HRRH030012052012

Presented on : 16-08-2012
Registered on : 16-08-2012
Decided on : 04-07-2026
Duration : 13 years, 10 months, 19 days

IN THE COURT OF
Judicial Magistrate - Ist Class
AT ,Rohtak
(Presided Over by Sh. Karandeep)

CHI/4745/2013

State Versus Ajay Kumar Sandhu son of Kulbir Singh , resident of VPO Koth Kalan, Tehsil Narnaud, District Hissar.

….Accused

FIR No. 296 dated 05.06.2011
Under Section: 406 and 420 of IPC
Police Station: Civil Lines, Rohtak.

Present: Sh. Mahesh Lohat, Ld. APP for the State assisted by Sh. J.S. Khatri, Advocate for complainant.
Accused Ajay Kumar Sandhu on bail represented by Sh. A.S Saharan, and Sunil Hooda, Advocate.

JUDGMENT:

Accused named above is facing trial for the alleged commission of offences punishable under Sections 406 and 420 of IPC, Police Station: Civil Line, Rohtak.

2. Brief facts of the prosecution case as emanated from perusal of final report submitted under Section 173(2) of Cr.P.C. are that on 05.06.2011, a letter bearing memo no. Special-I/DGF-44 dated 03.06.2011 was received by the police to the effect that:

"To

The SHO,
Police Station, Arya Nagars, Rohtak.
Memo No. Special-I/DGF-44 Dated 03.06.2011

Subject: **To Lodge FIR against Sh. Ajay Kumar Sandhu @ Sh. Ajay Kumar, s/o Kulbir Singh Sandhu, r/o VPO Koth Kalan, Tehsil Narnaund, District Hissar.**

Please refer to this office memo no. CH-CJ-192 & 193/ DGF-44 dated 27.01.2011 which were forwarded lodging FIR of Sh. Ajay Kumar Sandhu @ Sh. Ajay Kumar, s/o Kulbir Singh Sandhu, r/o VPO Koth Kalan, Tehsil Narnaund, District Hissar.

It is further added that the same person namely Sh. Ajay Kumar Sandhu @ Sh. Ajay Kumar Singh Sandhu s/o Kulbir Singh Sandhu r/o Village Koth Kalan, Tehsil Narnaund, Distt Hisar made embezzlement of Rs. 12,76,647/- of EPF amount of worker which he supplied to XEN, TS, Divn. HVPNL, Rohtak for the period 01.07.2009 to 31.05.2010 with firm name as Sandhu Security Services, SCO No. 45, 46 Ist Floor, Office No.105, Sec. 11, Panchkula Ph. No.01724372273 (P) 071225048303 (F) 07126570722 Mob NO. 08146858001, 0978070598, 09467061100. The same person again under the different name M.s DKP Associates with 2 Nos. addresses 83/6, Jawahar Colony, NIT Faridabad & Office No. 17 New Chaudhary Complex Sector-12 (A) Panchkula ph. no. 07126570722 mob. no. 08146858001, 0978070598 09467061100 took the contract for supplying worker to XEN, TS, DIVN. HVPNL, ROHTAK for the period 01.06.2010 to 30.11.2010 & embezzled to an amount of Rs. 2,01,156/-.

You are requested to supply copy of FIR today positively by higher authorities at Govt. level are pressing very hard for same. The FIR of all over Haryana already stands lodged except Rohtak

Executive Engineer TS,
Divn, HVPNL, Rohtak.

Karandeep
Judicial Magistrate - First Class
Rohtak, 04.07.2026

C.C:-

The S.E./TS Circle, HVPNL, Rohtak for information please.”

3. Upon receipt of above said letter, formal FIR was registered. Investigation was carried out. Accused was arrested. On completion of investigation, final report u/s 173 Cr.P.C. was submitted before the Court.

4. Copy of challan were supplied to the accused, free of cost, as envisaged under Section 207 of Criminal Procedure Code.

