



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

CRR-2073-2010

Reserved on: 26.11.2024

Date of decision: 25.02.2025

Jai Bhagwan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Naresh Kumar Chhokar, Advocate
for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

KARAMJIT SINGH, J.

1. The instant revision petition has been filed by the petitioner/accused against the judgment dated 15.07.2010 passed by the Court of Additional Sessions Judge, Karnal whereby the appeal filed by the petitioner against the judgment of conviction dated 14.01.2008 and order of sentence dated 15.01.2008 passed by the Court of Judicial Magistrate Ist Class, Karnal vide which the petitioner was convicted and sentenced to RI for a period of 3 years under Section 409 IPC was partly modified and period of sentence was reduced to RI for one year, while the conviction of the petitioner under Section 409 IPC was upheld.

2. The case of the prosecution in brief is that petitioner was posted as Constable in Police Station Ambala City and was deputed vide DDR No.4 dated 10.02.1999 for depositing the case property relating to case having FIR No.2 dated 02.01.1999, registered under Section 27 of NDPS Act with



Forensic Science Laboratory, Madhuban (in short 'FSL Madhuban') and on his return to bring the case property relating to case having FIR No.329 dated 22.08.1998, registered under Section 304-B read with Section 34 IPC, Police Station City Ambala and case property relating to case having DDR No.17 dated 13.06.1995, under Section 174 Cr.P.C, Police Station City Ambala, along with the reports of FSL relating to both the aforesaid criminal cases. In compliance of the said order, petitioner got deposited case property of case having FIR No.2 dated 02.01.1999 in office of FSL Madhuban and received entire case property i.e. three separate sealed parcels along with report of FSL, relating to criminal cases having FIR No.329 dated 22.08.1998 and also received case property i.e. one sealed parcel along with report of FSL relating to DDR No.17 dated 13.06.1995 from there. The petitioner, on return to police station on 11.02.1999, deposited one sealed parcel and report of FSL relating to case having FIR No.329 dated 22.08.1998 and report of FSL relating to case having DDR No.17 dated 13.06.1995 with the MHC of the concerned police station. On asking about the aforesaid deficiencies in the case property, the petitioner confessed that he had thrown two parcels of case property relating to criminal case having FIR No.329 dated 22.08.1998 and one parcel relating to criminal case having DDR No.17 dated 13.06.1995 in a canal near Madhuban (District Karnal) and the remaining case property was deposited by him with the MHC concerned. The matter was brought to the notice of the higher police authorities and resultantly, FIR was registered against the petitioner. On completion of investigation, challan was presented before the Court of Illaqa Magistrate, Karnal.

3. *A prima facie* case being made out, charges were framed under



Section 407 and 409 IPC, to which the petitioner pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution examined 9 witnesses in all.

5. PW-1 Ram Phal, Laboratory Assistant, Chemistry Division, FSL, Madhuban proved letters Ex.P-1 dated 10.02.1999, Ex.P-2 dated 03.07.1995 and Ex.P-3 dated 21.01.1999. He deposed that letters Ex.P-1 and Ex.P-2 are bearing signatures of the petitioner. He clarified that theses documents are photocopies of the originals. He further deposed that during investigation, the aforesaid letters were taken into possession by the police vide memo Ex.P-4.

6. PW-2 Ishwar Singh, Sub Inspector (since retired) who conducted partial investigation proved memo Ex.P-4. He also proved disclosure statement Ex.P-5 suffered by the petitioner and site plan and demarcation memo Ex.P-6 and Ex.P-7, respectively. In his cross examination, the witness admitted that no original document was taken into possession by the police.

7. PW-3 Shiv Narian, the then Inspector/SHO, Police Station City Ambala, deposed that the petitioner was deputed to deposit the case property pertaining to criminal case having FIR No.2 of 1999 in FSL Madhuban and to get back the case property along with the concerned reports relating to criminal cases having FIR No.329 dated 22.08.1998 and DDR No.17 dated 13.06.1995. On 11.02.1999, the petitioner came back and disclosed that he had thrown two parcels relating to FIR No.329 and one parcel relating to DDR No.17 in the canal. In this regard, report was called from FSL



Madhuban vide letter Ex.P-8 and on receipt of the said report, matter was inquired into and he submitted detailed report Ex.P-9, wherein the petitioner was held guilty.

8. PW-4 Bharat Singh, Assistant Sub Inspector, produced concerned record, as per which the petitioner remained posted at Police Station City Ambala from 16.06.1998 to 13.03.1999 and the copy of the said record was placed on record.

