

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

260

CRM-M-40772-2019 (O&M)

Date of decision: 17.07.2023

Nasib Singh

....Petitioner

Versus

Satnam Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Imran Farooqi, Advocate (Legal Aid counsel)
for the petitioner

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 CrPC for setting aside the order dated 29.10.2015 passed by learned Judicial Magistrate First Class, Amloh vide which the complaint No.14 of 29.01.2010 filed by the petitioner was dismissed and order dated 09.04.2019 passed by learned Additional Sessions Judge, Fatehgarh Sahib vide which the revision petition was dismissed.

2. Facts as enumerated in the complaint are that the complainant is the Ex-President and accused no.1 and 2 are the ex-cashier and ex-President of Gurudwara Patshahi Chhevi, Guru Ki Nagri, Mandi Gobindgarh. During his tenure as President, from 20.10.2008 till 03.10.2009, different amounts were recovered from the Golak of Gurudwara Sahib as dated on 08.06.2009 of Rs.1,18,131/, on 08.07.2009 of Rs.1,58,790/-, on 06.08.2009 of Rs.99,235/ and on 05.09.2009 of Rs.1,10,000/- by accused No.1 under his signatures and he was required to deposit the same with Gurudwara Sahib. Thereafter, as per the account statement, about

Rs.83,000/- was due but it was never deposited and illegally withheld by the accused persons. To absolve themselves from the liability, accused No.2 submitted fabricated false bills No.87 to 116, which were not audited by SGPC Amritsar. He was requested many times to pay the due amount but with no effect.

3. In order to prove its case, the complainant examined as many as 7 witnesses.

4. The trial Court after hearing the submission dismissed the complaint of the petitioner vide order dated 29.10.2015. The revision preferred against the said order also came to be dismissed by the Revisional Court, vide order dated 09.04.2019.

5. Hence the present petition.

6. Since, none had appeared on behalf of the petitioner on a number of occasions, this Court vide order dated 23.02.2023, appointed legal aid counsel, who has assisted in the present matter. It is submitted that the receipts showing misappropriation of the amount in question were exhibited and moreover, since the petitioner was the President during the said tenure, thus he had locus standi to file the case. Reliance is placed on judgment of this Court in **Rajinder Singh Benipal vs. State of Punjab and others**, 2016 (4) PLR 274.

7. Heard and perused the file.

8. It would be apposite to refer to the judgment of the trial Court, wherein while dismissing the application it was observed thus:

“5. I have heard Ld. Counsel for complainant and carefully gone through the case file and I am of the considered opinion that complainant alleged that accused person has misappropriate an amount of Rs.83,000/- of Gurudwara Patshahi Chhevi, Guru Ki Nagri, Mandi Gobindgarh by not depositing

the same in the account of Gurudwara Prabandak Committee. But it is important to note that complainant himself in the first para of the complaint stated that he is Ex-President of Gurudwara Patshahi Chhevi, Guru Ki Nagri, Mandi Gobindgarh. If the accused has mis-appropriated the funds of the committee of Gurudwara Sahib, then President was having right to file complaint against the accused person. But the complainant in this case is Ex-President and no resolution in favour of complainant has been passed for filing the complaint against the accused person. On the other hand complainant has failed to prove that he was the President of Gurudwara Managing committee from 20.10.2008 to 03.10.2009. No appointment letter has been produced on record by the complainant to prove that he was President of Gurudwara Patshahi Cheevi, Guru Ki Nagri, Mandi Gobindgarh from 20.08.2008 to 03.10.2009. On the other hand complainant also failed to prove that accused was employee of Gurudwara Management Committee because no appointment letter nor any Identity card of accused has been produced on file by the complainant to prove that accused was employee of Gurudwara Management Committee. Whence Gurudwara Management Committee has produced the receipts Ex.C4 to Ex.C6 from the record of committee, then how accused has fabricated Ex.C4 to Ex.C6. On the other hand if accused person has collected receipts Ex.C4 to Ex.C6, the same must have to be shown in the record of the Gurudwara Management Committee. But complainant has not produced on record any register regarding maintaining the funds and expenditure of Gurudwara Management Committee.

Unless and until Gurudwara Management Committee has not proved that the accused has not deposited by the accused person in the funds of Gurudwara Management Committee, till then it cannot be presumed that accused has mis-appropriate the funds of Gurudwara Management Committee. So keeping in view of the abovesaid discussion, I find no reason to issue process against the accused persons. Hence complaint in hand is dismissed.”

9. The Revisional Court while dismissing the revision categorically recorded its findings as under:

“7. Learned Magistrate vide the impugned order dated 29.10.2015 on the basis of allegations levelled against accused and documents placed on record viz. Ex.C1 to Ex.C6 pleaded to dismiss the complaint under sections 406, 420, 120-B IPC. The complainant stated to be Ex-President of the Gurudwara

Patshahi Chhevi but as to why he did not file any complaint against accused persons who mis-appropriated the funds of the committee of Gurudwara Sahib. The complainant is Ex-President of Gurudwara Committee but no resolution was passed in favour of complainant to file complaint against accused persons. There is no document/appointment letter on record showing that complainant was Ex-President of Gurudwara Managing Committee w.e.f. 20.10.2008 to 03.10.2009 and President of Gurudwara Patshahi Chhevi, Guru Ki Nagri, Mandi Gobindgarh from 20.08.2008 to 03.10.2009. The complainant has failed to produce on record any register regarding maintaining the funds and expenditure of Gurudwara Management Committee showing the fabrication of receipt Ex.C4 to Ex.C6.

8. In view of the above said discussion, I do not find any illegality or irregularity committed by Ld.Lower Court while passing the impugned order and the same is hereby sustained. With these observations this revision petition stands dismissed. Record of learned trial Court be returned along with copy of this order, whereas file of this Court be consigned to the record room after due compliance.”

10. It is pertinent to note that the revisional Court has considered all aspects of the matter and rightly affirmed the judgment of the trial Court, which was well founded. Learned counsel for the petitioner has not been able to demonstrate that there is any glaring defect in the procedure or a patent error committed in ignorance of law, which has resulted in flagrant miscarriage of justice.

11. The petitioner in the present case has otherwise already availed of the remedy of filing a criminal revision petition, though unsuccessfully before the Additional Sessions Judge, Jalandhar, thus, this petition would amount to a second revision petition under the guise of petition under Section 482 Cr.P.C., as per Section 397(3) Cr.P.C., is the view of this Court, which finds support from the judgment in the case of **Krishnan vs. Krishnaveni and another** 1997(4) SCC 241, passed by Hon'ble The Supreme Court.

12. The High Court can entertain a petition under Section 482 of Cr.P.C. when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when it is felt that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court [See: **Kailash Verma vs. Punjab State Civil Supplies Corpn.**, (2005) 2 SCC 571]
13. No infirmity or perversity in the judgments of the Courts below has been found, thus, the same require no interference.
14. From the foregoing discussion, the present petition being devoid of merits, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

17.07.2023
S.Sharma(syr)

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No