5. After taking the cognizance of the offence, initially the accused was charge-sheeted for commission of offences punishable under Sections 406 and 420 of IPC vide order dated 09.01.2014 by the Court of Sh. Manjeet Pal, the then Ld. JMFC, Rohtak. However, in compliance of order dated 04.11.2025 passed by the Hon’ble High Court, order dated 19.01.2026 was passed by the Court of Ms. Ravleen Kaur, the then Ld. JMFC, Rohtak and charge was framed against the accused person only under Section 406 IPC vide order dated 28.01.2026 to which he pleaded not guilty and claimed trial.

6. In order to bring home the guilt of accused, prosecution has examined following witnesses:-

No. of witness	Name of witness	Documents	Exhibit
PW1	Ganga ram		
PW2	Dharambir		
PW3	Vikram		
PW4	Ashok		
PW5	Rakesh Kumar		
PW6	Narender		

PW7	Sandeep		
PW8	Ramphal	1. Application 2. Seizure Memo of Mark-A1 3. Documents 4. Seizure Memo of Mark-A2 5. Documents 6. Seizure Memo of Mark-A3 7. Documents	Mark-A Ex.PW8/A Mark-A1 Ex.PW8/B Mark-A2 Ex.PW8/C Mark-A3
PW9	Anita Malik, Circle Superintendent		
PW10	Retd. ASI Satnam	1. Arrest Memo 2. FIR 3. Endorsement	Ex.PW10/A Mark-V Mark-V2
PW11	Gagandeep Singh, Associate, SBI	1. Seizure Memo of Ex.P1A to Ex.P1M 2. Documents	Mark-A Ex.P1A to Ex.P1M
PW12	Dharmender Singh, Assistant Manager, SBI	1. Seizure Memo of Ex.P2(A) 2. Documents	Mark-B Ex.P2(A)
PW13	Swati Minocha, Assistant, SBI	1. Seizure Memo of Ex.P3(A) 2. Documents	Mark-C Documents
PW14	Sumit Garg, Branch Manager, SBI		

7. That the prosecution has availed numerous effective opportunities to conclude the evidence including the last opportunity granted by the Court vide order dated 06.04.2025, 21.04.2026 and again on 30.04.2026 but they failed to do so, hence, evidence of the prosecution was closed by Court order vide order dated 08.05.2026.

8. Statement of accused under Section 313 of Cr.P.C has been

recorded wherein he has denied all the allegations leveled against him and pleaded innocence. Accused opted to lead evidence in his defence, however, closed the same vide separate statement of even date.

9. I have heard learned APP for the State and learned defence counsel and have gone through the record carefully.

10. Arguments heard. In support of case of prosecution, it is argued by learned APP for State that the case of prosecution is duly proved on record. He has prayed that accused shall be convicted. On the other hand, it is argued by learned counsel for the accused that evidence of the prosecution is not sufficient to prove the allegations made by the prosecution. He has further argued that there are material discrepancies in the testimonies of prosecution witnesses. He has prayed that accused be acquitted.

11. That the accused Ajay Kumar Sandhu, Proprietor of Sandhu Security Services, stands charged under Section 406 IPC on the allegation that he deducted employees' contribution towards EPF, ESI, and Service Tax from the wages of workers engaged at the firm during the periods 01.07.2009 to 31.05.2010 and 01.06.2010 to 30.06.2011, and thereafter failed to deposit the said amount within the stipulated time and dishonestly misappropriating it instead. To sustain a conviction under this provision, the prosecution is obligated to prove, to the hilt and beyond reasonable doubt, the following ingredients cumulatively:

Firstly, entrustment of property or dominion over property with the accused;

Secondly, that such entrustment arose in a fiduciary capacity, whether by contract, statute, or express/implied trust;

Thirdly, dishonest misappropriation, conversion to personal use, or disposal of the entrusted property in violation of any legal direction or contract governing its disposal; and

Fourthly, that such act was accompanied by dishonest intention, namely, an intent to cause wrongful gain to the accused or wrongful loss to another. Further, it is a settled canon of criminal jurisprudence that failure to prove even one of these ingredients is fatal to the prosecution's case, since these ingredients are conjunctive and not disjunctive in nature. Further, the standard of proof in a criminal trial remains "proof beyond reasonable doubt" throughout.

