



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA  
ON THE 3<sup>RD</sup> DAY OF MARCH 2022  
BEFORE

HON'BLE MR. JUSTICE SANDEEP SHARMA  
CR. REVISION NO. 107 OF 2012

BETWEEN:-  
SHYAM LAL

.. PETITIONER

(BY MR. N.S. CHANDEL, SENIOR ADVOCATE  
WITH MR VINOD GUPTA, ADVOCATE)

AND

STATE OF HP THROUGH

RESPONDENT

(BY MR. SUDHIR BHATNAGAR AND  
MR. DESH RAJ THAKUR,  
ADDITIONAL ADVOCATES GENERAL  
WITH MR. NARINDER THAKUR AND  
MR. KAMAL KISHORE & GAURAV SHARMA,  
DEPUTY ADVOCATES GENERAL)

Whether approved for reporting: Yes.

*This petition coming on for orders this day, the court passed the following:*

**ORDER**

Being aggrieved and dissatisfied with judgment dated 4.10.2010 passed by learned Sessions Judge, Bilaspur, District Bilaspur,, Himachal Pradesh in Cr. Appeal No. 3 of 2008, affirming the judgment of conviction and order of sentence dated 26.12.2007 passed by learned Judicial Magistrate First Class, Bilaspur, Himachal Pradesh in case No. 131/2 of 1998/97 titled State vs. Shyam Lal, whereby learned trial Court, while holding the petitioner-accused(hereinafter, 'accused') guilty of

having committed offence punishable under S. 409 IPC, convicted and sentenced him to undergo simple imprisonment for two weeks and pay fine of Rs.500/- and, in default of payment of fine, to further undergo simple imprisonment for two weeks.

2. In nut shell, the case of the prosecution is that, on 19.7.1995, accused, who was serving as a Process Server in the court of Naib Tehsildar, was handed over summons Exhibit PW-3-/A to be served upon one Sita Ram son of Shri Pohlo Ram for recovery of Rs. 250/-. Though the accused, after having served above named person, collected fine of Rs. 250/- in the presence of person namely Gurnam Singh PW-7, and executed a receipt Exhibit PW-1/B in the presence of Ranjeet Singh, PW-13, however, he failed to deposit the amount in the Government treasury. Subsequently on 24.7.1995, another summon was given to the accused for serving upon PW-8 Sukh Dei, vide entry made in Register, Ext. PW-4/A, for recovery of Rs. 500/-. Accused served PW-8 Sukh Dei with the summons and after having collected fine of Rs. 500/-, executed a receipt Exhibit PW-1/D, in the presence of persons namely, Jai Singh PW-9, Nand Lal PW-10 and Hari Singh PW-11, however, such amount was never deposited in the Government treasury.

3. Since the accused, despite repeated reminders, failed to deposit the amount in Government treasury, an explanation was called from him by PW-2 Roshan Lal, the then Naib Tehsildar Swarghat, but yet accused failed to deposit the fine amount and as such, information was given to the Deputy Commissioner Bilaspur vide Ext. P-3, by Roshan Lal (PW-2). In the aforesaid background matter was reported to the police by

PW-2 Roshan Lal, vide Ext. PW-2/A, on the basis of which, FIR Ext. 14/A came to be recorded at Police Station Sadar, Bilaspur.

4. PW-14 ASI Tara Singh, conducted investigation. The leave application, Ext. PW14/A and specimen handwriting of the accused were taken into possession vide memo Ext. PW-14/C. Specimen Handwriting and signatures of the accused were obtained by Shri Arun Bhardwaj, PW-15, the then Executive Magistrate Ghumarwin, which are Exts. PW-14/D-1 to PW-14/D-6 and disputed receipts alongwith aforesaid specimen writing and admitted signatures were sent to the handwriting expert, for comparison, who vide report Exhibit PW-14/E opined that the receipts in issue were issued by the accused and bears his signatures. Exhibit PW-6A and PW-6/B regarding non-deposit of fine, were obtained from PW-6 Gulab Singh. Abstract of duty register Exts. PW-4/A and PW-4/B were also seized from PW-4 Desh Raj

5. After completion of investigation, police presented Challan in the competent court of law, which being satisfied that a prima facie case exists against the accused, charged him for commission of offence punishable under Ss. 420 and 409 IPC, to which he pleaded not guilty and claimed trial.

6. Prosecution, with a view to prove its case, examined as many as 15 witnesses, whereas, accused though in his statement recorded under S. 313 CrPC, denied the case of prosecution in toto but failed to lead any evidence in his defence despite adequate opportunity given to him.

7. Learned trial Court, on the basis of evidence, led on record by prosecution, though acquitted the accused of charge framed under S. 420 IPC but found him guilty for his having committed offence under S. 409 IPC and accordingly convicted and sentenced him, as per description given herein above.

8. Being aggrieved and dissatisfied with the judgment of conviction and order of sentence recorded by learned trial Court, accused preferred an appeal before learned Sessions Judge Bilaspur but the same was also dismissed vide judgment dated 4.10.2010. In the aforesaid background, accused has approached this court in the instant proceedings, praying therein for his acquittal after setting aside judgment of conviction and order of sentence passed by learned court below

9. Mr. N.S. Chandel, learned counsel for the petitioner duly assisted by Mr. Vinod Gupta, Advocate, vehemently argued that the impugned judgment upholding the judgment of conviction and order of sentence passed by learned trial Court, thereby holding the accused guilty of having committed offence punishable under S. 409 IPC is not sustainable in the eye of law, as the same is not based upon proper appreciation of evidence, as such, same deserve to be quashed and set aside. Mr. Chandel, learned senior counsel vehemently argued that since report of Handwriting Expert, Ext PW-14/E never came to be proved in accordance with law, learned courts below ought not have held the accused guilty of having committed offence punishable under S. 409 IPC, merely on the statement of PW-8 Sukh Dei and PW-9 Jai Singh,

especially when both the independent witnesses, PW-10 and PW-11, turned hostile.

10. Mr. Desh Raj Thakur, learned Additional Advocate General, supported the impugned judgments of conviction and order of sentence passed by learned courts below and argued that the impugned judgments of conviction and order of sentence passed by learned courts below are based upon proper appreciation of evidence led on record by the prosecution, and as such, present petition deserves to be dismissed. While refuting the contentions/submissions made by learned counsel for the petitioner, learned Additional Advocate General, submitted that the judgment of conviction and order of sentence passed by learned court below is not solely based upon the report of the Handwriting Expert, rather, the same is based upon statements of material prosecution witnesses, who, in unison, have deposed before learned trial court that the accused after having served summons upon PW-8 Sukh Dei received Rs. 500/- as a fine from her and executed receipt Exhibit PW-1/D.

11. Lastly, learned Additional Advocate General argued that this court, while exercising power under S.397 CrPC has a very limited jurisdiction to re-appreciate the evidence, especially when learned counsel for the petitioner has not been able to point out any perversity in the same.

12. Having heard learned counsel for the parties and perused the evidence led on record by respective parties, vis-à-vis reasoning assigned by learned courts below in the impugned judgments of conviction and order of sentence, this court sees no reason to interfere in the impugned

judgments of conviction and order of sentence passed by learned courts below, which otherwise appear to have been passed on the basis of proper appreciation of the evidence, be it ocular or documentary.

13. With a view to constitute an offence under S.409 IPC, prosecution is required to prove that the accused was entrusted with property in the capacity of a public servant and he committed criminal breach of trust qua that property. Though, in the case at hand, learned senior counsel for the accused attempted to carve out a case that at no point of time, accused was entrusted with property in the capacity of a public servant and he also argued that the accused was not authorized to collect the fine, however, careful perusal of the evidence collected on record by prosecution, clearly reveals that the accused, who at the relevant time was working as a Process Server was entrusted with duty to serve summons upon PW-8 Sukh Dei and another person Sita Ram, who were imposed fine of Rs. 500/- and Rs. 250/- respectively on account of encroachment. Though the accused collected fine from both the persons, amounting to Rs. 500/- and Rs. 250/- respectively, but failed to deposit the same with the Government treasury.

14. If the statements of PW-1 and PW-2 are read in conjunction, they clearly prove the factum with regard to the duty given to the accused to serve summons upon PW-8 Sukh Dei (complainant). PW-1 Daya Krishan Thakur has categorically deposed that on the askance of the accused, he had deposited Rs. 250/- collected by accused from person namely Sita Ram in the Government treasury but he never returned that money to him. This witness also deposed that despite repeated

reminders, accused failed to deposit Rs. 500/- recovered by him from Sukh Dei.

