

CRR-1471-2017 (O&M)

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

222

**CRR-1471-2017 (O&M)
Date of Decision: 26.04.2024**

Bhagat Ram ...Petitioner

Vs.

Ashwani and others ...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Arshdeep, Advocate for
Ms. Shivani Sharma, Advocate, for the petitioner.

Mr. Akbarjit Singh, Advocate, for respondent No. 1.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

CRM 13355 of 2017

1. Learned counsel for the petitioner submits that the present revision has been filed against the impugned judgment dated 08.02.2016 passed by the Court of Additional Sessions Judge, S.B.S. Nagar and the judgment dated 11.03.2015 passed by the Court of Chief Judicial Magistrate SBS Nagar, whereby, the respondent No. 1 and 2 were ordered to be acquitted. After the judgment was passed by the trial Court, the matter was placed before the Board of Directors of the Bank and it was decided to file a criminal revision before this Court. After receiving the record of the case, the petition was filed on 08.08.2016, but the Registry of this Court has raised certain objections and returned the file on 22.08.2016. Again, the petition was

refilled on 05.09.2016 and certain more objections were raised by the Registry of this Court and the file was returned. Thereafter, again, the objections were cleared and the present petition was refilled before this Court. In this process, delay of 240 days had occurred in filing the present appeal and the delay may be condoned.

2. On the other hand, learned counsel for the respondent has vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that the petitioner was bound to explain the delay of each day and the application may be dismissed.

3. I have heard learned counsel for the parties and I am of the considered opinion that the delay in filing the present petition deserves to be condoned by this Court. It is matter of common knowledge that in the official process, the decision is taken at different levels and, thereafter, a decision is finally taken to file a case. Apart from that, certain technical objections were raised and after removal of the objections, learned counsel had filed the present petition. Thus, there are sufficient grounds for condoning the delay in filing the present petition before this court.

Main case

1. The present petition has been preferred against the impugned judgment dated 11.03.2015 passed by the Chief Judicial Magistrate, SBS Nagar and the impugned judgment 08.02.2016 passed by the Additional Sessions Judge, SBS Nagar, whereby, the respondents No. 1 and 2 were ordered to be acquitted by both the

Courts. Challenging the impugned judgments, the complainant-bank has preferred the revision petition.

2. As per the case set up by the prosecution, a complaint dated 19.04.2018 was filed for embezzlement by Madan Lal, Ashwani Kumar and Harjinder Singh. The complaint was submitted by Bhagat Ram, Branch Manager, Central Cooperative Bank to the SSP, S.B.S. Nagar. As per the complainant, Ashwani Kumar, Branch Manager, Madan Lal, Accountant and Harjinder Nath Class IV employee had embezzled a sum of Rs.7,76,364/- by withdrawing the amount from the account of various account holders of the bank by forging their signatures. After holding the inquiry, it was requested that a formal FIR may be registered against all of them.

3. During the course of investigation, the police recorded various statements and presented a report under Section 173 Cr.P.C. against the accused. The trial Court found sufficient grounds to proceed against the accused under Sections 120-B, 409, 465, 468, 471 and 420 IPC and the accused pleaded not guilty and claimed trial.

4. During the course of trial, the prosecution examined PW1 Bhagat Ram, the complainant PW2 Narinder Kumar Sharma, who brought on record the resolution, PW3 Inspector Daljit Singh, who conducted inquiry being Incharge E.O. Wing Nawanshahr, PW4 Mohan Lal, who brought on record the transfer orders, PW5 Mangat Ram Bhogal in whose account money was withdrawn, PW6 Mangat Singh in whose account money was withdrawn, PW7 Ravinder Singh

with whom the forgery was committed, PW8 SI Gurdial Singh, the Investigating Officer, PW9 Inspector Joginder Singh, the witness of arrest and personal memos of accused Madan Lal, PW10 SI Sukhbir Singh, who registered the case against accused being Chowki Incharge, PW11 Hardeep Singh, the witness of arrest and personal memos of accused Ashwani Kumar, PW12 Inspector Ranjit Singh, who brought the record pertaining to inquiry and PW13 Hari Kishan, with whom the forgery was also committed.

