IN THE COURT OF SH. SUSHIL KUMAR,
ADDITIONAL SESSIONS JUDGE-04
NORTH DISTRICT, ROHINI COURTS, DELHI.

CNR No. DLNT01-007407-2021
CRIMINAL APPEAL No. 65/2021
PS Mukherjee Nagar

LAXMAN SINGH
S/o Sh. Pratap Singh,
R/o H. No.28, Type-II, Delhi Jal Board,
Model Town Delhi.
Presently Residing at:-
H. No.80, Gali No.16, A-1 Block,
Bangali Colony, Sant Nagar, Burari,
Delhi-110084. **…..Appellant**

VS.

STATE **…..Respondent**

Date of institution of appeal	:	11.10.2021
Date on which judgment pronounced	:	04.04.2024

<u>J U D G M E N T</u>

1. Vide this judgment, this Court shall dispose of the present appeal filed by appellant Laxman Singh, under section 374 (3) Cr.P.C. against judgment of conviction dated 28.09.2019 (*hereinafter referred to as impugned judgment*) and Order on sentence dated 16.09.2021 (*hereinafter referred to as impugned order on sentence*) passed by the Court of Ld. ACMM, North-District, Rohini Courts, Delhi (*hereinafter referred to as Ld. Trial Court*) in Case bearing FIR No.568/2001, PS Mukherjee Nagar, U/s. 409/420/468 IPC titled as 'State Vs. Laxman

Singh' wherein prayer for setting-aside the impugned judgment dated 28.09.2019 and impugned Order on Sentence dated 16.09.2021 has been made.

2. Being aggrieved by the impugned Judgment and Order on Sentence, the appellant has moved the present appeal on the following grounds :-

(i) That the impugned judgment dated 28.09.2019 is against the law and facts and is not sustainable in the eyes of law and is liable to be set-aside.

(ii) That the alleged embezzlement is for the period from 05.08.1997 to 12.05.1997. The FIR has been registered on 08.11.2001 and there is delay of Two and Half Years in registering the FIR for that no explanation is given.

(iii) That bare reading of the letter Ex.PW-4A on the basis of which the FIR is registered, no case of embezzlement or cheating or forgery is made out.

(iv) That the judgment was not announced in the open court perhaps, the judgment was passed on 28.09.2019.

(v) That the allegations that in order to destroy the documents/evidence, the gum/paste was spread on the cash books, particularly on the date, challan number and signatures. These things can be seen by naked eyes. This forgery cannot be over looked by the team of expert auditors and the Executive Engineer who is responsible for keeping the collected amount and cash receipt books in his custody.

(vi) That there is no evidence with the prosecution that the gums/paste has been spread over the challan numbers and dates and amounts by the appellant.

(vii) That since the appellant was working as a cashier, therefore, every receipt old or new is bound to bear the signatures of the appellant. Merely on the basis of signatures on the alleged forged receipts, the account cannot be held responsible for committing any offence of forgery.

(viii) That the audit department who has audited the account for the period from 05.08.1997 to 12.05.1997 gave clear chit regarding the correctness of the accounts, then, there is no scope of any kind of forgery or embezzlement as alleged.

(ix) That it is admitted case that the appellant was a public servant and was discharging his duties as cashier during the period from 05.08.1997 to 12.05.1997 when the theft of the cash books was committed on 21.05.1998 and he was communicated the same to Executive Engineer vide Diary No.941 dated 21.05.1998 and requested him to get the FIR register. When the Executive Engineer Sh. J. P. Aggarwal did not got the FIR registered, then the appellant made the complaint to the Superintendent Engineer Sh. R. K. Sethi vide DD No.1914 dated 22.05.1998 (Mark DW-1/E) and the appellant has received the reply from Superintendent Engineer (Ex. DW-1/F).

(x) That it is also admitted case that the alleged embezzlement is allegedly committed while the appellant was discharging his duties as cashier. The alleged act has direct nexus with the official duties of the appellant, therefore, the prosecution of the appellant is protected under section 197 Cr. P.C. The entire prosecution conducted by Ld. Trial Court is without jurisdiction in the absence of proper sanction from the competent authority i.e., CEO, Delhi Jal Board. Therefore, the appellant is entitled to be acquitted on this ground itself.

(xi) That due to contradictory statement in the complaint Ex. PW-4/A along with the statements Ex. PW-4/B and Ex.PW-4/C, the prosecution failed to prove its case of embezzlement against the appellant beyond reasonable doubt.

(xii) That PW-2 Suresh Kumar who was working as Junior Account Officer in coronation pillar during that period states that to his knowledge, there was no embezzlement of funds during the above said period.

(xiii) That PW-4 Sh. Y. K. Sharma in his cross-examination has admitted to have returned back the original cash book showing the remitted amount of Rs.4,89,603/- by the EE (SDW) Coronation Pillar Division to the Vigilance along with the report.

3. It has been argued on behalf of appellant that impugned order dated 28.09.2019 and order on sentence dated 16.09.2021 passed by the Ld. Trial Court are incorrect and, therefore, the impugned judgment dated 28.09.2019 and order on sentence dated 16.09.2021 passed by the Ld. Trial Court may kindly be set-aside.

