

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

Crl. Misc. No. A-3079 of 2019
Date of decision:- 01.09.2023

State of Haryana

....Applicant

vs.

Rajeshwar

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Pawan Girdhar, Addl.A.G. Haryana
for the applicant

Ritu Bahri, J.**CRM-41038-2019**

For the reasons mentioned in the application, delay of 229 days in filing of the present appeal is condoned.

The application stands disposed of accordingly.

CRM-A-3079-2019

1. The State has come up in appeal against the judgment dated 26.03.2018 passed by Additional Sessions Judge, Panipat, whereby on an appeal filed by the respondent against the judgment of conviction dated 22.01.2015 and order of sentence dated 23.01.2015, he has been acquitted of the charges framed against him.

2. Brief facts of the case as mentioned in the judgment reads as under:-

In brief, the facts of the present case are that the present case was lodged on an enquiry report submitted by vigilance Department as per report no.1301 dated 27.6.2007, wherein present appellant was found to have embezzled the public money to the tune of Rs.1,21,242.98P. under PRI grant, amount of Rs.41,686.55P under SGRY grant, loss of Rs.4,82,041/- under Panchayat Funds and following allegations were proved against the appellant in enquiry report. The allegations are that a complaint was made by Rajender Rathee, Pradhan Gram Sudhar Samiti, of the village whose preliminary investigation was conducted and during the investigation, Tek Chand Ranga, Ex. Sarpanch was afforded an opportunity of hearing; record of Panchayat was scrutinized

and it was found that Tek Chand Ranga, Ex. Sarpanch in collusion with

appellant Rajeshwar by embezzling the amount of grant received from the government and by keeping the amount of Panchayat fund in his hands beyond the stipulated limit as well as by showing the other irregularities bogus expenses, had caused financial loss to the Gram Panchayat and against him, the following charges have been proved:

i) The entry dated 5.11.2002 recorded in the PRI Grant-PRI Cash Book at page no 11, shows the amount of Rs.63,478/- was recen under the scheme by the Gram Panchayat, Manana as the same v not included in the total income at the time of Goswara a straightway by embezzling the same, the financial loss has bes caused to the Gram Panchayat; the appellant by keeping the amount from 5.11.2002 till March 2007 has caused the financial loss to the Gram Panchayat; as per instructions and rules of the Govt. for continuous misuse of the same, the amount of Rs.63,478/- including penal interest 21% Rs.57764.98P. till March 2007 comes to Rs.1,21,242.98P. which is to be recovered from him.

ii) SGRY Grant: in SGRY Cash Book at page no.8 in the month of January 2004 at the time of Goswara, the income amount of Rs.69,854/- by adding it in the last balance of Rs.39,427.80P. has been shown as Rs.79,281.80P. whereas it comes to Rs.1,09,281.80P. and in this way, by showing an amount of Rs.30,000/- less, the same has been embezzled and the benefit went to Sarpanch and the financial loss has been caused to the Panchayat; the difference of less amount of Rs.30,000/- has been shown added in the income, at page no.18 of cash book at the time of Goswara for the month of January 2005 by noting down a note thereon and thereby the said error has been removed and as per the said Goswara the month of January 2005 an amount of Rs.28,680.80P. as balance is with the Sarpanch in cash and it is coming till now, as per the instructions and rules of the Govt., for the misuse of said amount of Rs.28,650.80P. including penal interest 21% of Rs.13035.75P till March 2007 comes to Rs.41,686,35P with is to be recovered.

3. On the basis of said statement, formal FIR of the case was recorded. The matter was investigated. Statements of witnesses under Section 161 Cr.P.C. were recorded. Accused was arrested. After completion of usual formalities of investigation, complete challan, in all respects, was prepared and put in the Court for trial.

4 Complete copy of challan was supplied to the accused as envisaged under Section 207 Cr.P.C. and on finding a prima-facie case, the accused was charge-sheeted, for the commission of offences, punishable under Sections 409, 420, 467, 468 and 471 of IPC, vide order dated 11.11.2009, to which he pleaded not guilty and claimed trial.

5-Prosecution to prove its case has examined Neeraj Dhiman as PW-1, Santosh BDPO as PW-2, SI Rameshwar Dutt as PW-3, Amit as PW-4, Nafe Singh as PW-5, ASI Ramesh Kumar as PW-6, SI Ranvir Singh as PW-7, Bhim Singh as PW-8, Suresh Kumar SDO as

PW-9, Ashok Kumar JE as PW-9 (should be mentioned as PW-10), Lok Raj as PW-10 (should be mentioned as PW-11), Rohtash Kumar as PW-11 (should be mentioned as PW-12), Rajender Rathi as PW-12 (should be mentioned as PW-13), Ravi Dutt as PW-13 (should be mentioned as PW-14), Dev Raj as PW-14 (should be mentioned as PW-15), Anil Kumar as PW-15 (should be mentioned as PW-16), Ja Bhagwan as PW-16 (should be mentioned as PW-17), Khem Chand as PW-17 (should be mentioned as PW-18), Rajesh Kumar as PW-18 (should be mentioned as PW-19), Zile Singh as PW-19 (should be mentioned as PW-20), Karamvir as PW-20 (should be mentioned as PW-21), Fateh Singh as PW-21 (should be mentioned as PW-22) and thereafter, the evidence of the prosecution was closed by order of the Court on 2.6.2014.

6- After prosecution evidence, appellant-accused was examined under Section 313 Cr.P.C., in which he pleaded himself be innocent and false implication in this case. The accused did not opt to lead evidence in his defence.

Heard.

A bare perusal of judgment dated 26.03.2018 shows that on an application given by one Rajender Rathee, an enquiry was conducted against the respondent who was Gram Sachiv and one co-accused Ex Sarpanch Tek Chand. It was found that the respondent had misappropriated the amount and kept the same with him. In this regard, F.I.R. was lodged against the respondent and Tek Chand. The Court below has rightly held that the prosecution has examined as many as 22 witnesses and the case of the prosecution was based upon enquiry report No. 1301. But only photocopy of enquiry report was placed on record and this photocopy was never compared with the original. Further none of the witness had stated that the respondent misappropriated the panchayat fund during his service as secretary in village Manana. All the grants came in the Panchayat and Panchayat was authorized to withdraw the same through Sarpanch. Further none of the accused has withdrawn any amount which belongs to Gram Panchayat. After going through the statement given by the prosecution witnesses, it was not found that the respondent has misappropriate the funds of the Gram Panchayat. There was no proof regarding embezzlement. There were major contradictions in the statement of the witnesses.

The panchayat record used to remain in the custody of the Sarpanch and his son

Kuldeep and the respondent was a Government Official and his duty was only to write the documents and the resolutions passed by the Panchayat.

Counsel for the appellant has not been able to point out any other evidence which the lower Court has misread or which can lead to conviction of the accused.

Thus, the Lower Appellate Court has rightly acquitted the accused by giving him benefit of doubt.

Accordingly, the present application seeking leave to appeal is hereby dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

01.09.2023
G Arora

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No