# IN THE HIGH COURT OF PUNJAB & HARYANA
# AT CHANDIGARH

321

CRA-D-417-DBA-2005 (O&M)
Date of decision: September 10th, 2025

State of Punjab

.....Appellant

Versus

Vijay Kumar

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**
**HON'BLE MR. JUSTICE H.S. GREWAL**

Present: Mr. Amit Rana, Senior Deputy Advocate General, Punjab, for the appellant.

Mr. Tapan Masta, *Amicus Curiae* for the respondent.

**MANJARI NEHRU KAUL, J.**

The instant appeal by the State of Punjab is directed against the judgment dated 10.06.2004 passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby respondent-accused Vijay Kumar was acquitted of the charge under Section 406 of the IPC. The State of Punjab seeks setting aside of the acquittal primarily on the ground that the learned trial Court misappreciated the evidence and failed to hold the respondent guilty of criminal breach of trust in respect of the provident fund contributions deducted from the salaries of employees of M/s Ashoka Uniwool Industry, Ludhiana (hereinafter referred to as 'the Ashoka Industry').

2. Having heard learned counsel for the parties and upon careful examination of the evidence and record, we are of the considered view that the judgment of acquittal rendered by the learned trial Court does not suffer from perversity or misappreciation of evidence, and the appeal is devoid of

merit.

3. According to the prosecution, the Ashoka Industry, was an establishment governed by the provisions of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'EPF Act'), and thereby under a statutory obligation to deduct the provident fund contributions from the wages of its employees and deposit the same with the Provident Fund Commissioner.

4. On 29.10.1999, Mahesh Kumar, Inspector, Office of the Provident Fund Commissioner, submitted an application bearing No.11365/18 to the SSP, Ludhiana. It was alleged therein that during inspection, it was discovered that for the period April 1998 to June 1999, the management of Ashoka Industry deducted provident fund contributions of its employees but failed to deposit the same in the statutory fund. The amounts so deducted, being trust money, were alleged to have been dishonestly misappropriated by the management.

5. On this complaint, FIR No.289 dated 10.11.1999 (Exhibit PC) was registered at Police Station Division No.6, Ludhiana, under Sections 406/409 of the IPC against Vijay Kumar, stated to be a partner of the firm.

6. Investigation was conducted by PW-1 ASI Hakam Singh, who collected records of provident fund deductions containing signatures of employees and details of contributions. On completion of investigation, a report under Section 173 of the Cr.P.C. was filed, and the accused was sent to trial under Section 406 of the IPC.

7. During trial, the prosecution examined six witnesses including PW-1 ASI Hakam Singh, PW-2 Mahesh Kumar (complainant Inspector), and

some employees of the establishment, besides producing documentary evidence to demonstrate deduction of provident fund contributions and their alleged non-deposit within time.

8. When examined under Section 313 of the Cr.P.C., the accused denied the allegations, asserted his false implication, and stated that he was not personally responsible for accounts or for depositing provident fund contributions.

9. In defence, DW-1 Sundar Lal was examined, who categorically deposed that Vijay Kumar was neither the proprietor nor the person in charge of Ashoka Industry at the relevant time.

10. The learned trial Court, on appraisal of evidence, acquitted the accused by extending benefit of doubt. The material findings were:

- The prosecution failed to prove entrustment or legal liability of the respondent to deposit provident fund contributions.
- PW-2 Mahesh Kumar admitted that no written authorization or communication existed from the establishment fixing responsibility upon the respondent.
- PW-2 Mahesh Kumar further admitted that any delay in deposit could be regularized by payment of penalty and that at the time of trial, no dues were outstanding.
- No employee had lodged any complaint alleging misappropriation.
- Employees examined as witnesses stated that the accused was not the employer-in-charge.

11. Accordingly, the learned trial Court concluded that the prosecution had failed to establish dishonest misappropriation or conversion of provident fund contributions by the respondent, and acquitted him.

