

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1666-2017 (O&M)
Reserved on: 17.08.2022
Pronounced on: 17.10.2022

Mohinder Kaur and another

..... Petitioners

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Lekh Raj Sharma, Advocate
for the petitioners.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

PANKAJ JAIN, J. (Oral)

Petitioners herein are aggrieved of the judgment dated 11.04.2017 passed by the Additional Sessions Judge, Kapurthala, whereby their appeals against the judgment of conviction have been dismissed.

2. FIR No.10 dated 17.02.2021 was registered for offences punishable under Sections 409 and 120-B of IPC against the petitioners on the basis of communication received from Child Development and Project Officer, Sultanpur Lodhi. It was stated that on a surprise checking made by Deputy Commissioner, Kapurthala at Anganwari Centre, Boolpur on 16.02.2021, it was found that wheat weighing 4 Qtls. 58 Kgs has been misappropriated. The said stock was supplied by the State Government for preparation of food for the children.

3. It is alleged that during investigating the missing wheat was found from the house of petitioner No.1-Mohinder Kaur. Both the

petitioners were working as Anganwari workers. After trial, both were found guilty and were convicted for offences punishable under Sections 409/120-B of IPC. Both of them were sentenced for 03 years alongwith fine of Rs.500/-. It was further ordered that in case of default of payment of fine, they shall further undergo R.I. for 05 days.

4. Judgment of conviction dated 15.12.2015 was taken in appeal by the convicts. Appellate Court found that the petitioners were not public servants or banker, merchant or agent and thus reduced offence under Section 409 IPC to a minor offence under Section 406 IPC observing as under:-

“XX XX XX XX

34. Aforesaid discussion shows that both the appellants/ accused have committed the offence of criminal breach of trust while sharing criminal conspiracy with each other, but they cannot be held liable for the offence under section 409 IPC, however, they can be held liable for the offence u/s 406 IPC which deals with the punishment of criminal breach of trust. It is further relevant to mention over here that offence u/s 406 IPC is a minor in relation to the offence u/s 409 IPC. Therefore, by virtue of Section 222(2) Cr.P.C. a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence although he is not charged with it. To the aforesaid facts reference can be given to the following judgments given by the Hon'ble Supreme Court such as "State of Himachal Pradesh Vs. Tara Dutta", AIR 2000 S.C. 297 and "Sangarabonia Sreenu Vs. State of Andhra Pradesh", (1997) 4 Supreme 214.”

5. Holding them guilty, Appellate Court sentenced them as follows:-

Sr. No.	Name of the convict	Offence u/s	Sentence	In default to undergo R.I.
1.	Mohinder Kaur	406 IPC	Two years R.I. and fine of Rs.500/-	Five days
	-do-	120-B IPC	Two years R.I.	--
2.	Razia	406 IPC	Two years R.I. and fine of Rs.500/-	Five days
	-do-	120-B IPC	Two years R.I.	--

6. Counsel for the petitioners submits that both the Courts below erred in ignoring that in order to constitute offence under Sections 406/409 IPC, the offence alleged must satisfy the parameters as enumerated in the definition of 'criminal breach of trust'. He submits that the entrustment of the property in the hands of the accused was necessary to drive home offence as defined under Section 405 IPC against them. He further submits that entrustment/dominion over the property was required to be proved by the prosecution by leading cogent positive evidence. There being no evidence on record to prove entrustment with property or with any dominion over the property, petitioners cannot be held guilty. The judgments passed by Courts below holding the petitioners guilty for criminal breach of trust cannot be sustained. He further submits that heavy reliance has been placed on document Ex.PC which is nothing but a self-serving communication prepared after the registration of FIR. The same is based upon stock register. The stock register has not seen light of the day. In the absence of the basic document which forms foundation, the whole edifice built by the prosecution cannot sustain. He further contends that the alleged

recovery which is shown to have been made from the house of petitioner No.1-Mohinder Kaur also is a weak piece of evidence as there is nothing on record which links wheat recovered to the alleged missing stock. He further submits that the alleged confessional statements attributed to the co-accused Rajia before the police authorities also cannot be relied upon in terms of Section 25 of the Evidence Act.

7. Per contra, counsel for the State submits that both the Courts below have concurrently found petitioners guilty of criminal breach of trust. Entrustment of the wheat stock and dominion over the same cannot be denied by the petitioners in the light of Ex.PC. He further contends that the recovery having been made from the house of petitioner No.1 itself proves the conspiracy and the culpability of both the accused/petitioners in siphoning off the wheat stock. He further submits that wheat stock was entrusted to the petitioners for welfare scheme and by committing criminal breach of trust, the petitioners have brought disrepute to the State.

