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

Date of Decision:08.01.2019

1. CRR No.2530 of 2017

Som Dutt	Petitioner
Vs.	
The State of Punjab	Respondent

2. CRR No.2532 of 2017

Daljit Singh and another	Petitioners
Vs.	
The State of Punjab	Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Sushil Saini, Advocate for the petitioner
in CRR No.2530 of 2017.

Mr. H.S. Saini, Advocate for the petitioner in
CRR No.2532 of 2017.

Mr. K.S. Aulakh, DAG, Punjab.

Ms. Paramjit Deol, Advocate for the Central
Co-operative Bank.

Rajbir Sehrawat, J.(Oral)

This order shall dispose of two revision petitions i.e. CRR No.2530 of 2017 and CRR No.2532 of 2017 arising out of the common judgment/ order dated 24.04.2017 passed by Additional Sessions Judge, Gurdaspur.

These two revision petitions have been filed challenging the judgment/ order dated 24.04.2017 passed by Additional Sessions Judge, Gurdaspur whereby upholding the order dated 06.08.2014 passed by Sub Divisional Magistrate, Batala, the conviction of the petitioners under

Sections 120-B, 420, 467, 468, 471 and 379 IPC and the sentence awarded to them have been upheld.

The brief facts, as mentioned in the judgment of the Court below, are that one Subhash Chander, Manager of Batala Branch, Central Co-operative Bank, Batala made a complaint to the Police that on 03.10.2003, one of the petitioners, namely, Daljit singh, who was posted as peon at Shri Hargobindpur Branch approached his Bank and produced one draft No.05985 dated 01.10.2003 for Rs.90,000/- in the name of his brother-in-law Narinder Singh. The same was encashed by him. Similarly, on 02.10.2003, he again approached the same Branch with draft No.05999 dated 18.10.2003 which was in the name of his relative Arjun Singh. On this draft, Arjun Singh received Rs.3 lakhs. At that time, Daljit Singh and Som Dutt; both were also present. It was further alleged that on 04.11.2003, Daljit Singh again tried to get other draft encashed for an amount of Rs.1 lakh. However, on inquiry, it was found that the Hargobindpur Branch has never issued draft and further it was found that the draft book containing the leaflets of the draft from Sr.No.05976 to 06000 had been stolen from that Branch. Accordingly, it was alleged that Daljit Singh, Som Dutt and Narender Singh, the present petitioners alongwith Arjun Singh had cheated the Bank and committed a fraud upon it by getting the money encashed/ transferred through the drafts fabricated on leaflets from the stolen draft book. On the basis of these allegations, the present FIR was lodged.

After investigation, the police filed challan against the present petitioners and one Arjun Singh. To prove their case, the prosecution had examined PW-1 HC Narinder Singh, PW-2 HC Bodh Raj, PW-3 Ashok

Kumar, PW-4 Dhiraj Kumar, PW-5 Harbans Kaur, PW-6 ASI Kuljit Singh, PW-7 Jaswinder Singh, PW-8 Kashmir Singh, PW-9 Jai Dev, PW-10 Sukhjeet Singh, PW-11 Harjinder Singh, PW-12 Subash Chander and PW-13 Inspector Baldev Singh and, thereafter, the evidence of the prosecution was closed. It has also come on record that during the trial, the prosecution had made an application for directing the petitioners to give their specimen signatures so as to compare the same with the writings on the drafts and the signatures found on the backside of the encashed drafts. However, the petitioners had refused to give their specimen signatures.

On the basis of the evidence led before the trial Court and also on the basis of adverse inference drawn against the petitioners, the petitioners were convicted of varying offences under Sections 120-B, 420, 467, 468, 471 and 379 IPC. They were sentenced to rigorous imprisonment for various terms, maximum being three years. However, one of the co-accused, namely, Arjun Singh had expired during the pendency of the trial itself.

Aggrieved against the judgment of conviction and order of sentence, the petitioners preferred appeal before the Court of Additional Sessions Judge, Gurdaspur. However, the said appeal was also dismissed by the learned Additional Sessions Judge vide decision dated 24.04.2017. Impugning the said judgments of conviction and order of sentence, the present two separate petitions have been filed, although against a common judgment.

