IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-17-2023 (O&M)
Reserved on:15.07.2024
Pronounced on:26.07.2024

Qutab Plaza Condominium Association ... Appellant

Vs.

A.N. Sarin ... Respondent

CORAM: HON'BLE MRS. JUSTICE LISA GILL.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Chirag Jamwal, Advocate,
for the applicant/appellant (through V.C.).

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SUKHVINDER KAUR, J.

1. Applicant/appellant – Qutab Plaza Condominium Association (hereinafter to be referred to as 'the Association') seeks leave to appeal against the judgment dated 26.09.2022 passed by Ld. Judicial Magistrate 1st Class, Gurugram vide which the accused/respondent has been acquitted.

2. Brief facts as per case of the complainant are that criminal complaint was filed by Qutub Plaza Condominium Association against – its Ex-Honorary Secretary, alleging that complainant is a society registered under the Societies Act, 1860 vide registration No.818/2002-03 having its own bye-laws and acts as per its constitution. Accused is a member of Association and was elected as General Secretary for a period of one year from January, 2012 to January, 2013. The funds for functioning of the society were generated by collecting maintenance

charges from its members. A current account was opened in the Corporation Bank and State Bank of India, DLF City, Phase I, Gurgaon. The account could be operated only under signatures of General Secretary alongwith joint signatures either by the Treasurer or the President, to ensure that funds were properly used and that accountability could be fixed in case of misuse of funds. It was alleged that accused hired bouncers and engaged muscle man to run the society. General body meeting was never called for any cause or expenditure, said to be incurred on so called various projects taken up at their instance. No project was ever approved by calling General body meeting. No audit of accounts was ever conducted, though request was made by members of the Association in this respect several times. During their tenure, office files, computers, cheque books, un-deposited cheques, cash balance and other documents pertaining to society were in the custody of accused. No other member had any access to the office and records. It was alleged that accused withdrew huge amount from the account of the complainant/society without any lawful demand and knowledge of members of the Executive Committee. Though accused was requested time and again to call the General body meeting to maintain transparency, but he did not pay any heed to the said request of the members. Accused was also asked several times to dissolve the then Executive Committee after expiry of its tenure and declare fresh elections, but all in vain. Ultimately members resigned and an emergency meeting was called by the President and direction was issued to the banks where the society has its accounts, to stop payments. Elections for new Executive body was declared and returning officer was appointed to conduct fresh elections by 31.03.2013 under the supervision of the Registrar of the Firms and Societies. Accused was asked to hand over complete records, cheque books, office computers, office records files and balance cash in hand to the returning officer, but the accused did not hand over the same to the Interim President and also did not reply to the said letter. A new Executive body was elected in the election held on 31.03.2013 which was approved by Registrar of Firms and Societies, Gurgaon on 08.04.2013. After formation of new Executive body, complainant sent another notice to the accused for handing over complete records, cheque books, entire office files and balance cash in hand to the newly elected committee. Still the accused did not hand over the same to the present committee and did not even bother to respond. It was alleged that accused is not at all cooperating in any manner with the elected committee by way of providing details, files, documents, cheque books, office computers etc. He has illegally taken away the same from the office and balance cash in hand is also lying with him. It was also alleged that accused fabricated and forged documents on the letter head of the Association projecting himself to be General Secretary and other members holding different posts or the purported executing body. He submitted a forged letter to Corporation Bank and Bank of India, DLF City, Phase I, Gurgaon and before several other authorities. When members of this so called executive body came to know about the fraud and forgery committed by accused, then most of them withdrew their names saying that they had not filed any nomination and their consent was not taken by the accused. It was alleged that action, intention and conduct of the accused is *malafide* and self explanatory. He fabricated false documents with intent to commit fraud and cause irreparable loss to the Association for his own gain. It was further alleged that accused dishonestly and fraudulently prepared, signed, sealed and executed documents with intention to project that such document(s) were prepared, signed, sealed and executed by the Association. This was done with the sole purpose to cheat and misappropriate the funds of the Society. The accused dishonestly with intention to commit mischief is alleged to have taken away office computers containing all the details and accounts, cheque books, cash and other important documents along with furniture, without having any authority. He not only dishonestly disposed of office property but also raised bogus bills of diesel for running generator at far flung areas. He raised monthly bills to the tune of Rs.6-7 lakhs, whereas the actual expenditure was Rs.2-2.5 lakhs per month, including diesel for running the generators and for the back up. Accused after creating groupism, side-lined the then President, showing majority of governing body on his side. The said Ex-President expressed that accused never felt the need to have consent from him for running the Association and that all the records, files of Association were controlled and handled unilaterally by the accused himself during his tenure. As per the then Treasurer (Ex-Treasurer) Mr. Rajat Dogra, all documents, records, invoices etc. and books of accounts were duly maintained under the direct supervision of the accused, who was Ex-Honorary General Secretary, and as Ex-Treasurer was often travelling out of station for business or to his office at Manesar, the accused sometimes got blank cheques signed from the then Treasurer for generator diesel and staff salary payments which he statedly signed in good faith. Accused had also been taking signatures of the then President who was also authorized signatory of the Association. Accused instigated many material suppliers to send bogus bills in lakhs, by giving their wrong illegal receipts, alleging that they had supplied materials for the Association during the tenure of the accused. It was alleged that these purported suppliers were bringing such illegal bills even after gap of so many years and threatened the Association while alleging that they had supplied material to the accused. The accused illegally withdrew large sums through different cheques.

