## HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CRR-570-2020 (O&M)**
**Date of Decision: 23.04.2024**

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Sanjeev Kumar ... Petitioner

VS.

State of Punjab ... Respondent

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**CRR-571-2020 (O&M)**

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Sanjeev Kumar ... Petitioner

VS.

State of Punjab ... Respondent

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**CRR-588-2020 (O&M)**

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Sanjeev Kumar ... Petitioner

VS.

State of Punjab ... Respondent

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

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Present: Mr. Yagsimant Attri, Advocate for the petitioner

Mr. JS Rattu, DAG Punjab

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**Sandeep Moudgil, J.**

(1). This order shall dispose of the above-cited three revision petitions wherein the petitioner has challenged the judgment of the appellate court dated 13.02.2020 arising out of the same judgment and three orders of sentences dated 08.09.2014 passed by JMIC, Rupnagar in three different police challan arising out of FIR No.16 dated 06.02.2008 under Sections 409/420/467/471/120-B IPC registered at Police Station City Rupnagar whereby the petitioner has been convicted and sentenced to undergo RI for three years consecutively. CRR-570-2020 is being treated as the lead case.

(2). The petitioner has been working as District Nazir at District Courts Ropar during the relevant period i.e. September 1999 to August 2002. While working as such, the petitioner was entrusted with the funds of the

District Judiciary which was public money and he allegedly committed criminal breach of trust in respect of the said public money during his tenure as District Nazir at District Courts Ropar during the above said period between September 1999 to August 2000 by embezzling a sum of Rs.3,53,016/-; further during the period September 2000 to August 2001, he embezzled a sum of Rs.1,32,424/-; and further during the period between September 2001 to August 2002, embezzlement of Rs.4,63,258/- was done by the petitioner by forging bogus payment receipts to different shopkeepers and also fraudulently using the bogus/fake bills/receipts as genuine documents which the petitioner knew or had reasons to believe the same to be forged documents, as such, he has committed the offence of cheating.

(3). A discreet departmental inquiry was conducted and as per the inquiry report dated 22.01.2008, the Inquiry Officer, it was found that the petitioner is guilty of embezzlement of funds of Legal Services Authority, Rupnagar by forging/preparing bogus bills. Accordingly, the instant FIR was lodged and during trial, the investigating authorities presented one joint challan on 01.10.2008 for the entire period and three sub-challans for the segregated period of 12 months each against the petitioner which ultimately resulted in conviction of the petitioner vide three separate judgments for commission of offence for three different period vide judgments and orders dated 08.09.2014 whereby the trial court sentenced the petitioner to undergo RI for 3 years under Sections 409/467/471/420 IPC with fines of Rs.10,000/-. It was further ordered that all the above sentences awarded in three different challans were to run consecutively inter se as the petitioner-convict was not found entitled to concession under Section 427(1) CrPC to convert consecutive sentences into concurrent running of sentences. The petitioner preferred common appeal before the Additional Sessions Judge, Rupnagar and the same, however, was dismissed vide judgment dated 13.02.2020 which has prompted the petitioner to invoke the revisional jurisdiction of this Court.

(4). Learned counsel for the petitioner contends that the courts below have erred in not appreciating the fact that there are material contradictions in the testimony of the witnesses examined by the respondents inasmuch as the final sanction/approval for release of payment to the respective parties is made by the Chairman, Legal Services Authority and it is only thereafter, the payments are released by the petitioner as such, he has nothing to do with the embezzlement and has been made a scapegoat indeed.

(5). It is further argued that the very basis of FIR is the enquiry report Ex.PW9/A where the petitioner was neither heard nor the tent house owners (PW1 to PW7) were associated in the inquiry conducted. He then averred that there is an inordinate and unexplained delay of almost 7 years in lodging the FIR as the alleged incident took place between September, 1999 to August, 2002 whereas the FIR came to be registered in the year 2008. Moreover, none of the ingredients to make a case of cheating, dishonest, breach of trust or to destroy security has been proved to have been made out by the prosecution before the courts below.

(6). Learned State counsel on the other hand, vehemently opposed the prayer made by the petitioner and submits that the sentences as awarded by the trial court to run consecutively cannot be interfered with and is liable to be rejected in the view of the Full Bench decision of this Court in ***Jang Singh vs. State of Punjab 2008(1) RCR (Crl.) 323***.