9. PW-5 Sham Lal, Sub Inspector proved formal FIR registered in the present case and the concerned endorsement regarding registration of the said FIR.

10. PW-6 ASI Kartar Singh, the then M/MHC concerned deposed regarding handing over of the case property relating to criminal case having FIR No.2 dated 02.01.1999 to the petitioner for getting deposited the same in FSL Madhuban. He further deposed that the petitioner was also directed to bring the case property pertaining to FIR No.329 of 1998 and DDR No.17 of 1995 along with reports of FSL, from the office of FSL Madhuban, on his return. He further corroborated the allegations made in the FIR and he proved documents Ex.PW-5/A, Ex.PW-5/B, Ex.PW-5/C, Ex.PW-5/D and receipt Ex.PW-5/E.

11. PW-7 Ishwar Singh, Assistant Sub Inspector proved the concerned daily diary report dated 10.02.1999 Ex.PW-4/A, vide which the petitioner was deputed to deposit the case property relating to FIR No.2 dated 02.01.1999 in FSL Madhuban. He also corroborated the allegations made in the FIR with regard to misappropriation of case property by the petitioner.

12. PW-8, EHC Dharambir deposed that on 09.03.1999, he along



with other police officials conducted search of the missing parcels in the area of concerned canal, on demarcation of the accused and the concerned demarcation memo is Ex.P-7.

13. PW-9 Constable Naresh Kumar deposed that on 26.08.1998, he was deputed to deposit the case property of the concerned case with the FSL Madhuban. Finally, the prosecution evidence was closed by order.

14. The petitioner in his statement recorded under Section 313 Cr.P.C. denied the entire incriminating evidence and pleaded innocence and false implication. However, the petitioner did not lead any evidence in his defence.

15. After considering the rival contentions of the parties, the trial Court convicted and sentenced the petitioner to RI for a period of three years under Section 409 IPC vide judgment and order dated 14/15.01.2008.

16. Being aggrieved, the petitioner preferred an appeal, which was disposed of by the Court of Additional Sessions Judge, Karnal vide judgment dated 15.07.2010 with part modification and period of sentence imposed by the trial Court was reduced to one year of rigorous imprisonment and fine of Rs.2000/- was imposed and in default of payment of fine, the petitioner was directed to further undergo RI for a period of three months, under Section 409 IPC.

17. The petitioner has preferred the present revision petition against the judgments/order passed by the Courts below.

18. The counsel for the petitioner while referring to the statements of PWs coupled with the concerned documents has *inter alia* asserted that prosecution has miserably failed to prove that the petitioner was ever deputed



to collect the concerned case properties relating to criminal case having FIR No.329 dated 22.08.1998 and DDR No.17 dated 13.06.1995. It has been further contended that DDR Ex.PW-4/A dated 10.02.1999 is silent with regard to assignment of any such duty to the petitioner who as per said DDR was deputed only to get deposit in the office of FSL Madhuban, case property relating to FIR No.2 of 1999, registered in Police Station City Ambala. It has been further submitted that prosecution has miserably failed to prove that the concerned endorsements which are there on the reverse side of Ex.P-1 and Ex.P-2 are in the hand writing and bearing signatures of the petitioner. The disputed signatures of the petitioner on said endorsements were not got compared with the standard signatures of the petitioner. It has been further asserted that no authority letter in original was produced by the prosecution, whereby the petitioner was authorized to collect the concerned case property from FSL Madhuban. It has been further contended that as the prosecution has failed to prove the entrustment of disputed articles, the question of their misappropriation on the part of the petitioner does not arise at all. It has been further argued that the impugned judgments/order are not sustainable and deserve to be set aside.

19. On the other hand, the State counsel while supporting the judgments and order in question has *inter alia* submitted that prosecution has led more than sufficient evidence in order to prove that the petitioner was duly authorized to collect the case properties relating to criminal cases having FIR No.329 dated 22.08.1998 and DDR No.17 dated 13.06.1995 from office of FSL Madhuban, but he failed to deposit the entire case properties relating to the said two criminal cases and misappropriated certain part of the case



properties pertaining to the said two criminal cases. It has been further contended that the present revision petition deserves to be dismissed.

20. I have considered the submissions made by counsel for the parties.

21. Admittedly the case property of criminal case having FIR No.329 dated 22.08.1998 under Section 304-B/34 IPC Police Station City Ambala, was sent to FSL Madhuban vide Ex.PW-5/A and deposited in the said laboratory on 29.09.1998 vide receipt Ex.PW-5/B. The above said case property relating to criminal case having FIR No.329 dated 22.08.1998, was comprised of:- (i) sealed parcel of burnt clothes of a lady, (ii) sealed parcel of glass bottle (quarter) having kerosene oil and (iii) sealed parcel of plastic can containing kerosene oil.

