

CRA-S-969-SB of 2004

[1]

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

CRA-S-969-SB of 2004

Date of Decision: August 31 , 2022

Ujaggar Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. P. S. Ahluwalia, Advocate for the appellant.
Mr. Sandeep Kumar, DAG, Punjab.

AVNEESH JHINGAN , J.

This appeal is directed against conviction of Ujaggar Singh (appellant) in FIR No. 18 dated 6.4.1995 under Sections 467, 468, 471 and 120-B IPC and Sections 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the 1988 Act') registered at Police Station Vigilance Bureau, Patiala Range, Patiala.

The facts as per the prosecution are that in the year 1993, the appellant was Sarpanch of village Nanhera. The allegations were of misusing his powers to embezzle the grant amount. Three challans were presented levelling number of allegations. The challans were consolidated vide order dated 30.11.1998. The appellant was convicted, for misappropriating the amounts of Rs.3600/- withdrawn for installation of the hand pump; Rs.4271/- out of grant of Rs.97,000/- received for repair of the streets and Rs.200/- in repair of the hand pump.

On presentation of the challan, the appellant was supplied

copies of the documents and charges were framed. The appellant stated that he is innocent and claimed trial.

The prosecution to prove its case examined twenty five witnesses.

The prosecution witnesses, namely, PW1-Hardial Singh, PW3-Puran Chand, PW-4 Harbans Ram, PW13-Bhan Singh, PW15-Baldev Singh, PW18-Charanjit Singh, PW19-Shingara Singh, PW-20 Jarnail Singh, PW-22 Bhagwan, PW-23 Joginder Singh, PW24-Angrej Singh, were co-villagers of the appellant who deposed to support the case of the prosecution to the extent that the grant was received and was misutilised by the appellant. The shopkeepers who supplied the material and official witnesses were examined to prove the case of prosecution.

In statement under Section 313 of the Code of Criminal Procedure, it was stated that it was a case of false implication. Custodian of the accounts of Gram Panchayat was the Panchayat Secretary and it was his duty to enter the receipt and usage of the grant.

In his defence, the appellant examined three witnesses, namely, DW1- Bhan Singh, DW2-Sucha Singh and DW3-Bhupinder Singh. In nut shell, the deposition was that the complainant had strained relations with the appellant. Further that hand pump was installed in Govt. Primary School and drains and streets were made pucca during the tenure of the appellant.

In trial, PW1-Hardial Singh, PW3-Puran Chand and PW4-Harbans Ram stated that Rs.3600/- was withdrawn from the account of the Gram Panchayat for installation of the hand pump in Government Primary

School but the hand pump was not installed. The cross-examination of PW15-Baldev Singh, PW18-Charanjit Singh, PW-19 Shingara Singh, PW23-Joginder Singh, PW24- Angrej Singh and deposition of DW1-Bhan Singh was to the effect that hand pump was installed in Government Primary School during the tenure of the appellant. The appellant was convicted on the ground that books of accounts were not maintained as per the provisions of Haryana Panchayati Raj Act, 1994 (for short, 'the 1994 Act) and hence there was mis-utilisation of Rs.3600/-.

The appellant was convicted on the charge that he had misappropriated a sum of Rs.4271 /- from the grant received of Rs.97,000/- for repair of the streets. The trial court relied upon the report of PW5-Rajiv Bhalla, SDO Panchayati Raj. The conclusion was that excess payment of Rs.3810/- as labour charges in comparison to CSR rates were made and there was excess wastage than the permitted limit of 5%, amounting to Rs.922/-. The completion certificate issued by Block Development and Panchayat Officer was not considered being a marked document.

The appellant was convicted for difference of Rs.200/- in withdrawal and expenditure of repair of hand pump.

Learned counsel for the appellant argues:

- (i) the trial court erred in convicting the appellant for embezzlement of grant of Rs.3600/- for installation of the hand pump.
- (ii) The depositions of PW1-Hardial Singh, PW3-Puran Chand and PW4-Harbans Ram were disbelieved by the trial court, considering that they were members of the opposite faction

and had a motive to depose against the appellant. Further it was noted that they were concocting the story and telling a lie.

- (iii) PW3-Puran Chand lost election against the appellant and at the instance of the appellant, he was arrested in a case under the Arms Act, hence he was carrying a grudge.
- (iv) The appellant is an illiterate person, he cannot maintain the account. This fact is borne out from the cross-examination of PW11-Kahan Singh, Panchayat Secretary of the Gram Panchayat. He stated that the appellant was an illiterate and used to put signatures with seal on the entries.
- (v) That wastage of 5% was permitted in repair works. In the present case, 5% of each commodity was separately calculated rather than considering the wastage of the entire project, which would be less than 5%.
- (vi) It was not proved that labour payments excess of CSR rate was not actually paid to labour and that the appellant was the sole incharge for disbursing the payment of labour charges.
- (vii) The trial court erred in holding that the prosecution succeeded in proving third allegation that there was misappropriation of Rs.200/- in repair of the hand pump.

Learned counsel for the State defends the impugned judgment.

He submits that the prosecution witnesses had supported the case set up against the appellant. The contention is that charges were proved as it is not disputed that the books of accounts were not maintained properly. There was variation between the amount spent and the valuation done for

repair of the streets.

Heard learned counsel for the parties at length and perused the record with their able assistance.