3. After analyzing the preliminary evidence on file as well as the complaint, the learned trial Court summoned the accused vide order dated 02.05.2015 to face trial for commission of offence punishable under Sections 409/465/468/477-A IPC.

4. In the pre-charge evidence, complainant examined CW1 Sushil Yadav, CW2 Rajat Dogra, CW3 Veena Rani, CW4 Inderjeet Kocher, CW5 Sajjan Lohiya, CW6 Ranjan Kumar, CW7 Ballu Ram, CW8 T.K. Satheesan and CW9 Jitender Pruthi.

5. After concluding of pre-charge evidence and hearing the arguments on charge, charges under Sections 409/465/468/477-A IPC were framed to which the accused pleaded not guilty and claimed trial.

6. In after charge evidence, only PW Bhim Sain was examined.

7. Statement of accused under Section 313 Cr.P.C. was recorded while putting all the incriminating evidence against him. He claimed innocence and pleaded false implication, but no defence evidence was led

by the accused.

8. After considering the evidence on record, facts and circumstances of the case, learned trial Court acquitted the accused of the offences for which he had been charge sheeted vide judgment dated 26.09.2022. Hence aggrieved by the said decision, applicant/appellant has preferred the present application seeking leave to file an appeal against the acquittal of the accused.

9. Learned counsel for the applicant – appellant contended that learned trial Court has committed manifest error in law by outrightly rejecting Ex.CW10/A i.e. the audit report as having not been proved as per the Indian Evidence Act, though the said document was prepared in the presence of Sh. Dalel Singh Ahlawat (President), Jatinder Pruthi (Treasurer) and Sh. T.K. Satheesan (Secretary) and bears signatures of the said three officials. Learned trial Court also failed to appreciate the existence of ingredients of Sections 408 and 405 IPC while deciding the matter. If a person in his capacity as a Secretary of the Society, acts as an agent of the Society and is entrusted with goods in such capacity and commits criminal breach of trust, he is liable for commission of an offence punishable under Section 409 IPC. He further contended that burden of proof never shifts from the prosecution to the defence. Nevertheless the fact that accused failed to disclose what happened to the money, coupled with other circumstances justifies the inference that he had misappropriated it. He argued that it is not possible for the prosecution to prove the precise manner in which the money was misappropriated. Question of existence of intention is not a matter of

direct proof and the strong circumstances against accused are to be scrutinized. He urged that accused committed breach of trust by withdrawing huge amounts from account of the complainant/Association without any lawful demand and knowledge of members of the Executive Committee. Accused was asked to dissolve the Executive Committee but he had refused to do so. After election of new executive body, accused did not hand over complete record, cheque books, cash in hand to the newly elected committee. As per audit report Ex.CW10/A, embezzlement of an amount of Rs.24 lakhs was found to be made by the accused. He further argued that learned trial Court failed to appreciate the testimony of the prosecution witnesses. The accused fabricated and forged a document on the letter head of the Association showing himself to be the General Secretary and submitted this letter to the Corporate Bank and State Bank of India and before other several authorities. Learned counsel submitted that case of the prosecution stands proved beyond shadow of doubt and accused is liable to be convicted for the offences charged with, as per law. It is, thus, prayed that leave to file appeal be granted and consequently the impugned judgment be set aside and accused be convicted for the offences as charged and punished accordingly.

10. After having heard learned counsel for the applicant/appellant and carefully scrutinizing impugned judgment dated 26.09.2022 as well as other relevant record, we are of the considered opinion that prosecution in the instant matter was indeed unable to prove its case beyond the reasonable doubt.