15. Leaving everything aside, accused himself in his statement recorded under S. 313 CrPC, admitted the factum with regard to his having been deputed to serve summons upon PW-8, complainant on the given date. In his statement he admitted that he was a public servant in the year 1995 and was working as a Process Server in the office of Naib Tehsildar Swarghat. PW-1 Daya Krishan and PW-2 Roshan Lal never came to be cross examined qua the question of posting and entrustment of duty to the accused to serve summons upon PW-8 and as such, it stands duly established on record that the accused, in his official capacity, had gone to residence of PW-8 Sukh Dei to serve summons on 24.7.1995.

16. Besides above, accused in his statement recorded under S.313 CrPC, while answering question No. 11, specifically admitted that on 24.7.1995, he was given summons vide entry No. 195 made in the Register Exhibit PW-4/A to be served upon PW-8 Sukh Dei for recovery of Rs. 500/-. Similarly, allegations with regard to collection of Rs. 500/- as fine from PW-8 by the accused stands duly proved on record. PW-8 Sukh Dei complainant deposed that she is known to the accused, who is deployed in Sub Tehsil Swarghat. She stated that about four years back, accused came to her house in the presence of PW-9, Jai Singh Pradhan, PW-10 Hari Singh and another person and she handed over Rs. 500/- as fine in respect of illegal encroachment. She also deposed that the accused issued receipt, Exhibit PW-1/D, which was handed over to the

police. She deposed that the aforesaid receipt was issued in the presence of witnesses.

17. Cross-examination conducted upon this witness, nowhere suggests that the defence was able to extract anything contrary to what this witness stated in her examination-in-chief. In her cross-examination, she denied the suggestion that no such amount was handed over by her to the accused as fine. This witness also denied that Ext. PW-1/D(receipt) was forged by her in connivance with the police.

18. Afore version of PW-8 is duly corroborated by PW-9 Jai Singh, the then Pradhan, Gram Panchayat, who deposed that PW-8 handed over Rs. 500/- to the accused in his presence. He deposed that the accused was deployed in Tehsil Office, Swarghat four years back, when he was Pradhan of the Gram Panchayat. He deposed that the accused came to the house of Sukh Dei and told her that she has been fined Rs. 500/- on account of encroachment. He deposed that the accused asked PW-8 Sukh Dei to hand over Rs. 500/- to him in his presence and two other witnesses. He deposed that PW-8 handed over Rs. 500 to the accused, who told that proper receipt would be issued by the office but himself issued receipt Ext. PW-1/D, which was prepared by him in the presence of PW-8 and other witness.

19. Cross-examination conducted upon this witness also nowhere suggests that the defence was able to extract anything contrary to what this witness stated in his examination-in-chief. Though, in the case at hand, accused set up a plea that he is innocent and has been falsely implicated in the case, but while making his statement under S. 313



CrPC, he never attributed any motive to PW-8 and P-9, qua his alleged false implication. Otherwise also, there is no evidence, if any, led on record by accused, suggestive of the fact that PW-8 and PW-9 were inimical towards him and to implicate him, falsely deposed against him. ◇

20. True it is that the receipt Ext. PW-1/D does not bear signatures of PW-9 Jai Singh, but such fact is of no consequence, especially when perusal of receipt itself suggests that PW-9, was very much present on the spot at the time of its execution. It has been categorically stated in the receipt Exhibit PW-1/D that the fine amount was received in the presence of Pradhan, Gram Panchayat i.e. PW-9 and persons namely Hari Singh and Nand Lal, PW-10 and PW-11. PW-9 has admitted in his cross-examination that the receipt Exhibit PW-1/D does not bear his signatures but the presence of PW-9 at the time of execution of receipt Exhibit PW-1/D stands duly proved with bare reading of receipt, which confirms receipt of Rs. 500/- as fine by the accused from PW-8, complainant, Sukh Dei.

21. Though learned senior counsel for the accused argued that the independent witnesses namely PW-10 Nand Lal and PW-11 Hari Singh, have not supported the prosecution case, but cross-examination conducted upon these witnesses, if read in entirety, clearly proves their presence on the spot at the time of execution of receipt Exhibit PW-1/D. Though these witnesses were declared hostile, on account of their failure to support the case of the prosecution, but both the witnesses admitted their signatures upon the receipt. No plausible explanation came to be rendered on record by these witnesses qua their signatures upon receipt,

Ext PW-1/D. PW-10 admitted that he has studied upto 10th class and can read and write Hindi. Since Exhibit PW-1/D is in Hindi, it is not understood that how, without reading the contents of the receipt, this witness put his signatures upon the same.