4. On the other hand, Ld. Additional PP for State/ Respondent has opposed the contentions made by Ld. Counsel for appellant and submits that the impugned order has been passed by Ld. Trial Court after considering the testimonies of Prosecution Witnesses including material witnesses and that the same has not been passed arbitrarily. He has opposed the present appeal vehemently and he has prayed that the present appeal may kindly be dismissed.

5. This Court has given thoughtful consideration to the arguments advanced on behalf of ld. Counsel for the appellant/accused as well as Ld. APP for State/Respondent. This Court has also perused the record.

6. In the present case, Trial Court record has also been summoned. Perusal of the Trial Court Record shows that vide order dated 09.12.2013, charge was framed against appellant / accused Laxman Singh for the offence punishable under sections 420/409/468 IPC to which he pleaded not guilty and claimed trial.

7. Perusal of the Trial Court Record further shows that in order to prove its case, the prosecution examined total Eight (08) witnesses. After closing of prosecution evidence, the appellant/accused was examined under Section 313 Criminal Procedure Code read with Section 281 Criminal Procedure Code, wherein he pleaded false implication and innocence. Appellant/accused wished to lead defence evidence.

8. Perusal of the Trial Court Record further shows that appellant in his examined total four (04) defence witnesses including himself as DW-1. After closing of defence evidence, matter was put up for final arguments.

9. Perusal of the Trial Court Record further shows that after hearing final arguments, Ld. Trial Court convicted accused Laxman Singh for the offences punishable under Section 409/468 IPC vide its impugned judgment dated 28.09.2019 and passed the impugned order on sentence dated 16.09.2021.

10. Perusal of TCR shows that in the present case, the prosecution has examined as many as eight witnesses to prove its case out of which four witnesses namely PW-1 Sh. Gunjiar, PW-2 Sh. Suresh Kumar, PW-4 Sh. Y. K. Sharma and PW-7 Sh. Satender Kumar from the office of Delhi Jal Board. From the testimonies of these four above-named prosecution witnesses, prosecution has been able to establish appellant/accused Laxman Singh was discharging duties as a cashier in the concerned office at the relevant time. It has been argued on behalf of appellant that there is delay in registration of present FIR case. Perusal of the Trail Court Record reveals that embezzlement of funds had been committed by appellant/accused during the period starting from 05.08.1997 to 12.05.1999 and the present FIR has been registered on 08.11.2001. From the perusal of Trial Court Record, it is also clear that fraud in question had come to the knowledge of Senior Officials of Delhi Jal Board only during audit of accounts by the Vigilance, Department of Delhi Jal Board and when the report regarding alleged embezzlement of funds was put up before senior police officials, complaints were made promptly before the SHO of concerned PS. Thus, there is no intentional delay in registration of FIR in the present case.

11. It has been contended on behalf of appellant/accused that the alleged embezzlement is allegedly committed while the appellant was discharging his duties as cashier, therefore, the prosecution of appellant is protected under section 197 Cr. P.C and appellant is entitled to be acquitted. It is important to mention that Hon'ble Supreme Court of

India in case titled as '***Chandan Kumar Basu v. State of Bihar***' as well as in various other judgments has concluded that the provisions of section 197 of Cr. P.C., are incorporated in the Code to protect upright public servants from vexatious prosecution by unscrupulous persons and the said provision cannot afford protection to dishonest public servants involved in commission of criminal acts such as fraud, forgery, criminal breach of trust and cheating. Further, no public servant entrusted with public money is supposed to misappropriate the same, however, in the present case, appellant/accused being cashier in Delhi Jal Board committed breach of trust in respect of public money collected by him through challans and the act of accused cannot be protected under the colour of his official duties.

12. From perusal of Trial Court Record, it is clear that the judgment of conviction was pronounced on 28.09.2019 in the open court and the matter was fixed up for arguments on the point of sentence but the same could not be done due to imposition of lock-down for a period of about one and half years. Perusal of Trial Court Record further shows that the order on sentence was passed on 16.09.2021 and copies of the judgment of conviction as well as order on sentence was duly supplied to the appellant/accused.

13. In view of the above discussion, this Court is of considered view that the present appeal has been filed without any merit and same is liable to be dismissed. Same is dismissed accordingly. The judgment

passed by Ld. Trial Court is accordingly, upheld. Further, Ld. Trial Court has passed the order on sentence correctly by considering all the aggravating as well as mitigating circumstances and this Court does not found any illegality or infirmity in the impugned order on sentence. Same is also upheld, accordingly.

14. Let the Trial Court Record be sent back alongwith a copy of this Judgment to Ld. Trial Court.

15. Appeal file be consigned to **Record Room** after due compliance.

16. A copy of this order be given to both the parties at free of cost.

Pronounced in open Court
on this 04th day of April, 2024.

(SUSHIL KUMAR)
Additional Sessions Judge-04
North: Rohini Courts: Delhi.
04.04.2024