IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRR-929-2022(O&M)

Date of Decision:-22.08.2024

Haryana State Council for Child Welfare.

......Petitioner.

Versus

Chander Mohan & Ors.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Vinay Kumar Mahajan, Advocate for the Petitioner.

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JASJIT SINGH BEDI, J. (ORAL)

CRM-16986-2022

The prayer in the application under Section 5 of the Limitation Act for condonation of 520 days in filing the present revision petition.

Heard.

For the reasons stated in the application, the same is allowed and delay of 520 days in filing the present revision petition is condoned.

CRR-929-2022

The present revision petition has been preferred against the judgment dated 01.08.2019 passed by Additional Sessions Judge, Faridabad affirming the judgment of acquittal dated 10.01.2017 passed by Judicial Magistrate Ist Class, Faridabad.

2. Briefly the facts of the prosecution case are that a letter bearing no. 177 dated 13.06.2011 was received in the police station Kotwali, NIT, Faridabad wherein the complainant Sajjan Singh has stated as follows:

"that on the order dated 08.06.2011 of Commissioner and President of District Council for Child Welfare, it is informed that in accordance with cash book of April 2003 to 31st March 2010 officers and employees for District Council for Child Welfare has in their possession cash in hand to the extent of Rs.37,60,891/-. The particulars of cash in hand in follows:-

(i) Sh.Kamlesh Shastri Ex-District Child Welfare Officer and Sh.Nem Kumar Accountant from April 2003 to 24.2.2006 has cash in hand.

(ii) Smt.Sujata dhar, Office acting District Child Welfare and Sh.NemKumar from 30.1.2006 to 11.6.2007 has cash in hand Rs.25,481/-.

(iii) Sh.Chander Mohan Bhatnagar Ex-District Child Welfare Officer, Sh.Karamvir Singh, Programmer Manager and Sh.Nem Kumar, Accountant from 10.8.2007 to 31.3.2010 has cash in hand Rs.30,03739/- total Rs. 37,60,891/-.

It is further informed to you that from 9.7.2009 to 31.3.2010 the cash book is not yet return and from the year 2007-08 to 2009-10 signatures of DDO is not there in cash book. Thus, it is requested you to that in FIR against them be registered and fund of the District Child Welfare Council be recovered and annexure as per law be taken".

3. On the basis of this complaint, the FIR was registered. Statements of witnesses under Section 161 Cr.P.C. were recorded. On finding substantial incriminating material against the accused, the challan was presented against them before the Court.

4. Finding a prima facie case, the accused were charge-sheeted under Sections 409 IPC vide order dated 21.7.2014, to which the accused pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined the following witnesses:-

Prosecution Witnesses	Exhibits	Document
PW-1 Uday Chand	Ex.PW-1/A Ex.PW-1/B Ex.PW-1/C Ex.PW-1/D Ex.PW-1/F	Office Note Office Order Cash Book Cash Book Report of Child Welfare
PW-2 SI Kamlesh	Ex.PW-2/B	FIR Endorsement
PW-3 Mahtab Singh PW-4 SI Om Parkash	Ex.PW3/A Ex.PW-4/A & Ex.PW-4/B Ex.PW-4/C Ex.PW-4/D & Ex.PW-4/E Ex.PW-4/F & Ex.PW-4/G Ex.PW-4/H Ex.PW-4/J Ex.PW-4/K	Sanction Order Disclosure Statements Recovery Memo Disclosure Statement Site Plan Disclosure statement Search Memo Photocopy of Record
PW-5 Sajjan Singh (Complainant)	Ex.PW-5/A Ex.PW-5/B & Ex.PW-5/C	Complaint Details of cash book
PW-6 ASI Krishan Kumar	Nil	Nil
PW-7 Sandeep Kumar	Nil	Nil

6. Statements of the accused under section 313 Cr.P.C. were recorded wherein the incriminating evidence was put to them. They denied all the allegations leveled against them and stated that the case has been falsely planted against them.

7. The accused tendered the following documents in defence evidence:-

Ex.D-1 Audit Report

Ex.D-2 Letter

Ex.D-3 Auditors report

Ex.D-4 Auditors Report for the year 2005-06

Ex.D-5 Auditors Report for the year 2006-07

Ex.D-6 Auditors Report for the year 2007-08

Ex.DX FIR report

8. Based on the arguments and evidence led the Court of Judicial Magistrate Ist Class, Faridabad on 10.01.2017 acquitted the accused/respondent.