8. I have heard counsel for the parties and have gone through the evidence on record.

9. Before advertng to the facts of the present case, it is apt to peruse Sections 405 and 406 of the IPC:-

405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or

implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”. 1[Explanation 2[1].—A person, being an employer 3[of an establishment whether exempted under section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee’s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.] 4[Explanation 2.—A person, being an employer, who deducts the employees’ contribution from the wages payable to the employee for credit to the Employees’ State Insurance Fund held and administered by the Employees’ State Insurance Corporation established under the Employees’ State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.] Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the direction and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

406. Punishment for criminal breach of trust.—

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

10. As per Section 405, the essential ingredients constituting criminal breach of trust are:

1. Entrusting any person with property or with any dominion over property.
2. The person entrusted is:-
 - (i) dishonestly misappropriating or converting to his own use that property, or
 - (ii) dishonestly using or disposes of that property or wilfully suffering any other person so as to do in violation of:
 - (a) any direction of law prescribing the mode in which such trust is to be discharged, or
 - (b) any legal contract made touching the discharge of trust.”

11. Apex Court in case of '***Kailash Kumar Sanwatia vs. The State of Bihar and another***' reported as (2003) 7 SCC 399 while dealing with ingredients of Section 405 held as under:-

“XX XX XX

The basic requirement to bring home the accusations under [Section 405](#) are the requirements to prove conjointly (1) entrustment and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally

afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime.”

12. Apex Court in '*Jiwan Dass vs. State of Haryana*' reported as *(1999) 2 SCC 530* held as under:-

“xx xx xx

In a prosecution for offence of criminal breach of trust if there is absence of legal and independent evidence with regard to the entrustment, then it would be improper either to put a question with regard to the entrustment to the accused and if put and an answer is obtained, partially admitting entrustment, the same does not establish the case of entrustment.”

13. Adverting to the facts of the present case, both the Courts below found that Ex.PC proves entrustment of wheat stock to the petitioner. Ex.PC reads as under:-

“Office of Child Development Project Officer, Sultanpur Lodhi, Kapurthala

To

The SHO Talwandi
Chaudharian
No.38 dated 22.02.2011

Sub:- With regard to wheat stock lying at Anganwari Centre, Boolpur

In reference to the communication received from you, after checking wheat stock register of Anganwari Centre, Boolpur. The following Anganwari workers have the following stock of wheat:-

Name of the Anganwari Worker	Wheat issued	Wheat used	As per register balance wheat
1. Smt. Mohinder Kaur	2 Q.75 kg	167.500 kg	107 kg, 500 gms.
2. Smt. Rajia	2 Q.75 kg	123.554 kg	151 kg, 500 gms.”

14. Likewise reliance is being placed upon document Ex. PE to hold that the wheat stock was required to be stored as Anganwari Centre

and thus by storing the same at her house accused-petitioner No.1 Mohinder Kaur dishonestly used/disposed off the same. Appellate Court while affirming the order of conviction held as under:-

“xx xx

24. In view of the aforesaid discussion, it has come into picture that both the appellants/ accused had been posted as Anganwari workers and the same have been proved by way of Ex.PD and further in lieu of their work, entrustment was given to them and the same has been proved vide Ex.PC. Moreover, alleged wheat has been recovered from the house of appellant/ accused Mohinder Kaur and the same is in the violation of directions issued by the Punjab Govt., which has been further proved by the prosecution vide Ex.PE. Therefore, I do not find any substance in the argument taken by the counsel for the appellants/ accused that entrustment in the aforesaid case has not been proved.

25. In view of the aforesaid reasoning, the argument raised by the ld. counsel for the appellants/ accused has no substance even the alleged recovery is more than the entrustment given to him as per Ex.PC., as it is for her to explain.”

15. In the considered opinion of this Court, both the Courts below completely misread the evidence on record. Following statement of PW-2 SI Balwinder Singh, Investigating Officer needs to be perused:-

Stated that I on dated 16-02-2011 was posted in Police Station Talwandi Chaudhrian. On that date D.C. Sahib Smt. Kavita Singh Chauhan phone to me that D.C. Sahib has come to village Boolpur. Were doing the surprise checking of Anganwari workers. I alongwith police party joined D.C. Sahib. The wheat issued by the government was not available there.

Then D.C. Sahib alongwith us did the checking in the house of Mahinder Kaur then there 4 quintal 58 Kilo wheat of the Anganwari was recovered having put in an iron drum, the recovered wheat was taken into police custody under section 102 Cr.P.C. vide Ex PA. At which Narinderjit Kaur Panch and HC Kashmir Singh appended their witness. On dated 17.02.2011 a letter was received by SHO Talwandi Chaudhrian from Child Development Project Officer Sultanpur Lodhi at which I by endorsing my Ex PW2/A recorded in FIR Ex PW2/B. I alongwith police party went at the spot and prepared the spot map Ex PW2/C. The statements of the witnesses were written. On dated 29-02-2011 Mahinder Singh accused was arrested, who was present in case in the Court. Arrest memo is Ex PW2/D. On dated 1-3-2011 accused Rajia was arrested vide memo Ex PW2/E in the case, who was present in the Court. The statements of witnesses were written. On completion of the investigation the Challan was presented by SI/SHO Kulwant Singh, whose signatures I identify. I have seen the case property in the Court which are Ex P1, Ex P2, Ex P3 and Iron Drum is Ex P4, to which I had sealed with seal of my words B.S. The seal after use was entrusted to H.C. Kashmir Singh.

x x x x x x by Smt. Rajwinder Kaur Advocate for Accused No. 1 Mohinder Kaur.

