

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

CRR-2695-2013(O&M)

Date of decision:-4.3.2020

Avinash Chander

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Dinesh Arora, Advocate
for the petitioner.

Mr.Kuldeep Sharma, DAG, Haryana.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 13.9.2007 passed by Judicial Magistrate Ist Class, Rohtak vide which he had convicted accused Avinash Chander for the offence under Section 409 IPC and the order dated 14.9.2007 vide which said accused was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo imprisonment for a period of six months for the offence under Section 409 IPC as well as judgment dated 27.7.2013 passed by Additional Sessions Judge, Rohtak vide which the said judgment was affirmed and appeal filed by the accused – convict was dismissed.

The accused-convict – Avinash Chander, who is petitioner before this Court prays that the revision be accepted, the impugned

judgment of his conviction and order of sentence passed by Judicial Magistrate Ist Class, Rohtak and judgment in appeal by Additional Sessions Judge, Rohtak be set aside and he be acquitted of the charge framed against him.

Briefly stated, the the facts of the case as per the prosecution story are that on 3.8.1994, Dr.Rajshree, DSP, Headquarter, Rohtak received an information in her office that in department of Water Disposal Mechanical Sub Division, Rohtak situated at Bye Pass, Delhi, Avinash Chander, JE (accused) was Incharge of the store, situated behind 'Bicha Ram & Sons', petrol pump; Avinash Chander used to keep 20/20 litre diesel out of Government diesel and used to sell that illegally; he had kept diesel in one drum placing it in truck No.HRY/808 for the purpose of sale and if immediate raid was conducted, then Avinash Chander, JE could be caught red handed; relying upon that information, Dr.Rajshree, DSP formed a raiding party comprising of DSP Headquarter, Jai Bhagwan Punia AFSO, Sri Bhagwan Dass Arora, Inspector, Food & Supply Department, Rohtak, Jagdish Chander SI, HC Rajbir Singh, HC Subhash Chander etc. and went to the spot in an official jeep; ruqa was sent to the police station, on the basis of which formal FIR was registered.

The raiding party had visited at the spot where Bhikha Ram and Rajbir joined the investigation. The raiding party reached at the store of Department of Water Disposal Mechanical Sub Division, Rohtak where Avinash Chander, JE was present. He was asked to produce the stock register regarding HSD and accused produced relevant documents before the Investigating Officer. Three copies of all the indents were

taken into police possession vide a recovery memo in presence of the witnesses. Five drums of HSD which were lying in the store, the contents thereof were measured by Jai Bhagwan Punia, AFSO by gauge. After measurement of four drums containing 180 litre HSD each and one drum containing 160 litre HSD was found, in this manner total diesel of 880 litre was recovered and it was sealed with the seal of Jai Bhagwan Punia, AFSO. One drum was recovered from truck No.HYR/808, which was measured with the help of gauge. It was found to contain 208 litre HSD. It was taken into possession vide recovery memo. Investigation in this case was conducted by DSP Dr.Rajshree, Headquarter, Rohtak with SI Raghbir, Police Station Civil Lines. Accused was arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Area Magistrate, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned trial Magistrate finding that charge for offences under Sections 409, 462, 468 and 471 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined in as many as nine witnesses, namely, Rajbir as PW1, Bhagwan Dass as PW2, Bhikha Ram as PW3, Raghbir Singh, Inspector as PW4, Dr.Rajshree , DSP as PW5, Jai Bhagwan Punia as PW6, Udey Singh,

Supervisor as PW7, Satbir Singh as PW8 and Bhoop Singh, DSP as PW9.

Thereafter, the prosecution evidence was closed by Court order dated 24.2.2007.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

In his defence evidence the accused examined Sh.Mehtab Singh, Clerk, Water Service Mechanic Sub Division, Rohtak as DW1.

After hearing arguments, learned Judicial Magistrate Ist Class, Rohtak convicted and sentenced the accused as mentioned supra.

