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

****

**CRR-4589-2017 (O&M)**

**Date of Decision: 25.04.2023**

****

Rajender Kumar Meghwal ... Petitioner

VS.

Santra Devi & Ors. ... Respondents

****

**CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

****

Present: Mr. Ajit Sihag, Advocate for the petitioner

Mr. Ashok Kumar Sehrawat, DAG Haryana

****

**<u>Sandeep Moudgil, J.</u>**

1. This criminal revision petition has been preferred by the petitioner against the judgment dated 08.06.2017 passed by the Addl. Sessions Judge, Bhiwani and the judgment dated 12.02.2016 passed by SDJM, Tosham vide which the respondents have been acquitted.

2. The factual matrix leading to the filing of instant revision petition are based on a complaint against the accused-respondents arising out of an application Ex.PW1/A are that Smt.Raj Kaur wife of Gaje Singh, had expired on 13.04.2009. Despite her death, Ex Sarpanch, Santra Devi and Panch while hatching conspiracy with each other got released old age pension of deceased Raj Kaur for the months of March, June, August and September, 2009. Complainant Rajender obtained the information under RTI Act regarding disbursement of pension from the month of October, 2008. The Sarpanch and the Panch have embezzled an amount of Rs.2,000/- on account of pension of a dead person.

3. Learned counsel for the petitioner submits that the contentions of the prosecution as well as evidence were not appreciated by the Courts below

while passing the impugned judgments as the prosecution on the strength of its evidence had been able to prove the charges levelled against the accused persons and this fact was proved that the accused had committed the criminal breach of trust with respect to the pension amount of Rs.2,000/- which was of a pensioner who had already died. It was further argued that the accused had converted the said amount for their own use by affixing the thumb impressions of a dead person and as such all the essential ingredients of Sections 409 and 406 IPC, thus, have been proved by the prosecution with the help of its witnesses as well as evidence.

4. Heard learned counsel for the petitioner and gone through the record.

5. Before adjudicating and examining the judgments passed by the Courts below, it would be appetite to test the material on record as to whether the set of facts would make out a case within the ambit of Sections 406 & 409, 420 IPC. As envisaged in these provisions, first of all it is to be seen whether there was any criminal breach of trust as defined under Section 405 IPC on the part of the accused and for an offence to be made out under Section 409 IPC it is further to be seen whether the accused was one of the persons as mentioned in the provision. As per Section 405 IPC, 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 willfully suffers any other person so to do,

commits criminal breach of trust. Thus, the first and paramount ingredient for an offence of criminal breach of trust to be made out it is required to be shown that some property was entrusted to the accused or he having dominion over such property dishonestly misappropriated or converted for own use that property.

6. Section 409 IPC provides that whoever being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. It is thus clear that the offence under this provision is an aggravated form of criminal breach of trust when it is committed by a person mentioned in the provision itself. By any stretch of imagination, the petitioner and/or the co-accused cannot be said to be covered within the purview of this provision.

7. Offence under Section 420 IPC provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. It is thus clear that for an offence to be made out under Section 420 IPC, it is to be shown that the accused cheats a person. The word cheating has been defined under Section 415 IPC, which provides that

whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or it likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat. It is now well settled legal position that in order to constitute an offence of cheating the intention to deceive should be in existent at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating, but at the same time it is also well settled legal position that subsequent conduct of the accused is also a relevant factor to infer whether he had fraudulent or dishonest intention at the inception i.e. when the offence was committed.

8. The exact connotation of the expression 'entrustment' as used in Sections 405 to 409 of the IPC has been settled by the decisions of the Supreme Court in ***Jaswantrai Manilal Vs. State of Bombay, AIR 1956 SC 575*** and ***State of Gujarat Vs. Jaswantlal Nathalal, AIR 1968 SC 700 : 1968 CrLJ 803***. According to the said decisions, "entrustment" contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event. The person who transfers possession of the property to the second party still remains the legal owner of the property and the person in whose favour possession is so

transferred has only the custody of the property to be kept or disposed of by him for the benefit of the other party. The expression 'Entrustment' also carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another continues to be its owner.