(7). He further averred that three different challans were presented by the police as the public money was embezzled by the petitioner-revisionist in three different transactions between September, 1999 to August 2000, September, 2000 to August 2001 and September 2001 to August 2022 and as such the courts below have rightly convicted and sentenced him to undergo rigorous imprisonment consecutively as per section 427(1) CrPC wherein it has been provided that it is the prerogative and discretion of the trial court to order specifically that the subsequent sentence shall run concurrently with the previous sentence and the same is not mandatory for the trial court.

(8). Heard learned counsel for the parties and gone through the record.

(9). Admittedly, the petitioner was working as District Nazir with the District & Sessions Judge- cum-Chairman, Legal Services Authority, Ropar and his duty was to release the payments "*as per the sanction granted by the District & Sessions Judge-cum-Chairman, Legal Services Authority, Ropar*". After the conclusion of Lok Adalat on a particular day, the respective parties, raise their bills in the name of the Chairman, Legal Services Authority and the same is submitted to the ADA (Legal) and after due checking of its antecedent correctness, eventually, the District Judge sanctions the bill and thereafter the said bill is placed before the Chairman, Legal Services Authority for its final sanction/approval for release of payment to the respective parties and it is only after sanction and approval is granted by the Chairman, Legal Services Authority, the payment is released by the petitioner.

(10). In the present case, all the payments have been released by the petitioner as per the sanctioned/approved bills by the Chairman Legal Services Authority, Rupnagar and no payment whatsoever have been made by the petitioner over and above the sanctioned and approved payments and this fact has not been given due weightage by both the courts below and as such there seems to be no question of any embezzlement of the said amount by him. Had there been an inquiry with regard to the payments, which have been released, the same would have proved that the payments released tally with the sanctioned/approved bills.

(11). Further this Court also cannot lose sight of the fact that it took more than 7 years for the prosecution/Department to lodge an FIR against the petitioner as the incidents, as alleged, are of September, 1999 to August 2022. This fact has gone unnoticed by both the Courts below and the benefit of such delay, which has not been duly explained, must flow to the petitioner inasmuch as if there was any embezzlement, nothing precluded the departmental authorities to register criminal case against the petitioner besides the parallel domestic enquiry could have been conducted by the department.

(12). In so far as the ingredient of the provisions invoked in the FIR are concerned, that too does not inspire any confidence with the conscience of this Court as nothing material or evidence of any sort has been placed or appreciated before the courts below which may even remotely suggest that the petitioner ever cheated, dishonestly induced the department, or carried out any forgery or had entered into any breach of trust with the anyone so as to attract the punitive action under Sections 409/420/467/471/120-B IPC.

(13). In the case of ***State of Kerala v. A. Pareed Pillai and another, AIR 1973 SC 326*** the Supreme Court ruled that to hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise and such a dishonest intention cannot be inferred from a mere fact that he could not subsequently fulfill the promise. Similar view has been taken in the case of ***S.W. Palanitkar and others v. State of Bihar & another (2002) 1 SCC 241*** and also in the case of ***State of Kerala vs. A. Pareed Pillai and Anr. (1972) 3 SCC 661***.

(14). In the present case, there is no element of deception by the petitioner inasmuch as the allegation of the prosecution has legs to stand as they failed to bring on record any document to establish that the embezzled amount was actually misappropriated by the petitioner either by way of leading cogent evidence like bank account statement of the petitioner or any other such documentary proof which shows that the petitioner was solely responsible for sanctioning and releasing the amount to the persons/entities engaged in conducting Lok Adalat or that such amounts were never allowed to be drawn by the petitioner in favour of such persons/entities This fact in itself establishes that there was no fraudulent or dishonest inducement by the petitioner or even *mens rea* in regard to execution of sale deed.

(15). Even otherwise, the trial court cannot be said to be justified in ordering the sentence award to run consecutively and not concurrent inasmuch as the transactions though pertaining to different years but the same were in relation to a common purpose/events conducted under the aegis of the District Legal Authorities and by this very fact, the provisions of Section 427(1) CrPC could not be invoked and the trial court ought to have ordered the sentences of the petitioner to run concurrently. So much so, the petitioner has by now completed more than 4 years and 2 months of custody till date against the maximum sentence awarded of 3 years.

(16). For the reasons aforementioned, this revision petition is allowed on merits and the judgments and orders passed by both the courts below are set aside.

(17). Ordered accordingly.

23.04.2024
*V.Vishal*

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

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