22. From the perusal of Ex.P-2, it appears that case property i.e. one sealed parcel relating to criminal case having DDR No.17 dated 13.06.1995, under Section 174 Cr.P.C, Police Station City Ambala was deposited in FSL, Madhuban in July 1995.

23. The case of the prosecution is that the petitioner was deputed to collect the case properties relating to aforesaid two criminal cases i.e. FIR No.329 dated 22.08.1998 and DDR No.17 dated 13.06.1995 along with the reports of FSL, Madhuban. However, the petitioner after collecting the said case properties and reports of FSL, misappropriated two sealed parcels of case property pertaining to FIR No.329 dated 22.08.1998 and one sealed parcel relating to DDR No.17 dated 13.06.1995.

24. As per DDR No.4 dated 10.02.1999 Ex-PW-4/A, petitioner was deputed to deposit case property i.e. a sealed parcel of five grams of charas



and sample seal impression relating to FIR No.2 of 1999 under Section 27 NDPS Act Police Station City Ambala, with FSL Madhuban. In the said DDR Ex.PW-4/A, there is no mention that the petitioner was also deputed to collect case properties (parcels) and the reports of FSL relating to criminal cases having FIR No.329 dated 22.08.1998 under Section 304B/34 IPC Police Station City Ambala and DDR No.17 dated 13.06.1995 under Section 174 Cr.P.C Police Station City Ambala, from the office of FSL, Madhuban. The concerned DDR dated 10.02.1999 showing that the petitioner was deputed to collect the case properties of FIR No.329 dated 22.08.1998 and DDR No.17 dated 13.06.1995 along with reports of FSL, was neither produced nor proved on the record by the prosecution. Admittedly, DDR dated 10.02.1999 Ex.PW-4/A which is relied upon by the prosecution is silent with regard to this aspect.

25. It is apparent that on the next day i.e. 11.02.1999, when petitioner returned to Police Station City Ambala, DDR No.17 dated 11.02.1999 was recorded. However the said document was neither exhibited nor marked in its evidence by the prosecution as per the provisions of Evidence Act and only its photocopy is available on the record of the trial Court and the same is not per se admissible. From the perusal of the aforesaid photocopy of DDR dated 11.02.1999, it seems to be recorded by PW-7 Ishwar Singh, the then MHC. However, the said police official while appearing in the witness box as PW-7 failed to prove any such DDR dated 11.02.1999 which was recorded at the time when petitioner returned to the police station and handed over the case properties relating to FIR No.329 dated 22.08.1998 and DDR No.17 dated 13.06.1995, to PW-6 Kartar Singh



the incharge of malkhana of Police Station City Ambala. Even, PW-6 also did not depose anything regarding recording of any such DDR dated 11.02.1999.

26. It is pertinent to note that the Director FSL Madhuban had written letter dated 21.01.1999 (Ex.P-3) informing the Superintendent of Police, City Ambala to depute a police official with proper letter of authority to collect case property and FSL report relating to criminal case having FIR No.329 dated 22.08.1998 under Section 304-B/34 IPC Police Station City Ambala. The said letter was down marked to M/MHC through SHO Police Station City Ambala, for its compliance.

27. From the perusal of Ex.P-3 it is evident that on the reverse side of the said document there is endorsement to the effect that petitioner was deputed on 10.02.1999 by M/MHC Kartar Singh to collect the report of FSL and case property relating to criminal case having FIR No.329 dated 22.08.1998 under Section 304B/34 IPC Police Station City Ambala. However, said Kartar Singh while appearing in the witness box as PW-6 did not depose with regard to Ex.P-3 or the aforesaid endorsement which was there on the back side of Ex.P-3. In his cross-examination PW6 simply stated that he gave one authority letter to petitioner to collect the case property, but he has not seen the original of said authority letter in the record. He further admitted that the concerned authority letter is not bearing signatures of petitioner and the said authority letter was not issued by him and rather the same was issued by FSL, Madhuban and the same is not bearing even name of the petitioner. In backdrop of the aforesaid admissions made by PW-6 in his cross examination, the prosecution has failed to prove the said



endorsement/writing appearing on the back side of Ex.P-3 as per law, which was purported to be written by PW-6 Kartar Singh. In the given circumstances, prosecution has failed to prove that in compliance of letter Ex.P-3, proper letter of authority was issued in favour of the present petitioner to collect the case property in question from FSL Madhuban.

