

220

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

**CRR-4953-2016 (O&M)
Date of Decision: 10.02.2023**

Chet Ram

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Gaurav Gupta, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana
for respondent No.1/State.

Mr. Baldev Singh, Advocate
for respondent No.2.

HARSH BUNGER J.

1. Petitioner (Chet Ram) has filed the present petition for setting aside judgment of acquittal dated 04.11.2015 passed by the Court of Additional Sessions Judge, Palwal, wherein the said Court reversed the judgment of conviction and order of sentence dated 14.06.2013 passed by the Court of Chief Judicial Magistrate, Palwal, whereby respondent No.2- Smt. Urmila, was convicted and sentenced to undergo simple imprisonment for a period of three years along with payment of fine of Rs.2,000/- for the offence punishable under Section 409 of the Indian Penal Code and to undergo simple imprisonment for a period of three years along with payment of fine of Rs.1,000/- for the offence punishable under

Section 420 of the Indian Penal Code.

2. Briefly, the case FIR No.243 dated 08.09.2006 was registered under Sections 409 and 420 of the Indian Penal Code, at Police Station Sadar Palwal on the basis of a complaint filed by the Block Development and Panchayat Officer, Hodal against respondent No.2, namely Smt. Urmila, Ex-Sarpanch, Gram Panchayat, Village Bammi Khera, for initiating action against her. It was claimed that respondent No.2 had misappropriated and embezzled an amount of Rs.3,29,630/- by way of misusing the Government funds, an amount of Rs.1,49,954/- in the work of street construction, an amount of Rs.28,842/- in the work of construction of cremation ground, an amount of Rs.1,44,897 under the garb of S.G.R.I. Scheme and another amount of Rs.4,936/- in the name of same Scheme. On the said complaint, the aforesaid FIR No.243 dated 08.09.2006 was registered against respondent No.2 and after completion of investigation, the final report was submitted in the Court. Thereafter, respondent No.2 (Smt. Urmila) was charge-sheeted under Sections 409 and 420 of the Indian Penal Code, to which she pleaded not guilty and claimed trial. Thereupon, the prosecution examined the following witnesses:-

PW-1 : S.I. Banwari Lal

PW-2 : A.S.I. Sultan Singh

PW-3 : Mam Chand, retired Inspector

PW-4 : A.S.I. Rajesh Kumar

PW-5 : Sh. Narender Sarwan, D.D.P.O., Rewari

PW-6 : Sh. Dharam Pal, Social Education & Panchayat Officer.

3. After closure of evidence by the prosecution, the statement of respondent No.2 (accused) was recorded under Section 313 of the Code of Criminal Procedure, wherein she denied all the allegations levelled against

her and pleaded false implication. In defence, respondent No.2 (accused), examined the following witnesses:-

DW-1 : Sh. Nepal Chand, Cashier

DW-2 : Sh. Tarif Singh, J.E.

DW-3 : Sh. C.S. Dalal, retired D.D.P.O.

4. After appreciating the evidence placed on record, learned trial Court convicted and sentence respondent No.2 (Smt. Urmila) vide judgment of conviction and order of sentence dated 14.06.2013. However, in an appeal carried therefrom by respondent No.2/convict before the Lower Appellate Court, the finding of conviction was reversed and respondent No.2 (Smt. Urmila) was acquitted of the charges levelled against her, vide impugned judgment dated 04.11.2015 passed by the Court of Additional Sessions Judge, Palwal.

5. Now, the present revision petition has been filed by one Chet Ram, who has claimed that it was him who had filed one complaint before the Deputy Commissioner, Faridabad against respondent No.2, however, since no action was taken thereupon, therefore, the petitioner filed a petition bearing CRM-M No.28843 of 2006 for issuance of directions to the official concerned to register a case against respondent No.2 (Smt. Urmila) and it was only thereafter that the present FIR No.243 dated 08.09.2006 was registered against her.

6. Learned counsel for the petitioner has submitted that the findings of acquittal recorded by the Court of Additional Sessions Judge, Palwal, vide judgment dated 04.11.2015, is not based upon proper appreciation of evidence on record and the same are liable to be reversed and the judgment passed by the trial Court be restored.

7. On the other hand, learned counsel for respondent No.2 has

supported the judgment of acquittal dated 04.11.2015, passed by the Court of Additional Sessions Judge, Palwal, by submitting that the same is well reasoned and justified and it does not call for any interference by way of the present revision petition, especially when the scope of revision petition against the aforesaid judgment of acquittal is limited. Accordingly prayer for dismissal of the present revision petition has been made.

8. I have heard learned counsel for the parties and have perused the paper book with their able assistance.

9. The judicial review in exercise of revisional jurisdiction is not like an appeal. It is a supervisory jurisdiction which is exercised by the Court to correct the manifest error in the orders of subordinate Courts but should not be exercised in a manner so as to turn the Revisional Court in a Court of Appeal. The legislature has differently made provisions for appeal and revision and the distinction of two jurisdictions has to be maintained.

10. A perusal of paper book would show that the Court of Additional Sessions Judge, Palwal has returned the following findings, vide its order dated 04.11.2015:-

“ - x - x -

A perusal of relevant evidence may be referred here. PW1 SI Banwari Lal is the investigating officer who does not know if the work conducted by accused was got re-assessed and on the basis of the same, the revenue authorities submitted that no case is made out against the accused. Defence has brought one such application Ex.DW3/A on record.