Arguing the case for the petitioners, counsel for the petitioners has submitted that there is no direct evidence showing that the theft of the

drafts book, as alleged by the issuing Branch, was actually committed by the petitioners only. It is further contended that qua the forgery of the drafts also, there is no direct evidence that it was done by the petitioners. Counsel for the petitioners has further pointed out the observations of the Lower Appellate Court, wherein it is observed that there is no direct evidence against the petitioners having forged the said drafts. Counsel for the petitioners has argued that PW4, Dhiraj Kumar who was working as a Clerk in the Paying Branch had duly verified the said drafts before making the payments on the basis of the same. This witness has admitted in the cross-examination that he had verified the drafts and the signatures thereon.

Learned counsel for one of the petitioners, namely, Som Dutt has submitted that this petitioner is not alleged to have either forged the drafts or have received any amount on the basis of the same. Therefore, he has been wrongly convicted in the case.

On the other hand, learned counsel for the Bank, who is assisting the learned counsel for the State has submitted that there has come direct evidence regarding stealing of the drafts book; explaining the circumstances when the petitioners had stolen the drafts book. Still further, it is contended that to connect the petitioners to the fogery and encashment of the drafts, the prosecution had sought the specimen signatures of the petitioners. However, they had refused to give the specimen signatures. Therefore, the Courts below have rightly drawn adverse inference against the petitioners. Still further, it is contended that PW4, upon which the petitioners are relying, himself has categorically deposed that it was the petitioners who had come to him for getting the drafts encashed. He has

further deposed that the petitioner, namely, Daljit Singh had impressed upon him to make the payment immediately. Still further, it is contended that the drafts have been got encashed/deposited by the petitioners and the money has gone to their immediate relatives. Therefore, the chain of the circumstances is completed against the petitioners. Hence, the petitioners have rightly been convicted of the offences alleged against them. It is further contended by the counsel for the Bank that besides the three drafts mentioned in the judgment, there was one more draft of Rs.5 lakhs which was also got encashed by the petitioner – Daljit Singh. To support this contention, learned counsel for the Bank has relied upon the statement of PW4 itself, who had deposed to this effect.

Having heard learned counsel for the parties, this Court is of the considered opinion that the Courts below have not committed any illegality or irregularity warranting any interference by this Court. During the arguments, it is not even disputed by counsel for the petitioners that the signatures of the petitioners and their co-accused are there on the backside of the drafts; which were put at the time of encashment or presentation of these drafts. However, despite that, the petitioners have remained conspicuously silent as to how the drafts came to their hands for being further presented for encashment or deposit. Once it is admitted by them that they had encashed/deposited the drafts then onus lies upon the petitioners to prove that the negotiable instrument which was being presented by them for encashment was received by them in due course and through legal means. Even in the statement made under Section 313 Cr.P.C., the petitioners have not disclosed or even claimed to have received

the drafts in due course or through any legal means. This well thought-out silence on the part of the petitioners conclusively leads to the complicity of the petitioners in the crime. Even the effort of the prosecution to connect the petitioners to the said drafts; by comparing writing and the signatures on the backside of the encashed drafts was overcome by the petitioners by refusing to give specimen writings, just to conceal their guilt. Therefore, the Courts below have rightly drawn the adverse inference against the petitioners, although the same may not even be required in view of the categorical admission on the part of the counsel for the petitioners that the signatures on the backside of the drafts are of the petitioners and their co-accused.

Learned counsel appearing for the petitioner – Som Dutt has submitted that this petitioner has no concern with the crime, because neither he is beneficiary nor was he employed with the Bank. However, it has come in the testimony of the witnesses examined by the prosecution that this petitioner was also present with the co-accused when the transaction of encashment of the said draft was taking place. Even petitioner Som Dutt has not taken any stand as to how he was present there, either in his statement under Section 313 Cr.P.C or otherwise. It also deserves to be noted that this petitioner has been convicted with the help of Section 120-B IPC; for being part of the conspiracy. Therefore, it is totally immaterial whether he is beneficiary of the said drafts or whether he is the employee of the Bank or not.

This Court also does not find any substance in the argument of the learned counsel for the petitioners that there is no direct evidence qua

the stealing of the drafts book by the petitioners. Learned counsel for the Bank has rightly pointed out the statements made by the prosecution witnesses where the factum of the draft being stolen is amply deposed by these witnesses.

Otherwise also, the scope of revision is having a limited ambit to see only the illegality and impropriety of the orders passed by the Court below. The re-appreciation of the evidence may not be the proper domain for exercising revisional powers. As mentioned above, from the perusal of the judgments/ orders passed by the Court below as well as from perusal of the record, this Court does not find any illegality or impropriety in the judgments/orders passed by the Court below.

In view of the above, finding no merits, the present petitions are dismissed.

January 08, 2019
renu

(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No