12. Learned counsel appearing for the State of Punjab vehemently argued that the trial Court misdirected itself in discarding the prosecution case. It was contended that:

- the respondent was a partner of Ashoka Industry and hence in charge of its affairs, with the statutory obligation to deduct and deposit provident fund;
- for April 1998 to June 1999, provident fund was deducted but not deposited within the prescribed time; the act of deduction itself created entrustment;
- failure to deposit was criminal breach of trust under Section 406 of the IPC;
- subsequent deposit with penalty did not wipe out the offence, which was complete upon non-deposit in time.

13. It was also argued that the trial Court erred in holding that absence of written authorization or any complaint from any employee diluted the case of the prosecution. It was asserted that the statutory liability flowed directly from law.

14. Learned State counsel also submitted that testimony of PW-2 Mahesh Kumar, corroborated by records, was sufficient to fix responsibility upon the respondent.

15. It was therefore prayed that the acquittal be set aside and the respondent be convicted.

16. Learned *amicus curiae* appearing for the respondent supported

the acquittal and submitted that the prosecution utterly failed to prove entrustment or that the respondent was the person responsible for deposit of provident fund. No document or authorization from the establishment was produced to show that accused-Vijay Kumar was incharge of accounts.

17. Learned *amicus* argued that mere assertion of PW-2 Mahesh Kumar could not fasten criminal liability without any corroborative evidence. It was also argued that PW-2 Mahesh Kumar admitted that provident fund dues could be deposited belatedly with penalty, and that at the time of trial, no dues were outstanding. Thus, the substratum of the prosecution case collapsed.

18. It was further argued that no employee had ever complained of misappropriation, and the alleged beneficiaries themselves had no grievance. DW-1 Sundar Lal's testimony showed that the accused was neither proprietor nor incharge.

19. Therefore, learned *amicus* asserted that the trial Court rightly extended benefit of doubt and the acquittal of accused-respondent required no interference.

20. We have heard learned counsel for the parties and perused the relevant material on record.

21. The pivotal issue before us is whether the prosecution succeeded in proving beyond reasonable doubt that the respondent-accused was entrusted with the provident fund deductions of the employees and had dishonestly misappropriated or converted the same, thereby attracting the mischief of offence under Section 406 of the IPC.

22. It is well-settled that to constitute an offence under Section 406 of the IPC, the prosecution must prove:

(i) entrustment of property, and

(ii) dishonest misappropriation or conversion thereof, in violation of law or legal contract. Mere non-deposit of contributions within time, in the absence of proof of entrustment with the accused, does not suffice.

23. In the present case, entrustment has not been proved. PW-2 Mahesh Kumar admitted that the department had no written authorisation or letter from the establishment showing that accused- Vijay Kumar was responsible for deposit of provident fund. Still further, no partnership deed or company record was produced to establish his role or capacity. The testimony of DW-1 Sunder Lal, unrebutted in material particulars, showed that the accused was neither proprietor nor incharge.

24. Furthermore, PW-2 Mahesh Kumar conceded that the contributions of the provident fund, though delayed, stood deposited with penalty and no dues were pending at the time of trial. Thus, the essential element of dishonest misappropriation or conversion was absent.

25. Still further, none of the employees examined alleged misappropriation or withholding of their contributions. In fact, no grievance emanated from the very beneficiaries of the fund.

26. The statutory obligation under the EPF Act is primarily enforceable through departmental proceedings and recovery mechanisms. Criminal liability under Section 406 of the IPC cannot be fastened in the absence of cogent evidence of entrustment and dishonest intention.

27. Viewed thus, the evidence on record does not establish the essential ingredients of the offence under Section 406 of the IPC against the respondent. The reasoning adopted by the trial Court is well-founded and supported by the record.

28. On an overall consideration, we find no infirmity in the impugned judgment of acquittal. The prosecution failed to prove beyond reasonable doubt that the respondent was entrusted with the provident fund contributions or that he had dishonestly misappropriated the same. The trial Court rightly extended the benefit of doubt.

29. The appeal filed by the State is accordingly dismissed and the judgment dated 10.06.2004 passed by learned Judicial Magistrate 1st Class, Ludhiana, acquitting the respondent, is affirmed.

**(MANJARI NEHRU KAUL)**
**JUDGE**

**September 10th, 2025** **(H.S. GREWAL)**
*Puneet* **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes