

Des Raj

Vs

The State of Punjab

Criminal Appeal No. 227(N) of 1968

(CJI S. M. Sikri, P. Jagmohan Reddy JJ)

25.03.1971

JUDGMENT

SIKRI, C.J. -

1. This appeal by Special leave is directed against the judgment of the Punjab and Haryana High Court dismissing the revision petition under Section 439 of the Criminal Procedure Code and confirming the conviction and sentence of the appellant, Des Raj, under Section 409, I.P.C.

2. The relevant facts are as follows :

The Managing Committee of a Co-operative Society, known as The Banga Urban Co-operative Thrift and Credit Society Ltd., Banga, passed a resolution on August 26, 1963, to raise a loan of Rs. 4,000/- from the Nawansher Central Co-operative Bank, Banga. The Society authorised the appellant, who was an ordinary member of the society, to receive Rs. 4,000/- from the Bank on the basis of a promissory note executed by some members of the Executive Committee on behalf of the Society.

The learned Counsel for the State has not been able to explain why none of the officials of the Society was authorised to draw the money and why the appellant was chosen to receive the money from the Bank. It appears that the Secretary of the Society, Mehnga Ram had authenticated a copy of the resolution. According to the Manager of the Bank, the Secretary of the Society, Mehnga Ram, had accompanied the appellant when the payment was made to him in the bank and also attested the signatures of the persons on the Management of the Co-operative Society. The resolution does not contain any instructions as to what the appellant had to do with the money but according to the President of the Society the appellant had to pay the money to the Cashier, Balbir Singh, who would make the entry in the accounts. Balbir Singh, unfortunately, is dead. On December 23, 1963, a notice was sent by the Sub-Inspector of the Co-operative Society, Banga to the appellant stating that he had withdrawn Rs. 4,000/- on August 28, 1963, but had not got the amount so received entered in the books of the Society, and an explanation was called for. In his reply, dated January 9, 1964, the appellant stated that as per instructions of the Committee he had given the amount to Shri Mehnga Ram, Secretary of the Society, and he did not know as to whether the aforesaid amount was entered in the books or not. He said that it was only on the receipt of the notice that he had come to know that the entries regarding this amount had not been made. He said that the money was paid to Secretary, Mehnga Ram, in the presence of Sarwan Ram, Piara Singh and Satnam Singh at the repair shop of Sarwan Ram. On January 31, 1964, the Sub-Inspector called upon the appellant to produce written proof in support of these two statements, viz., about the instructions of the Committee and regarding the payment of the amount to the Secretary.

3. The appellant was charged under Section 406 of the Indian Penal Code for having committed criminal breach of trust in respect of Rs. 4,000/- entrusted to him. It is amazing that the President of the Society stated that Balbir Singh, deceased had orally brought to his notice that the money had not been deposited by the appellant with him, and yet he said that no written demand on the appellant was made for payment of the amount withdrawn from the Bank. He did not even say that he orally complained to the appellant. He further stated that Mehnga Ram had absconded, and was still absconding at the time when the evidence was being taken in January, 1967. There is no doubt that the appellant admits that he received the money. The only question is whether there is any evidence that he had misappropriated the money. The appellant examined three witnesses in his defence. D.W.1, Sarwan Ram, a cycle repairer, stated that the appellant had paid the money to Mehnga Ram in his presence at his shop on August 28, 1963. He said that he did approach the police and told them that the payment had been made in his presence but he did not make any written application to anybody. The fact that he did not make a written complaint has been commented upon by the learned Magistrate. We do not consider that because he did not complain in writing his evidence should be disbelieved. D.W.2, Piara Singh, a shareholder of the Society, was present when this amount was paid and he also deposed that Rs. 4,000/- was paid to the Secretary by the appellant. It is note-worthy that in cross-examination no questions at all were put to this witness whatsoever. D.W.3, Satnam Singh, also supported the defence story. He admitted that no receipt was obtained by the appellant from Mehnga Ram. One ground given by the learned Magistrate for disbelieving the defence witnesses was that they had not represented at the earliest to any higher authorities against the false implication of the appellant in this case. He observed :