The reasoning for arriving at such conclusion is contained in para Nos.17 to 21, which for ready reference are being reproduced as under:

17. The cosmetic argument of learned defence counsel is that as the evidence brought on record by the prosecution falls short, as is required to prove a criminal charge, therefore, the accused deserves to be acquitted, is not only devoid of merit but misplaced. Learned defence counsel drew the attention of this court towards the store indent Ex. D1. Bare perusal of indent Ex.D1 vide dated 2.8.94. shows that 100 litre diesel was issued to truck No.HRD-8206. Learned defence counsel also drew the attention of this court towards the indent Ex.D2. Bare perusal of indent Ex. D2 shows that 20 litre diesel was also issued on 21.8.94. This document cannot be looked into as raid was conducted on 3.8.94. Both these documents

came in the evidence of DWI. Learned defence counsel also drew the attention of this court towards the documents Ex. D3 & Ex. D4. Both the documents are relating to Ex.D1 and Ex.D2. Learned defence counsel also drew the attention of this court towards Log Book register Ex. D/2 where in has been shown that 100 litre diesel was supplied to Bigha Ram on 1.8.94. Learned defence counsel also drew the attention of this court towards the cross-examination of PW5 Dr. Rajshree, she has stated in her cross examination that she did not remember whether she note the diesel of the petrol tank of truck and log book was taken into police possession. It is wrong to say that accused has produced two indents one of 100 litre and second of 20 litre diesel on 2.8.94 and 26.8.94.

18. According to the learned defence counsel as per Ex. D1, 100 litre diesel was issued to truck no. HRD/8206 on 2.8.94 and as per Ex.D2/A, 100 litre diesel was issued to Bigha Ram. It means indent of 200 litre diesel was not considered by the prosecution at the time of conducting of the raid. According to the case of the prosecution, total diesel was issued to the accused 2450 litre and four drums containing 180 litre each i.e. 720 litre + one drum containing 160 litre = 880 litre and according to the indent which have been taken into police possession as mentioned in the complaint, 1440 litre diesel was issued by the accused, according to indent as referred above. Total diesel was issued to the accused 2450 litre -1440 litre + 1010 litre. Remaining diesel was 1010 litre and 880 litre diesel was recovered from five drums, it means there is shortage of 130

litre but accused is saying that 100 litre diesel was issued on 2.8.94 and 100 litre diesel was issued to 1.8.94 and the same was not considered. Accused has failed to prove how it came upto the 200 litre when there was shortage of 130 litre.

19. Had there been any reason for these witnesses to give a false statement, the accused would have taken that stand in his statement under Section 313 Cr.P.C. According to statement of accused under Section 313 Cr. P.C., he has stated that all witnesses are false and he is Innocent and he was falsely implicated in this case. No specific stand has been taken by the accused.

20. During the course of arguments, accused has also failed to prove from where diesel 208 litre came in the truck as referred above. Prosecution has also examined Bhikha Ram as PW3. As per story of the prosecution he was driver of truck no. HRY-808. This witness has been cross-examined at length but no question was put to PW3 that this drum containing 208 litre does not belong to the store. Moreover PW1 to PW9 proved the case of the prosecution. PW1 Rajbir, Pump Operator and PW3 Bikha Ram categorically stated in their evidence that accused was indulging in selling of the diesel illegally. He took out 20 litre diesel form the drums and the same was being sold by him. Prosecution has also proved on the file that accused was Incharge of the store by way of document Ex. PW4/A wherein certificate was given by Superintendent, Yamuna Water Services Circle. Rohtak that Avinash Chander is working in Water Services Mech. Division. Rohtak since 6/88 as Junior

Engineer Incharge of Store Section located at Delhi Road near JLN Feeder.

21. In the present case. it is duly proved that accused has committed criminal breach of trust as he was working being a public servant in the said store. The prosecution could not prove the offence under Sections 462, 468 & 471 IPC.

The appeal preferred against the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Rohtak was also decided against the accused by learned Additional Sessions Judge, Rohtak, which left petitioner – accused Avinash Chander aggrieved and he has filed the present revision petition.

Notice of the revision petition was issued to respondent -State, which put in appearance through State counsel.

I have heard learned counsel for the petitioner-accused-convict and learned Deputy Advocate General for the State of Haryana besides going through the record.

The prosecution had successfully proved the charge against the accused beyond a shadow of reasonable doubt. There is no reason to differ with the Courts below on that point. The judgments passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. The petitioner had committed a heinous crime of misappropriation of Government money. Therefore, no leniency can be shown.

In view of the above, I find no illegality or infirmity in the

judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and revision is found to be without any merit and is dismissed accordingly.

4.3.2020

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**