
(2003) 04 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 575 of 1988

Neel Kanth

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Citation : (2003) 3 RCR(Criminal) 589

Hon'ble Judges : H.S.Bedi, J

**Advocate : Mr. Ravinder Chopra, Sr. Advocate with Mr. Sant Pal Singh, Advocate.
Mr. Sukant Gupta, DAG, Punjab., Advocates for appearing Parties**

Judgement

H.S. Bedi, J.

1. This petitioner has been filed at the instance of Neel Kanth, accusedpetitioner, who has been convicted and sentenced by the courts below for an offence under Section 409 of the Indian Penal Code.

2. The facts of the case are that Neel Kanth was working as a cashier in the officer of District Education Officer, Ferozeore. On 31.3.1978, he was deputed to get two drafts amounting to Rs. 94007.50 prepared in favour of M/s B.S. Enterprises, Delhi. It is the case of the prosecution that though the money had been withdrawn by the petitioner on that date but the drafts were not prepared nor any payment made to M/s B.S. Enterprises. This fact came to light when the District Education Officer made an inquiry in pursuance of letter dated 11.11.1982 of the Accounts Officer, DPI (P) with regard to the payment made to the aforesaid concern. On investigation it was found that no payment has infact been made, which led to the registration of a case against the petitioner. On the completion of the investigation, the accused was charged under Section 409 of the Indian Penal Code and as he pleaded not guilty was brought to trial.

3. The prosecution in support of its case relied on the statements of a large number of witnesses and also tendered into evidence the inquiry report recorded by Harbux Singh, Retired Registrar in the office of the DPI, Chandigarh. The

Court, however, placed primary reliance on the evidence of PW3, Sudesh Chander, Deputy Head Cashier of the State Bank of India, who deposed that Neel Kanth had in fact withdrawn the aforesaid amount against token No. 103/24 although no bank drafts had been got prepared by him thereafter. The Court further repelled the argument that as the documentary evidence, more particularly, the entries Ex.P1 and Ex.P2 dated 31.3.1978 were in the handwriting of the petitioner and these were evidence of the fact that these entries had been made to show that payment had been made to the concern and as these had been countersigned by the Drawing and Disbursing Officer, K.K. Aggarwal, who was a superior officer, the petitioner stood absolved of all criminal liability by holding that though a lapse had been committed by K.K. Aggarwal yet that did not absolve the petitioner of his involvement. The trial Court accordingly vide its judgment dated 30.3.1987 convicted the accused for the offence punishable under Section 409 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 1/12 years and to pay a fine of Rs. 500/ and in default of payment of fine to undergo further rigorous imprisonment for three months. The appeal filed by the petitioner against the aforesaid judgment of the trial Court was dismissed by the appellate Court vide its order dated 9.6.1988.

4. Mr. Ravinder Chopra, the learned counsel appearing on behalf of the petitioner, had been roped in on account of a conspiracy hatched by K.K. Aggarwal and the fact that he had initialled the entries, Exhs. P1 and P2, clearly showed that he too was guilty party and instrumental in the commission of the offence. He had accordingly urged that for this reason and in view of the statement of Harbux Singh (PW14) and the report tendered by him, K.K. Aggarwal alone was in fact guilty one.

5. As against this, Mr. Sukant Gupta, the learned Deputy Advocate General, Punjab, has argued that as a finding of fact had been recorded by both the Courts below spelling out the involvement of the petitioner based on unimpeachable evidence, the mere fact that some entries had been made to show that payment had been made to M/s B.S. Enterprises without any further evidence of actual payment clearly showed that the petitioner had been involved in the embezzlement. He has further argued that K.K. Aggarwal may have been left out by the prosecution but that would not be a ground to absolve the petitioner of his criminal liability.

6. I have considered the arguments advanced by the learned counsel for the parties and have and perused the judgment of the Courts below.

7. The fact that a sum of Rs. 94007.50 had been withdrawn by the petitioner stands fully proved from the evidence of Sudesh Chander (PW3), the Deputy Head Cashier of the State Bank of India, who deposed that the cash had been withdrawn by the petitioner and that no bank drafts for this amount had been got prepared thereafter. He further submitted that the disbursement of the cash by the Cashier of the Bank was made after the acceptance of tokens which too had been issued to the petitioner. There is no evidence to show that the amount had

been paid to the concern and in this situation the best evidence available to the petitioner in defence would have been either to show that payment had been received by it. Despite questioning, the learned counsel for the petitioner has not been able to refer to any such evidence. The mere fact that K.K. Aggarwal had initialled certain entries in the register evidencing payment to M/s B.S. Enterprises is thus of no consequence. At best, the petitioner could claim that K.K. Aggarwal too had been guilty of the offence and ought to have been punished. This fact had been noticed by the Appellate Court but it cannot be said that due to the lapse on the part of the prosecution, the petitioner should be absolved of his liability.

8. The question of sentence now requires to be considered.

9. The incident had happened in March, 1978. The FIR had been registered against the petitioner on 25.2.1983 and conviction recorded against him by the Judicial Magistrate Ist Class, Ferozepore on 30.3.1987. The appeal filed by him was dismissed on 9.6.1988. The present petition had been filed in this Court in the year 1988 and is pending since then. It is, therefore, obvious that the petitioner has been facing trial and other legal proceedings in one Court or the other since 1983. At the time of admission of the petitioner on 20.6.1988, the petitioner was ordered to be released on bail. In this view of the matter to send the petitioner to jail to serve the remaining part of his sentence would be wholly unfair.

This petition is accordingly dismissed but the sentence imposed upon the petitioner is reduced to the one already undergone by him.