5. After the conclusion of the prosecution evidence, the statements were recorded under Section 313 Cr.P.C. and the accused/petitioner claimed innocence.

6. Learned counsel for the petitioner contends that the impugned judgments are based on misappreciation of evidence and law. Both the Courts overlooked the fact that the accused had embezzled a sum of Rs. 7,76,364/- by withdrawing the amounts from the accounts of various bank customers by forging their signatures. An inquiry was conducted and even during the course of inquiry, the charge stood proved against them. He further contends that the Courts had clearly ignored the oral as well as documentary evidence against the respondents and committed an illegality by passing the impugned judgments of acquittal. Apart from that, the charge against the respondents was also substantiated by the fact that the accused had deposited back an amount of Rs. 2 lacs to Rs. 4.4 lacs with the bank on 25.01.2008 and 05.02.2008, respectively, and their own admission

showed that they had committed the crime. Learned counsel further contends that both the Courts have taken hyper technical approach and the impugned judgments are legally unsustainable.

7. On the other hand, learned counsel appearing on behalf of the respondents submit that the impugned judgments are based on correct appreciation of facts and law. They further contend that there was no evidence of forging the signatures of anyone by any of the accused and the impugned judgments are legally sustainable.

8. I have heard the learned counsel for the parties and with their able assistance, I have carefully examined the record of the present case.

9. The main charge against the accused was that they had withdrawn the amount from the bank accounts of various customers vide cheques Ex.PE to Ex.PK by forging their signatures. However, the prosecution did not get compared the signatures and the writing of the aforesaid cheques with the standard signatures, with the help of some finger print and handwriting expert. Rather, no handwriting expert was examined by the prosecution. Apart from that, PW5 Mangat Ram had stated that he had given the cheque to Ashwani Kumar, respondent No.1 for encashment but Ashwani Kumar did not return the cash to him after withdrawing from the bank. Thus, his evidence shows that he had himself signed the cheques. Even, the deposit and disbursement of cash is done by the cashier and it was never done by Ashwani Kumar, who was working as Branch

Manager. Thus, the allegations were primarily levelled against Madan Lal, who had expired during the course of trial. Still further, PW13 Hari Kishan stated that he had deposited two installments of Rs. 2600/- and 1300/- each with Madan Lal, Cashier, but Madan Lal cashier had not deposited the said amount in the loan account. Thus, the fraud was committed by Madan Lal and not by the respondents No. 1 and 2. Apart from that, the statement of Ravinder was recorded, who stated that he had given the installment for depositing his loan account to Harjinder Nath, but Harjinder Nath had returned him pass book before entry of deposit of installment, but the installment was not deposited in the said account. Thus, the main allegations in the present case were levelled against Madan Lal, cashier, who had to make appropriate entries in the pass book of the customers regarding the deposit of the amount, but in reality, he had not deposited the amount with the bank.

10. Still further, the prosecution could not lead any evidence to show that Ashwani Kumar and Madan Lal had deposited a sum of Rs. 6,45,000/- with their bank vide Ex.PA and Ex.PD. The signatures of both the accused were not proved by the prosecution and no advantage could be drawn from the same. Even, the prosecution utterly failed to prove that the amounts were withdrawn by respondents No. 1 and 2 by encashing the cheques and expert evidence in this regard was completely missing.

11. Even otherwise, I have carefully perused the findings recorded by both the Courts and detailed findings, based on correct appreciation of facts and law, have been recorded by both the Courts. Even during the course of arguments, learned counsel appearing on behalf of the petitioner could not point out any illegality, material irregularity or perversity in the impugned judgments passed by the Courts and impugned judgments are ordered to be upheld.

12. As a consequence, the revision petition fails and is, accordingly, ordered to be dismissed.

26.04.2024

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

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Yes/No