

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

CRR-2897-2013 (O&M)

Date of Decision: 06.03.2020

Suresh Chand

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr. Kunal Mulwani, Advocate for the petitioner.

Mr. Kuldeep Sharma, DAG, Haryana.

H.S. MADAAN, J.

Briefly stated facts of the case as per prosecution story are that accused Suresh Chand had been working as a Clerk in the office of SDO (C), Mohindergarh and his duties included receipt of fees for licenses and registrations against receipts. Audit of office SDO (C), Mohindergarh in the year 2003 revealed that record regarding licenses and registration of the vehicles w.e.f. 12.05.2003 and 01.04.2002 to 31.03.2003 was not available. Suresh Chand was asked to produce the record. Then, it transpired that Suresh Chand had not deposited the amount so collected by him w.e.f. 17.03.2003 onwards in the treasury. Suresh Chand accused did not attend office and rather applied for leave. He had sent his son with key of his almirah in the office. Record

of accused was scrutinized, which disclosed embezzlement of Rs. 4 lacs around by Suresh Chand. It also came out that Suresh Chand was actually having good health and was feigning illness. He requested that he be given 20 days time to deposit the amount. A complaint was accordingly sent to the police that Suresh Chand accused had not deposited the amount under cash book No.027544 Sr. No.041 to 100, cash book No.27545, Sr. No.01 to 100, cash book No.035961 to 35969, Sr. No.1 to 100, cash book No.035970, Sr. No.01 to 49. On receipt of such complaint at PS Mohindergarh, formal FIR Ex.PW10/A was registered. The matter was investigated; the accused was arrested in this case; statements of the witnesses were recorded; documents were taken into possession.

After completion of investigation and other formalities, the challan against the accused was prepared and filed in the Court of Sub Divisional Judicial Magistrate, Mohindergarh. On presentation of challan, the Court supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Consideration on the point of framing of charge was made. Thereafter, finding a prima facie case, charge for offences under Sections 409 and 420 IPC was framed against the accused, to which, he pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined as

many as 14 PWs i.e. PW1 Dr. Karan Singh, PW2 Amir Singh, Tehsildar, PW3 HC Satyabir, PW4 Deshraj, Record Keeper, PW5 Mohan Lal, Clerk, PW6 Naurang Lal, ASR, PW7 Ishwar Singh, PW8 HC Mahender Singh, PW9 SI Mahender Singh, PW10 SI Om Parkash (retired), PW11 Inspector Kurda Ram, PW12 HCW Sandeep Singh-complainant, PW13 EHC Raghbir Singh and PW14 ATO Ramesh Chander.

With that the prosecution evidence was concluded.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him but he denied the same, contending that he was innocent and had been falsely implicated in the case. The accused did not lead any evidence in defence.

After hearing arguments, the trial Magistrate, vide judgment dated 02.02.2010, came to the conclusion that charge for offences under Sections 409 and 420 IPC stood proved against the accused beyond doubt. As such, vide order dated 04.02.2010, he was sentenced to undergo rigorous imprisonment for three years with fine of Rs.1000/- under Section 409 IPC; in default of payment of fine, to further undergo RI for 03 months. He was further sentenced to undergo rigorous imprisonment for one year with fine of Rs.500/- under Section 420 IPC; in default of payment of fine, to further undergo RI for 01 month. Both the sentences were ordered to run concurrently.

Accused/convict felt aggrieved by the said judgment of his conviction and order of sentence and had preferred an appeal before the Court of Sessions. That appeal was assigned to Addl. Sessions Judge, Narnaul, who vide judgment dated 20.11.2012, dismissed the appeal.

Still feeling dissatisfied, he has filed a revision petition before this Court. On getting notice thereof, respondent/State has put in appearance through Deputy Advocate General, Haryana.

I have heard learned counsel for the parties besides going through the record.

The revisional jurisdiction of this Court is quite limited. The Court can certainly call for record of any proceeding before any inferior Criminal Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceeding. Unlike in appeal, the Court while exercising revisional jurisdiction is not to start reappraisal and re-appreciation of evidence, so as to arrive at a conclusion different from the Court below. The Court may interfere only if the judgment passed by the Court below is perverse, arbitrary and against settled legal position, which had resulted in miscarriage of justice and not otherwise, if judgments passed by the Courts below using that yardstick, then no fault can be found therewith and no reason comes out to be there to interfere with the same by exercise of

revisional jurisdiction. The trial Court by proper appreciation of evidence and correct interpretation of law had come to the conclusion that the accused had in fact misappropriated the amount received by him in his official capacity which he was bound to account for and deposit in the treasury. It stood established on record that he had received amounts for which he had issued receipts Ex.PW5/A to Ex. PW5/K but did not deposit the same in the treasury with regard to those receipts and he failed to account for the same. Merely because his supervisory officers i.e. SDO and ASR did not notice the embezzlement being committed by the accused did not absolve him of the criminal liability. Office order Ex.PW6/A clarified the matter that accused Suresh Chand was assigned duty of clerk for issuing receipt against the amount deposited for license, traffic challans etc. Only for the reason that the accused was given an additional charge for the same, does not lessen his guilt or justify embezzlement of public money by him. It needs to be mentioned here that accused had suffered a disclosure statement Ex.PW8/A during investigation and got recovered an amount of Rs.19,980/- from the secret place inside the almirah belonging to him. Criminal misappropriation of public money by him in his capacity as a public servant as committing offence of cheating stand duly proved on record. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt and the trial Court was justified in convicting and

sentencing the accused. The accused had committed grave and serious offences of misappropriation of public money and cheating.

Learned counsel for the revisionist has cited **Sardar Singh Vs. State of Haryana, 1977 (1) SCC 463** by the Apex Court, wherein it was observed that mere failure or omission to return the property is not sufficient to constitute the offence of breach of trust. This judgment does not help the revisionist in any manner because the Courts below have dealt with the matter in detail and came to a conclusion that the petitioner in his capacity as public servant had embezzled the public money and it is not a case of failure or omission to return the property. Another judgment referred to was **State of Punjab and Amarjit Singh, 1992 (1) RCR (Criminal) 619**, to that very effect. For similar reasons and on account of different facts of the judgments cited, those are not helpful to the revisionist in any manner.

The revisionist/accused is said to have been already undergone 03 years of imprisonment awarded to him. There is absolutely no reason to upset the judgments passed by the Courts below on the point of conviction and sentence. There is no merit in the instant revision petition, the same stands dismissed accordingly.

06.03.2020

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**(H.S. MADAAN)
JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No