9. An appeal was preferred which came to be dismissed vide judgment dated 01.08.2019 passed by Additional Sessions Judge, Faridabad.

10. The aforementioned judgments are under challenge in the present revision petition.

11. The Counsel for the petitioner contends that the courts below had erred in acquitting the accused on the basis of the audit reports Ex.D-1 to Ex.D-6 without examining the discrepancies in the accounts. The Courts had come to the wrong conclusion that the statements of the prosecution witnesses were contradictory and not supporting the case of the prosecution. The Trial Court as well as lower Appellate Court had not appreciated the inquiry conducted by Mr. R.C. Rao, IAS (Retd.) dated 24.07.2012 and 18.07.2012. The audit report were not matching with the cashbook and the statements prepared by the accused. The Chartered Accountant had admitted that he had not audited the cashbooks properly and had not checked the entries in the cash in hand. He, therefore, prays that the present petition be allowed and impugned judgments be set aside

12. I have heard Counsel for the petitioner.

13. In order to affix the guilt of the accused for commission of offence under Section 409 of IPC, the prosecution is required to show that the accused persons were public servants and some property was entrusted to them or that they had any dominion over the property which they had

dishonestly misappropriated or converted to their own use or dishonestly used or disposed of that property in violation of any direction of law.

14. Thus, the prosecution was required to establish the following facts:

(a) The accused must be entrusted with property or dominion over the property; and
(b) The person so entrusted (i.e., the accused) must-
(i) dishonestly misappropriate, or convert to his own use, that property, or
(ii) dishonestly use or dispose of that property or willfully suffer any other person to do so in violation of
(1) any direction of law, prescribing the mode, in which such trust is to be discharged, or
(2) any legal contract made touching the discharge of such trust.

15. Considering the above ingredients of the offence alleged against the respondents, the evidence led by the prosecution is required to be examined. The prosecution has examined two material witnesses to prove the allegations as PWI & PW5. PWI is the accountant of the department and PW5 is the complainant-cum-Ex District Child Welfare Officer. PWI in his examination in chief tried to prove the case of the prosecution. However, during cross-examination, he admitted that audit was being carried out in their office every year. No irregularity was observed in the audit. He was confronted with audit report Ex.D1 to Ex.D6 and stated them to be correct. He further admitted that every file was completely checked. The bill numbers were tallied. He also admitted that in order to ascertain whether any misappropriation has been taken place or not, examination of the bill-book alongwith cash file was required to be examined. However, no such documents had been produced.

16. Furthermore, PW5 being the complainant in his examination in

chief accused proved the complaint and also the allegations that the accused had misappropriated about Rs.7,31,671/- during the period from 1.4.2003 to 24.6.2006 and Rs.30,03,439/- from 7.8.2007 to 31.3.2010. However, he failed to provide any detail. Moreover, during cross-examination, he also admitted that an audit was being carried out every year. He was shown the audit report Ex.DI to Ex. D6 and deposed that the same were correct. During cross-examination, he also admitted that the matter was brought to the notice of Deputy Commissioner, Faridabad, who was his immediate superior, who directed that the account record of the department be kept in the custody of the City Magistrate. However, the said order was not complied with by him for the reasons unknown to him. He also admitted that the FIR No. 959 of 12.11.2014, under Section 409 of IPC was also lodged against him in PS Civil Line Gurgaon and the copy of the same was Ex.DX.

17. From the statement of these two witnesses and particularly from the cross-examination, the prosecution has not been able to establish that the alleged amount was entrusted by the department or by any other person. Further, they did not produce the bill book and the register to compare that the amount received by them from the public was duly collected in the account of department or not. The recovery effected from the accused were from their own accounts. Since, entrustment of amount has not been proved, thus, the question of misappropriation does not arise. Moreover, in view of the Audit Report Ex.D1 to Ex.D6, it cannot be said that there was any irregularity in the department qua the amount received by the respondents/accused.

18. In view of the aforementioned discussion, I find no reason to

interfere with the impugned judgments and therefore, the present petition stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 22, 2024
Vinay

Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***