17. The enquiry report of Panchayat Officer Dharampal was received by the police during the investigation by ASI Rajesh Kumar as PW4. Now the main witness is Narender Sarwan, DDPO Examined as PW5. He was the concerned

BDPO Hodal in the year 2006. He had received the letter from Deputy Commissioner on 6.9.2006. As per him a proper enquiry was conducted and accused was found embezzled with Rs.3,29,630.00 from the government funds. However, he has given no details as if the show cause was given to the accused in the said enquiry and if any reply was filed by accused at this relevant time or not. These questions are important as the question of natural justice and its implication was necessary to be completed by the BDPO then who had conducted the said enquiry. Same witness PW5 in his cross-examination stated that he did not confirm that if accused had embezzled amount or not. He did not verify the enquiry report. He does not know if the work was go re-assessed or the Deputy Commissioner, Palwal had written a letter No.343 dated 17.4.2007 stating that no case against the accused is made out.

18. The reassessment of the disputed constructed work, the application was given by the accused has been accepted by PW6 Dharampal Social Education and Panchayati Officer. Alongwith this evidence, necessary is to refer DW2 JE Tarif Singh who has stated that he re-assessed the report and verified same which is Ex.D2.

19. A close appreciation of both the documents and the oral evidence of the prosecution and the accused re-assesses the matter to the extent that the prosecution has not brought on record any documentary proof of the fact that prior to holding of enquiry of work assessment against the conduct and work of accused Urmila as Sarpanch at the relevant time, any opportunity of being heard under the natural principle of law were abided by or not. Without giving any opportunity of being heard no one side enquiry was within the rights of any departmental enquiry officer. Primarily this fact has not been proved by the prosecution. Secondly, reassessment of the work was made by JE Hodal by his report DW2 on which a letter was written by BDPO to Deputy Commissioner,

Faridabad which is Ex.DW3/2 where after reassessment of the work and after accused depositing defaulting amount in the bank, it was opined that no charges are proved against accused Urmila. These are both self-contradictory document of the concerned department headed by the Deputy Commissioner, Palwal and in these circumstances, I am afraid that prosecution has not been able to prove that there was specific entrustment.

- x - x -

27. *This means to go to say that in order to commit a criminal breach of trust, it is to be established that the person concerned did such act with the intention to cause loss to any particular person in order to gain something.*

28. *Therefore, no offence under section 409 IPC is made out against the accused.*

29. *Under section 420 IPC there are necessary guilty intentions as essential ingredient to prove offence of cheating. In the present case there are no specific allegations against accused Sarpanch as how the offence was alleged to have been committed by her unless the prosecution shows that accused had dishonest or fraudulent intention at the time when she embezzled the money. It would not be an offence under section 420 IPC. Further to secure conviction under section 420 IPC "mens-ria" on the part of the accused must be established. Intention to deceive should be in existence at the time when inducement occurred. The accused has already deposited amount. Hence, section 420 IPC not proved.*

30. *In view of my above discussion, appeal in hand is accepted and the accused is acquitted of the charges. Her bail bonds and surety bonds stand discharged. The amount of fine of Rs.3000/- already deposited by the appellant shall be adjusted towards costs of proceedings.*

- x - x - ”

would reveal that respondent No.2, has been acquitted, by returning the following findings :-

(a) PW-5 in his cross-examination stated that he did not confirm that if accused had embezzled amount or not. He did not verify the enquiry report. He does not know if the work was go re-assessed or the Deputy Commissioner, Palwal had written a letter No.343 dated 17.4.2007 stating that no case against the accused is made out.

(b) The prosecution has not brought on record any documentary proof of the fact that prior to holding of enquiry of work assessment against the conduct and work of accused Urmila as Sarpanch at the relevant time, any opportunity of being heard under the natural principle of law were abided by or not.

(c) Reassessment of the work was made by JE Hodal by his report DW2 on which a letter was written by BDPO to Deputy Commissioner, Faridabad which is Ex.DW3/2 where after reassessment of the work and after accused depositing defaulting amount in the bank, it was opined that no charges are proved against accused Urmila.

12. After going through the findings recorded by the lower Appellate Court, this Court is of the considered view that the learned lower Appellate Court has taken a reasonable and probable view on appreciation of evidence.

13. Hon'ble Apex Court in the case of **Ashok Kumar v. State of Rajasthan 1991(1) RCR (Criminal) 14 : 1991(1) SCC 166**, has held that interference in an appeal against acquittal would be called for only if the judgment under appeal is perverse or is based on misreading of evidence.

14. Learned counsel for the appellant-complainant has failed to

point out any misreading of evidence by the trial Court.

15. It is a settled law as has been held in *C. Antony v. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750* that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his/her favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible. In this case, no exceptional circumstances have been brought forth so as to warrant interference in the impugned order passed by the lower Appellate Court.

16. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the petitioner.

17. Thus, no interference is warranted in the impugned order dated 04.11.2015 passed by learned Additional Sessions Judge, Palwal. Accordingly, finding no merit in the contention of the learned counsel for the petitioner, the revision is hereby dismissed.

18. All pending application(s), if any, shall also stand closed.

10.02.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No