The charge that the appellant had embezzled grant of Rs.3600/- received for installation of a hand pump in Government Primary School was not proved. The prosecution witnesses and DW1-Bhan Singh made statements to the effect that the hand pump was installed during the tenure of the appellant.

It would be relevant to extract the depositions made by the witnesses:

PW13- Bhan Singh:

“ It is correct that a handpump was installed in primary school of Nanhera. It is correct that funds received by the Sarpanch was being used on the welfare of the village.”

PW15-Baldev Singh:

“Even a handpump was installed in the primary school of the village by Ujagar Singh accused.”

PW18- Charanjit Singh

“I am living in this village for the last 15 years, one handpump was installed in the primary school by the accused. There is a party faction between accused and Puran Chand in the village.”

PW20-Jarnail Singh

“Handpump is installed in school of the village.”

PW23-Joginder Singh

“It is correct that during tenure of Ujagar Singh, drains and streets were made Pakka in the village. Even handpump was installed in the school.”

PW24-Angrej Singh

“Puran Chand was Sarpanch of our village prior to Ujagar Singh, drains and streets were made pakka in the village during tenure of Ujagar Singh. Even a handpump was installed in the school of village during tenure of Ujagar Singh. I am resident of Nanhera since childhood. Now son of Ujagar Singh son of Sarpanch in the village. It is correct that party of Puran Chand has tussle with party of accused.”

DW1-Bhan Singh

“I know Ujagar Singh, who was Sarpanch of Nanhera. Earlier Puran Chand was Sarpanch of this Panchayat. This Puran Chand was having strained relations with Ujagar Singh accused. A handpump was installed in Primary School as grant was received during tenure of Ujagar Singh for installation of that handpump.”

The appellant was convicted as the entries of utilisation of the grant for installing the hand pump were not made in the books of accounts as per provisions of the 1994 Act.

The onus is on the prosecution to prove that ingredients of Section 13 of the 1988 Act are fulfilled. The conviction under the 1988 Act cannot be on the sole ground of irregular maintenance of books of accounts.

More-so, when it came on record that the books of accounts were not required to be maintained by the appellant, he was illiterate and only appending his signatures on the entries being a Sarpanch.

It would be appropriate to mention that neither the case is set up nor evidence adduced that by irregular maintenance of books of accounts, the appellant was misappropriating money to convert it for his use or for allowing someone else to do so.

The trial court concluded that charge of misappropriation of Rs.4271/- stood proved as there was excess payment for labour charges and wastage was more than 5% i.e. the permitted limit. The fact cannot be lost sight of that the work for repairing the streets was carried out in 1993, the valuation of the work was done in 1995. There is bound to be difference between actual expenses and the valuation. It was not brought on record that as per instructions, wastage of 5% is to be calculated of the entire material used in the project or for each component separately. It was not proved that the amount depicted in the books of accounts was not actually paid for labour charges. The difference of labour charges paid vis-a-vis the rates fixed under CSR in itself does not prove misappropriation by the appellant. The onus on the prosecution is to prove its case to hilt, benefit of doubt goes in favour of the accused. On failure of the prosecution to prove the charge, the trial court erred in convicting the appellant for misappropriation of Rs.4271/-.

The third charge against the appellant was of swindling of Rs.200/- for repair of the hand pump. As per the books of accounts, Rs.810/- was withdrawn for repair of the hand pump. Receipt Ex.P17/A

was of Rs.610/-. The split of the bill was Rs.435/- for the spare parts and Rs.375/- for labour charges. It is not the case that no repair was carried out. The case set up is that the vouchers/receipts were not in consonance with the books of accounts maintained. The sum involved is paltry. It was not duty of the appellant to maintain books of accounts. These were maintained by Panchayat Secretary. PW-11 Kahan Singh, Panchayat Secretary in his deposition stated as under:

“Accused is illiterate and I have been doing entire working of writing . It is correct that the accused used to put his signatures with seal on the entries which used to be incorporated by me.”

Section 13(1)(c) of the 1988 Act is reproduced below:

“13. Criminal misconduct by a public servant.-(1) A public servant is said to commit the offence of criminal misconduct,-

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(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or

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To constitute a criminal misconduct of public servant under Section 13(1)(c) of the 1988 Act, it is required to prove that there is dishonest or fraudulent intention. With this intention the property entrusted or under the control of the public servant was misappropriated or converted for his own use or permitting some other person to do so.

The Supreme Court in C. Chenga Reddy and others v. State of A.P., (1996) 10 SCC 193, held:

“22.. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence. In Abdulla Mohd. Pagarkar v. State (Union Territory of Goa, Daman and Diu), (1980) 3 SCC 110, under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and the High Court to the requirements of

proof in relation to a criminal charge was not proper....”

It was held that dis-regard of the provisions of the financial code or the procedure laid down by the Government made a strong suspicion but the guilt cannot be established solely on this basis.

Since the prosecution failed to prove beyond reasonable doubt the case against the appellant for conviction under Sections 13(1)(c) of the 1988 Act, the impugned judgment of conviction and order of sentence are liable to be set aside.

The appeal is allowed. Impugned judgment of conviction and order of sentence are set aside and the appellant is acquitted of the charges framed against him.

(AVNEESH JHINGAN)
JUDGE

31st August, 2022.
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Whether reasoned/speaking	Yes
Whether reportable	Yes