22. Merely the fact that the afore witnesses PW-10 and PW-11 have not supported the prosecution case, would not render statements of PW-8 and PW-9 untrustworthy. Rather, if both are read in conjunction, clearly prove guilt of accused and as such learned courts below rightly placed heavy reliance upon same, while holding accused guilty of having committed offence punishable under S. 409 IPC. Otherwise also, denial if any on behalf of PW-11 that no money was paid in his presence by PW-8 Sukh Dei to the accused, is of no consequence, especially when there is no dispute that receipt Ext. PW-1/D does not bear signatures of this witness, which fact has been admitted by this witness in his cross-examination done on behalf of the accused. Though, PW-10 and PW-11 have not corroborated the version put forth by PW-8 and PW-9, but this will definitely not make version of PW-8 and PW-9 unreliable, in light of other evidence adduced on record by the prosecution.

23. Statements of PW-15 Shri Arun Bhardwaj, as well as that of the accused recorded under S.313 CrPC, clearly reveal that the specimen handwriting and signatures of the accused were obtained in writing during investigation. ASI Tara Singh i.e.PW-14 has deposed categorically that the same were handed over to the Handwriting Expert alongwith questioned documents. Though, the Handwriting Expert opined that the receipt in dispute bears signatures of the accused but definitely report never came

to be proved in accordance with law, because the prosecution failed to examine the Handwriting Expert.

24. True it is that, in the case at hand, Handwriting Expert was not examined to prove the result of comparison of specimen writing and signatures with questioned document including Ext. PW-1/D, however, overwhelming evidence apart from report of Handwriting Expert led on record by prosecution proves the guilt of the accused beyond reasonable doubt. Since it stands duly established on record that Ext. PW-1/D was issued by the accused under his hand, non-examination of the Handwriting Expert by the prosecution cannot be said to be fatal to the case of the prosecution. Report given by the Handwriting Expert duly corroborates the version of PW-8 and PW-9. Though the report of the Handwriting Expert was not proved in accordance with law, but the same can be duly read in corroboration of the version put forth by PW-8 and PW-9.

25. On the basis of statements of PW-8 and PW-9, which have been found to be confidence inspiring and worth credence, it stands proved that Exhibit PW-1/D was issued by accused under his hand and signatures, as such, learned courts below rightly arrived at a conclusion that it stands established on record, that the accused received Rs. 500 from Sukh Dei as fine, on 25.7.1995.

26. As has been discussed herein above, it stands established on record from the statements of PW-2 Roshan Lal, the then Naib Tehsildar Swarghat and PW-1, Daya Krishan Thakur, that in the year 1995, accused was a Process Server and he was assigned duty to serve PW-8

with the summons to pay the fine and he, after having unauthorizedly received fine of Rs. 500 from PW-8, failed to deposit the same in the Government treasury. It has come in the evidence of PW-2 that he called upon accused to explain vide Exhibit P.4 that, why he has not deposited the amount received by him from PW-8 with Government treasury, but neither the accused replied to the notice nor deposited the said amount.

27. Having scanned the entire evidence available on record, this court finds no illegality or infirmity in the conclusion drawn by learned Courts below that the prosecution has successfully proved its case against the accused beyond reasonable doubt that the accused misappropriated the amount received by him as fine from PW-8, Sukh Dei and as such, committed criminal breach of trust qua said amount.

28. Consequently, in view of the detailed discussion made herein above, I find no merit in the present petition, which is accordingly dismissed. Impugned judgments of conviction and order of sentence passed by learned Courts below are upheld.

29. At this stage, Mr. N.S. Chandel, Senior Advocate, appearing for the accused submitted that since alleged offence was committed in the year 1995 i.e. 27 years back, and during the pendency of trial and thereafter during proceedings before appellate court, accused has already undergone mental trauma coupled with the fact that the accused has turned 65 years of age, this court may consider extending benefit of S. 4 of the Probation of Offenders Act.