28. Documents Ex.PW-5/C and PW-5/E are relating to deposit of case property of criminal case having DDR No.9 dated 03.08.1998 under Section 174 Cr.P.C Police Station City Ambala which comprised of one sealed parcel of viscera and one another parcel containing documents and the said case property was deposited in FSL Madhuban on 26.08.1998. Both the said documents are having no bearing on the present case.

29. It is also the case of prosecution that the petitioner was entrusted three sealed parcels and report of FSL relating to criminal case having FIR No.329 dated 22.08.1998 vide endorsement appearing on back side of Ex.P-1 and one sealed parcel and report of FSL relating to criminal case having DDR No.17 dated 13.06.1995 under Section 174 Cr.P.C vide endorsement appearing on back side of Ex.P-2, by the office of FSL Madhuban. It is also the case of prosecution that both the said endorsements are bearing signatures of petitioner and the same were signed by the petitioner when the aforesaid case properties relating to two criminal cases were entrusted to him by the concerned official of FSL Madhuban. The petitioner has disowned his handwriting and signatures on the aforesaid endorsements appearing on the reverse side of Ex.P-1 and Ex.P-2 respectively. As far as documents Ex.P-1 and Ex.P-2 are concerned, PW-1 Ramphal official of FSL Madhuban failed to identify handwriting of petitioner on the said documents. He further stated



that Jai Bhagwan (petitioner) was not personally known to him and he never saw him writing. At the first instance, PW-1 stated that the petitioner did not sign Ex.P-1 and Ex.P-2 in his presence but immediately, thereafter, he stated that both the said documents were signed by the petitioner in his presence. Undoubtedly, the petitioner has disputed his hand writing and signatures on the concerned documents. However, the prosecution did not make any efforts to get compare the disputed handwriting and signatures of the petitioner on both the said endorsements, with his admitted handwriting and signatures. This fact was also admitted by PW-2 Ishwar Singh (retired SI) who investigated the case.

30. Disclosure statement Ex.P-5 suffered by the petitioner before the Police Officials is inadmissible in evidence as on the basis of said disclosure statement, no recovery or discovery was effected by the police.

31. At the relevant time, PW-3 Inspector Shiv Narayan was SHO Police Station City Ambala and in his cross examination, he admitted that MHC concerned did not gave any complaint in writing to him in this matter till 15.02.1999. This fact is also established from perusal of Ex.P-8 and Ex.P-9, both of whom are dated 15.02.1999. Further, PW-7 who at the relevant time was working as 'Munshi' in Police Station City Ambala, admitted in his cross examination that he is not aware of the articles handed over to the petitioner by FSL Madhuban. Furthermore, it appears on the record that no document in original was taken into possession by the investigating officer during the investigation of the case. This fact was admitted by the investigating officer namely PW-2 Ishwar Singh while appearing in the witness box and is also established from perusal of recovery memo Ex.P-4.



32. In the light of the above discussion, the prosecution has failed to prove that the petitioner was ever deputed to collect the case properties in question from FSL Madhuban and further, the aforesaid case properties were ever entrusted to him by the concerned official of FSL Madhuban.

33. Admittedly, the inherent as well as revisional jurisdiction should be exercised cautiously and the revisional Court is not having appellate jurisdiction. However, revisional power is to be exercised in appropriate cases as may be necessary for the ends of justice and to do real substantial justice for administration of which alone, the Courts exists. It is also trite law that the prosecution must prove it's case beyond a reasonable doubt against the accused.

34. In the instant case, both the Courts below failed to take into consideration the fact that the originals of concerned authority letters and the documents whereby the case properties in question were handed over to the petitioner were neither produced nor shown to the prosecution witnesses during the trial. Further, the material documents i.e. DDR dated 10.02.1999 whereby the petitioner was entrusted to collect the case properties in question from FSL Madhuban and DDR dated 11.02.1999 whereby the petitioner on his return from FSL Madhuban handed over the case properties to the malkhana incharge were not proved on the record as per provisions of Evidence Act. In case, the official record was weeded out, then the prosecution ought to have produced the concerned order passed by the competent authority, in this regard.

35. Having regard to the facts and circumstances of the case as are detailed above, the prosecution has failed to prove its case under Section 409



IPC against the petitioner, beyond shadow of doubt.

36. Resultantly, the present petition is allowed and the judgment dated 15.07.2010 passed by the Court of Additional Sessions Judge, Karnal and judgment and order dated 14/15.01.2008 passed by the Court of Judicial Magistrate Ist Class, Karnal are set aside and the petitioner is acquitted of the offences for which he was charged and convicted.

25.02.2025
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No