I do not know at what time I reached at spot, we alongwith DC and police party had gone directly to the house of the accused, which was of accused No. 1 Mahinder Kaur, I did not see any record of Anganwari center at the spot, nor it was enquired as to how much wheat was less of the Anganwari Centre at the spot. At the spot Sarpanch Baldev Singh was present. I did not write the statement of Sarpanch in the recovery.

I had not written the statement at the spot, of any other influential person of the village. D.C. Sahib had told that as much wheat is lying, take that to the Police Station. The wheat was lying in the Drum. We had weighed the wheat in the house of accused No.-1 which had accrued total 4 quintal 58 Kilo. We had weighed the wheat at the weighing machine which was taken from the village itself but we did not wrote any statement regarding taking the weighing machine. Wheat was put in 8 Borees (bags), which was put in the Khaki coloured gunny bags. We had gone at the spot and had come back after taking the wheat. Except this we did not do anything else. CDPO SLP was not present at the spot. I had sealed the bags with my seal B.S. The case property which has been presented in the court today no seal has been tagged at any bag of those and nor the seal has been tagged at the drum. The case property which has been presented in the court today those are three bags filled to top and one is half of wheat. The lower lid of the drum is not available. It is wrong that there might not have recovered any wheat from the house of accused No. 1. It is wrong that for harassing the accused No.1 the false case might have been filed by showing the false recovery at the asking of CDPO Sultanpur Lodhi.

x x x x x by Sh. Surjit Singh Advocate Counsel for accused No. 2, Rajia.

The raid was conducted in the house of accused No. 2 for recovery but nothing was recovered from her house. Regarding this no report was given regarding recovery. This thing is wrong that the false case might have been filed for involving the accused No. 2 in the case. It is wrong that I might have given the false witness.”

16. From the statement of I.O., it is clear that the complainant i.e. Child Development and Project Officer was not present on the spot. As per Ex.PC, the balance wheat in the account of Smt. Mohinder Kaur as per stock register is 107 Kg, 500 gms. Similarly, the same in the stock of Smt. Razia is said to be 151 kg, 446 gms. Total it comes out to 259 kgs. The wheat alleged to have been recovered from the house of Mohinder Kaur is 458 kgs. There is nothing on record that relates the alleged seized 458 kgs. of wheat to the stock of 259 kgs which is stated to be entrusted to the petitioners as per the wheat register. Further, counsel for the petitioners is right in contending that Ex.PC which is a communication dated 22.02.2011, after registration of FIR cannot be looked into without stock register produced on record. It was incumbent upon the prosecution to prove genesis of Ex.PC i.e. stock register. In absence of stock register, stock with petitioners cannot be said to have been proved. When Child Development and Project Officer-the complainant appeared as PW-6, she is explicit in saying that:

“I wrote to SHO Talwandi for proceeding against the accused in compliance of the orders passed by DC Sahab. I never checked record of the accused. DC Sahab conducted checking. I cannot say as to whether the accused have embezzled with the records. I was not present on the spot.”

Appellate Court reads Ex.PE as directions of Government. However, like Ex.PC, PE is also a communication from an officer replying to a query by Investigating Officer. Courts below did not even bother to look at the same to ascertain nature of the document.

17. Resultantly, it cannot be said that the entrustment of the wheat stock or embezzlement thereof stands proved by the prosecution.

Apart from that, recovery of 4 qtls. 58 kgs of wheat alleged to have been recovered from the house of Mohinder Kaur cannot linked to wheat belonging to Anganwari Centre especially when as per Ex.PC both the petitioners were left with stock of 2 qtls. 59 kgs only. Recovery and seizure is also not beyond suspicion. During recovery, no prominent/respectable inhabitant of the locality was joined as witness. Admittedly, sarpanch of the village was present but was not joined. Seized property was not sealed.

18. In view of these circumstances, both the Courts below erred in holding that the petitioners were guilty even though the ingredients to constitute offence under Section 405 IPC were not satisfied.

19. As a sequel of discussion made hereinabove, the impugned judgment of conviction passed by the trial Court and as affirmed by the Appellate Court holding the petitioners' guilty of offences punishable under Section 406 IPC read with Section 120-B IPC are hereby set aside. The petitioners are acquitted of all the charges levelled against them in FIR No.10 dated 17.02.2021 was registered for offences punishable under Sections 409 and 120-B of IPC at Police Station Talwandi Chaudharian.

20. Consequently, the present revision petition is allowed.

(PANKAJ JAIN)
JUDGE

17.10.2022

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes