

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.3468 of 2017(O&M)
Date of decision: 03.10.2019

Yadwinder Singh Buttar

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. A.P.S.Deol, Senior Advocate with
Mr. Himmat Deol, Advocate for the petitioner

Mr. S.P.S.Tinna, Additional Advocate General, Punjab

Mr. Pushpinder Kaushal, Advocate for respondent No.2

ANIL KSHETARPAL, J. (ORAL)

This revision petition has been filed by petitioner-Yadwinder Singh Buttar against the judgment of conviction and order of sentence which have been affirmed by the learned First Appellate Court.

As per the case of the prosecution four accused- Baljit Singh, Raghubir Singh, Kulwinder Singh and Yadwinder Singh Buttar (petitioner) had committed cheating and hence offence of dishonest misappropriation of the property to the tune of Rs. 10 lakhs is made out against the petitioner and other co-accused. Prosecution asserts that these accused offered to invest a sum of Rs.10 lakhs belonging to the first informant in order to make profit in real estate. It is asserted that there was an oral understanding that the amount would swell to 1 ½ times i.e Rs. 15 lakhs within a period of six months. The amount of Rs. 10 lakhs was paid in the following manner:-

“Through Bank draft in favour of Raghubir Singh s/o Budh

Singh amounting to Rs. 9 lakhs and Rs. 1 lakh in cash.”

It must be noticed that learned Judicial Magistrate acquitted the accused under Section 420 IPC, however, convicted them under Section 406 IPC. The first appeal against the aforesaid judgment was dismissed.

It is not in dispute that in the revision petition filed by co-convicts i.e Baljit Singh, Raghubir Singh and Kulwinder Singh, parties have entered into settlement and vide decision dated 1.5.2017 first informant-victim had accepted a sum of Rs. 24 lakhs for settlement of the dispute with the aforesaid accused. The order passed is Annexure P-4.

Now only Yadwinder Singh Buttar remains.

This Court has heard learned counsel for the parties at length. It may be noted here that apart from the sentence awarded, the Court had also directed accused to pay a sum of Rs. 2,50,000/- each as compensation to the first informant, which has been deposited by the petitioner in the year 2017.

Learned senior counsel appearing for the petitioner has drawn the attention of the Court to the defence of victim/first informant-Amanpreet Singh. He has stated that draft of Rs. 9 lakhs and cash of Rs. 1 lakh was handed over to Kulwinder Singh and Kulwinder Singh had in turn handed over the cash amount to petitioner-Yadwinder Singh Buttar. He has further stated that the aforesaid amount was left by Yadwinder Singh Buttar on the table as he had come with the first informant in order to see him off and thereafter went away from the place. It has been deposed by the first informant/victim in following manner:-

“It is correct that Yadwinder Singh help me to get profitable deal for me and there was no dishonest intention of him in the same, however, the other accused

namely Kulwinder Singh, Baljeet Singh, Raghubir Singh's intention was not good.”

Similarly Simarjeet Singh had been examined by the prosecution as PW 4 who had reiterated what has been stated by the first informant i.e victim. Simarjeet Singh additionally has stated as under:-

“Yadhwinder Singh had not given any assurance but the Kulwinder Singh gave the assurance to return the money of Rs. 15 lakhs within 6 months.”

xxx

“The assurance was only given by Kulwinder Singh and not by the accused Raghubir Singh and Baljeet Singh.”

xxx

“The repayment of amount i.e 1 ½ times was to be made by Kulwinder Singh not by Yadhwinder Singh.”

On the strength of the aforesaid depositions of the first informant/victim, and a witness learned senior counsel submits that offence under Section 406 IPC is not made out against the petitioner. Criminal breach of trust involves dishonest mis-appropriation of the property or dishonest conversion of that property to his own use.

Misappropriation of property has been defined under Section 403 IPC which is extracted as under:-

“Section 403 Dishonest misappropriation of property – Whoever dishonestly misappropriates or converts to his own use any movable property, shall be

punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

He, hence, submits that once there was no dishonesty on the part of the petitioner-Yadwinder Singh Buttar as admitted by the victim/first informant, the judgment of conviction passed by the Courts below are erroneous.

On the other hand, learned counsel for the first informant has supported the judgments passed by the Courts below by submitting that the word 'dishonest' is only for misappropriation and not to be read for conversion of the property for his own use.

This Court has considered the submissions and find that the argument of learned senior counsel for the petitioner is more plausible. Before someone can be convicted for criminal breach of trust as provided under Section 406 IPC, there has to be dishonest misappropriation of property or conversion to his own use that property. Sine qua non for an offence of criminal breach of trust is dishonesty. In the present case, as admitted by the first informant as well as Simarjeet Singh there was no dishonest misappropriation by the petitioner.

Still further these witnesses examined by the prosecution have themselves admitted that petitioner did not give any assurance. Further there is no evidence that the amount of Rs. 1 lakh was ever entrusted to the petitioner and rather it is the case of the prosecution that the amount was handed over to Kulwinder Singh who had in turn handed over to the petitioner and he had left it at the table when petitioner accompanied the first informant in order to see him off and thereafter left the place where the

amount was handed over. There is no evidence that the petitioner went back and pocketed Rs.1,00,000/-

Even otherwise the first informant has already received a sum of Rs. 24 lakhs from the co-accused. Hence, the judgments of convictions are set aside. Petition stands allowed. Amount of Rs. 2,50,000/- deposited by the petitioner be released to him.

03.10. 2019		(ANIL KSHETARPAL)
rekha		JUDGE
Whether speaking/reasoned	Yes / No	
Whether Reportable	Yes / No	