30. In support of the aforesaid arguments, learned counsel for the accused also invited the attention of this Court to the judgment

passed by this Court in **Yudhbir Singh versus State of Himachal Pradesh** 1998(1)S.L.J. 58, wherein it has been held as under:

“9. The only mitigating circumstance that appears to be there is that the time gap of about six years between the date of occurrence as well as the date of decision of this revision petitioner. During this entire period sword of present case looming over the head of the petitioner was always there. That being so, this court is of the view that instead of sending the petitioner to jail as ordered by the courts below, he is given the benefit of Section 4 of the Probation of Offenders Act. Accordingly, it is ordered that he shall furnish personal bond in the sum of Rs. 5,000/- to the satisfaction of the trial Court within a period of four weeks from today to keep peace and to be of good behavior for a period of one year from the date of execution of the bond before the court below as well as not to commit any such offence. In addition to being given benefit of Section 4 of the Probation of Offenders Act, petitioner is further directed to pay a sum of Rs. 3,000/- each to PWs Baldev Singh and Dilbagh Singh injured as compensation. Shri R.K. Gautam submitted that this amount of compensation be deposited with the trial Court on or before 31.8.1997, who will thereafter pay the same to said persons.”

31. In this regard, reliance is placed upon judgment of the Hon'ble Apex Court in **Ramesh Kumar @ Babla versus State of Punjab** 2016 AIR (SC) 2858, wherein it has been held as under:

“7. Accordingly the appeal is allowed in part by converting appellant's conviction under Section 307 IPC to one under Section 324 IPC. On the question of sentence, it is pertinent to note that the occurrence took place in 1997. In his statement under Section 313 of the code of Criminal Procedure the appellant gave his age in 2002 as 36 years. He claimed that he and others went to the place of occurrence on getting information that his brother Sanjay Kumar was assaulted by Ramesh Kumar (Complainant). He brought his brother to Police Station and lodged a report. As noticed by trial court, parties are involved in civil as well as criminal litigation from before. High Court has noted that appellant, as per custody certificate, is not involved in any other case. In such circumstances, it is not deemed necessary to send the

appellant immediately to Jail custody after about 19 years of the occurrence when he appears to be 50 years of age and fully settled in life.

8. In view of aforesaid, in our view the ends of justice would be met by granting benefit of Probation of Offenders Act to the appellant. We order accordingly and direct that the appellant be released on executing appropriate bond before the trial court to appear and receive sentence of rigorous imprisonment for 1 (one) year when called upon to do so and in the meantime to keep the peace and be of good behaviour.”

32. Reliance is also placed upon judgment passed by Hon'ble Apex Court **Hari Kishan & Anr** versus **Sukhbir Singh & Ors**, 1988 AIR (SC) 2127, wherein it has been held as under:

“8. The question next to be considered is whether the accused are entitled to the benefit of probation of good conduct? We gave our anxious consideration to the contentions urged by counsel. We are of opinion that the High Court has not committed any error in this regard also. Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders, on probation, the Court encourages their own sense of responsibility for their future and protect them from the stigma and possible contamination of prison. In this case, the High Court has observed that there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. These are not showing to be incorrect. We have already said that the accused had no intention to commit murder of any person. Therefore, the extension of benefit of the beneficial legislation applicable to the first offenders cannot be said to be inappropriate.

9. This takes us to, the third questions which we have formulated earlier in this judgments. The High Court has directed each of the respondents to pay Rs.2500/- as compensation to Joginder. The High Court has not referred to any provision of law in support of the order of compensation. But that can be traced to section 357 Criminal Procedure Code Section 357, leaving aside the unnecessary, provides:-

“357. Order to pay compensation:

(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine

forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is in the opinion of the Court, recoverable by such person in a civil Court;

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(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation. Such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its power of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this Section.

11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default."

33. In view of the aforesaid law as well as submissions having been made by learned counsel appearing on behalf of the accused and after taking into consideration the facts and circumstances of the present case,

I am of the considered opinion that the present accused can be granted benefit of Section 4 of the Probation of Offenders Act, 1958.

34. Accordingly, Registry is directed to call for the report of the Probation Officer concerned on or before next date of hearing.

Registry to list this matter on **5.4.2022**.

**(Sandeep Sharma)**  
**Judge**

March 3, 2022  
(Vikrant)

High Court of H.P.