"If they had, in fact, witnessed the payment of Rs. 4,000/- to Mehnga Ram by the appellant, the witnesses would have represented in writing to the higher officers of the false implication of the accused. They have done nothing. Though Sarwan Ram does say that he had approached the police, yet I do not believe him on this point. If he had not been given a hearing by the police he should have made a written application to the higher authorities. Even the accused should have represented to higher authorities, bringing to their notice the factum of payment by him in the presence of these witnesses. But this also has not been done, because no such payment had been made by the accused. Sarwan Ram is a cycle repairer and I do not believe him. Unless he was specially attached to the accused or Mehnga Ram, the payment would (not) have been made at his shop. He does not say so that he was so attached."

4. This criticism seems to us invalid. It depends upon a person's nature whether he should write or not to high officers in a particular case. We are unable to appreciate why it was necessary that Sarwan Ram should be specially attached to the appellant. Similar criticism has been levelled against D.W.2, Piara Singh, who was not cross-examined by the prosecution. The learned Magistrate observed :

"If payment, in fact, had been made in his presence, he would naturally have told the office bearers of the Society of the factum of payment by the accused to Mehnga Ram and the case against the accused would have been asked to be dropped by the Society, but no such thing has been done."

5. We are not aware wherefrom the learned Magistrate drew this inference. No question was asked from Piara Singh, D.W.2, whether he had told anybody or whether he had informed the members of the Society or not. There is no material in support of this observation. No reasoning is contained in

the learned Magistrate's following observations :

"Even there was no such suggestion made in the cross-examination of Kishan Chand P.W. 2, by the accused. I therefore, do not believe his statement also, on the factum of payment to Mehnga Ram."

6. This is rather an unsatisfactory way of dealing with the evidence of a person. Satnam Singh, D.W.3, was disbelieved on the following ground : "He was then merely a lad of eighteen years. There is no special reason why he should particularly remember this payment. He has admitted that he could not recollect any other transaction done at his shop by him on that day. If he is considered to be a shrewd businessman then it is natural that he should have advised accused to obtain a receipt from Mehnga Ram or in any case get the factum of payment entered into the registers of the Society in the possession or power of Mehnga Ram. He did not do this either. I have, therefore, no option but to disbelieve his statement, as well, on the question of payment of Rs. 4,000/-."

In our view this is not a valid criticism.

7. The learned Sessions Judge disbelieved the defence witnesses because, according to him, "it cannot be imagined that the appellant paid the huge amount of Rs. 4,000/- to Mehnga Ram without getting any receipt from him". He also disbelieved the defence witnesses because none of them represented to the authorities against the false implication of the accused in this case. He could not understand why the payment was made at the shop of Sarwan Ram.

8. The High Court agreed with the findings of the Trial Court and the learned Sessions Judge.

9. This Court ordinarily does not go into the question of facts and appreciate the evidence but in this case both the Trial Court and the learned Sessions Judge have, relying on conjectures and surmises, disbelieved the evidence of the defence witnesses. In the first place, they did not give due weight to the fact that Mehnga Ram had, in fact, accompanied of the money. If the money had not been paid, it is surprising that nobody came to know about it till the audit of the accounts of the Society. This sum had been borrowed by the Society and the money had to be utilised for non-agricultural purposes. It seems to us that the defence version cannot be disbelieved merely because if the money had not been paid, as stated by the appellant, it would have been expected that the non-payment would be known to the President and the Cashier much sooner. In our view the only foolish thing the appellant did was that he delivered the money and did not take the receipt from Mehnga Ram. As stated above the evidence of the defence witnesses has been disbelieved on pure conjectures and surmises. It is not common, as far as we are aware, that the persons who are witnesses to a transaction go about complaining to the higher authorities if the transaction is impugned. We cannot allow a person to be convicted on mere suspicion and we are accordingly constrained to allow the appeal.

10. In the result the judgment of the High Court is reversed and the appellant acquitted. The appellant is on bail. His bail bond shall stand cancelled.

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