9. The essential ingredients for establishing an offence of criminal breach of trust as defined in Section 405 and punishable under Section 406, IPC with sentence for a period upto three years or with fine or with both, are: [i] entrusting any person with property or with any dominion over property; [ii] the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or wilfully suffering any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all its imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. In order to establish entrustment of dominion over the property, both the majority and

minority relied on in particular the judgment of this Court in ***Velji Raghavji Patel v. State of Maharashtra [(1965) 2 SCR 492]***.

10. In order to establish entrustment of dominion over the property to an accused person, mere existence of that person's dominion over the property is not enough. It must be further shown that his dominion was the result of entrustment. The prosecution must establish that the dominion over the assets.

11. Now, it is to be seen as to whether the prosecution has been able to prove the essential and required ingredients of both these provisions of IPC beyond all the shadows of reasonable doubt or not. As per the case of the prosecution, the accused had embezzled the pension amount of Rs.2,000/- of one lady namely late Raj Kaur wife of Gaje Singh who had died on 13.04.2009. It is also the case of the prosecution that the pension of the said lady was grabbed of four months i.e. May, June, August and September, 2009, total amount of Rs.2,000/-. In this regard, the prosecution itself has brought one enquiry report Ex.PW3/E conducted by the then Sub-Divisional Officer (Civil), Tosham and was sent to the Deputy Commissioner, Bhiwani vide his endorsement No.3007 dated 18.02.2013. While coming to his conclusion vide Ex.PW3/E, SDO (Civil), Tosham has mentioned that upon perusal of the file and in the light of the statements of Santra Devi (one of the accused herein) and Sundu Ram Panch of Ward No.7 that none had given the information regarding the death of Raj Kaur wife of Gaje Singh and thus, the old aged pension of the said lady continued. It is further mentioned in Ex.PW3/E that a Parda-nasheen lady while getting the benefit of crowd occasionally succeeds to get the amount of pension. It has been specifically

mentioned in the said report that no mistake was committed rather it was committed inadvertently. This way, the SDO (Civil), Tosham through his report Ex.PW3/E had reached at the conclusion that the disbursement of the pension was not an intentional act rather it was an inadvertent act. This way, vide Ex.PW3/E, SDO (Civil), Tosham, who was the senior most officer of the administration of the Sub-Division, Tosham, had reached at the conclusion that it was only an inadvertent mistake.

11. Even, PW1 has admitted that SDM, Tosham through his enquiry report dated 18.02.2013 had accepted both the accused as innocent through the report of the SDO (Civil), Tosham coupled with the fact that no other enquiry report was brought by the prosecution or by the investigating agency with the report under section 173 Cr.P.C. This fact clearly proves on the record that the accused have been successfully able to create a dent in the case of the prosecution. It is the settled law that the accused had to create a dent in the case of the prosecution whereas the prosecution was under bounden duty to prove the charges against the accused beyond all the shadows of reasonable doubt. The prosecution, thus, has failed to prove its case beyond all the shadows of reasonable doubt. PW3 the investigating officer also admitted that both the accused persons were found innocent. He also admitted that Tosham is a big village wherein thousands of people have been getting old-age pension. This fact admitted by PW3 who is not a formal witness rather is the Investigating Officer of the case.

12. Thus, the first and paramount ingredient for an offence of criminal breach of trust under Sections 406 & 409 is that it is required to be shown that some property was entrusted to the accused or he having

dominion over such property dishonestly misappropriated or converted for own use that property. In the present case, the prosecution has miserably failed to show that the entrustment of pension with the accused persons.

13. Thus, in the light of above discussion, the Courts below have rightly recorded the reasons and have acquitted the accused by giving them benefit of doubt as the prosecution has miserably failed to bring home the guilt of the accused. The case of the prosecution has been demolished by the report of SDM concerned which was brought on the record by the prosecution itself. Thus, the particular intent required to prove the charges against the accused remained unproved.

14. In view of the above discussion, there is no illegality or infirmity in the judgments passed by both the courts below. Accordingly, the present criminal revision petition is hereby dismissed.

25.04.2023
*V.Vishal*

**(Sandeep Moudgil)**
**Judge**

*1. Whether speaking/reasoned?* ***Yes/No***
*2. Whether reportable?* *Yes/No*