11. In the present case, accused has been charge sheeted under

Sections 409/465/468/477-A IPC. Specific allegation of embezzlement of funds of the Association by the accused have been levelled. In order to prove commission of offence under Section 409 IPC by the accused, no cogent documentary or oral evidence has been produced on record. Nothing has been produced on record regarding the amount of funds allegedly embezzled, the manner of misuse and the purpose for which the alleged embezzlement was made. Mere apprehension of the complainant and other witnesses that the amount might have been embezzled by the accused is not sufficient by itself to prove actual embezzlement of funds of the Association by the accused. Though, audit report Ex.CW10/A has been produced on record but learned trial Court rightly observed that same has not been properly proved on record as per the Indian Evidence Act. Admittedly, CW9 Jatinder Pruthi, who produced the said report in the pre-charge evidence is not the person who had prepared the said report or conducted the audit of the accounts. Said document was to be proved in evidence by the person/Chartered Accountant, who had prepared the said report. So when the said person/ Chartered Accountant, who is author of Ex.Cw10/A has not stepped into witness box without any plausible reason, then the aforesaid audit report which is not properly proved on record, cannot be relied upon. Once the audit report Ex.CW10/A is not to be considered, then in this eventuality, there is nothing on record to prove that offence under Section 409 IPC was committed by the accused.

12. The other allegation that has been levelled against the accused is regarding forging the document on the letter head of the Association. As per the allegation letter dated 11.04.2013 Ex. CW7/A was written by

the accused to Managers of Corporation Bank and State Bank of India where the Association was having bank accounts, alleging that list of General Body submitted before the Registrar of the Societies on 08.04.2013 was fake as the actual genuine body was elected on 31.03.2013. Accused also alleged that they apprehend embezzlement of funds by misrepresentation on part of certain persons alleging themselves as members of elected body and they be not allowed to operate the bank accounts.

13. As per allegations raised in the complaint, the aforesaid letter was forged and fabricated by the accused, however learned trial Court rightly observed that accused cannot be said to have committed forgery when no false document had been prepared. The aforesaid letter was signed by accused alleging that he was acting as General Secretary of the Association at the time when election of the Association was under controversy and both accused as well as complainant were asserting their control over the Association. So more or less, it appears to be a dispute regarding election of the Association.

14. As per allegations in the complaint, accused procured signatures of alleged members on Circular No.27 Ex.CW1/F without disclosing its contents. Doubtlessly, CW4 Inderjeet Kochar while appearing in the witness box stated that accused had taken his signatures on CW1/F without disclosing the contents, but it is highly improbable and opposed to all logic that said witness would have signed the document without going through its contents as, admittedly he is not an illiterate person. Every prudent person is expected to read a document before

signing the same. It is not also the case of the prosecution that signatures of such persons were obtained on blank papers. CW5 Sajjan Lohia has infact admitted in his cross-examination that accused never deceived or beguiled him. The other persons, who had signed the said document were not examined to prove or disprove their signatures on the same. Therefore in these circumstances, said document cannot be held to be a false document prepared by the accused. Thus, evidence on record does not prove that documents were forged by the accused.

15. Section 477-A IPC relates to wilfully falsification of accounts with intention to defraud, but again no cogent evidence to prove the said offence has been produced. There is not an iota of evidence to prove that accused embezzled money of Association and used the same for his own gain. As already observed, mere production of an audit report without examining its author is not sufficient to bring home the guilt of the accused.

16. **CRM-725-2023** has been filed by the appellant with a prayer that additional evidence be allowed and appellant be allowed to examine author of audit report Ex.CW10/A and this report be read into evidence. Hon'ble the Supreme Court in **Rambhau Vs. State of Maharashtra, 2001 (4) SCC 759** observed as under:

> *"4. Incidentally, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the doctrine of finality of judicial proceedings does not stand*

annulled or affected in any way by reason of exercise of power under Section 391 since the same avoids a de novo trial. It is not to fill up to lacuna but to subserve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41 Rule 27 of the C.P. Code."

17. It is a settled position that application under Section 391 Cr.P.C. is not to be allowed on mere asking of a party, when no such exceptional circumstances has been brought on record warranting interference by this Court. Under the garb of additional evidence, appellant cannot be allowed to fill up lacuna in the available evidence, more so, when the appellant had every opportunity to examine the author of the audit report Ex.CW10/A before learned trial Court.

18. It is well settled law that while hearing appeals against acquittal, the judgments of acquittal should not be interfered with lightly and Courts have to be extremely careful while hearing such appeals. In the case of **Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319,** the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, Appellate Court would interfere with the order of acquittal only when the judgment was beset with perversity of fact and law.

19. In the light of the above discussion, we are of the considered opinion that learned trial Court has rightly reached the conclusion that

prosecution could not prove its case beyond shadow of reasonable doubt against the accused. There is no manifest error, irregularity, perversity, non-application of mind or non-appreciation of evidence which calls for interference in the impugned judgment dated 26.09.2022 passed by the learned trial Court.

20. In view of the above, application seeking leave to appeal being bereft of any merit is dismissed.

21. Pending application(s), if any, also stand disposed of.

(SUKHVINDER KAUR) **JUDGE**	**(LISA GILL)** **JUDGE**

26.07.2024
harjeet

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