12. After hearing the rival contentions and on a careful perusal of the case file, the answer to points for determination framed is returned in negative i.e. prosecution has miserably failed to prove its case beyond the reasonable doubt for the reasons detailed here as under:-

Firstly, the prosecution's entire case on the aspect of entrustment rests on the testimony of PW1 to PW7, each of whom claims to have been an employee of the accused during the relevant period, from whose wages the impugned deductions were purportedly made. A witness-wise scrutiny of their depositions, however, reveals a uniform and telling pattern of infirmities that this Court cannot overlook. PW1 Gangaram deposed to having worked under the accused from 01.07.2009 to 30.09.2010, yet did not produce a single document, no appointment letter, no wage slip, no attendance register extract, no identity card, to lend even prima facie credence to his claim of employment. His admission in cross-examination that he never moved any complaint to the concerned official regarding non-payment of EPF/ESI dues is of considerable significance: ordinarily, an employee whose hard-earned statutory contributions are being systematically withheld over more than a year would be expected to raise some grievance, formal or informal, with the employer or the department. The complete silence of PW1 on this count, spanning the entire duration of his claimed employment, is inconsistent with the conduct of a genuinely aggrieved workman and casts a shadow of doubt over the veracity of his testimony. Next, the evidence of PW2 Dharambir suffers from an identical two-fold defect: absence of any documentary proof of employment, and absence of any complaint whatsoever regarding the EPF/ESI amount. Further the cross examination of PW3 Vikram is even more damaging to the prosecution, as he explicitly and unequivocally admitted that he did not possess, and could not produce, any employment letter or identity card issued either by the accused or by the Electricity Department, and further admitted, in terms, that he cannot place on record any document to show that he was employed by the accused. Next PW4 Ashok's testimony adds nothing further, following the same pattern of unsubstantiated oral assertion and further PW5 Rakesh Kumar, despite asserting two distinct spells of employment (01.07.2009 to 31.05.2010 and 01.06.2010 to 30.09.2010), similarly conceded the absence of any identity card or appointment letter, and admitted that he never lodged any complaint regarding EPF/ESI dues with the department. That PW6 Narender has deposed that he was paid monthly salary through cheque but the same remains a bare assertion, as he failed to produce a single cheque, bank passbook entry, or salary certificate to substantiate this claim, and further admitted that no agreement or contract of employment was ever signed by him. The testimony of PW7 Sandeep is perhaps the most self-contradictory of all as he has initially stated that no employment letter or ID card was in his possession and thereafter he himself stated that he had in fact been issued an identity card but could neither produce it nor state who had issued it to him. It is a well-recognised principle in the appreciation of oral testimony that where a fact could easily have been proved by documentary evidence which would, in the ordinary course, exist and be available, such as wage registers, attendance records, appointment letters, or identity cards in an organised employer-employee relationship spanning several months, the failure to produce any such document, particularly when the same is peculiarly within the knowledge or reach of the witness or the prosecution, permits an adverse inference against the version sought to be proved. Here, across seven independent prosecution witnesses, there is not a solitary document connecting any of them with the accused's establishment and the same strikes at the very foundation of the prosecution's theory of entrustment.

Secondly, compounding this infirmity is the complete absence of any evidence establishing that the accused had supplied manpower to HVPNL under any contract that obligated him to remit EPF/ESI contributions on their behalf. That no muster roll maintained by HVPNL, no attendance sheet countersigned by any departmental officer, and no correspondence between the accused and HVPNL specifically referencing these seven individuals as deployed workmen has been placed on the record and the accountant of HVPNL, who alone could have proved disbursement of contract payments to the accused and correlated the same with wages payable to the alleged workmen, was never examined by the prosecution. This is a critical and unexplained lacuna, since it is this very link, that is, payment by HVPNL to the accused, and onward payment of wages (less statutory deductions) qua PW 1 to PW 7 would have established the chain of entrustment. In its absence, the theory of entrustment remains a matter of bare assertion, unsupported by any documentary or independent corroboration.

Thirdly, even if this Court were to proceed on the assumption, purely for the sake of argument, that some employer-employee relationship existed and that some deductions were made, the second indispensable ingredient of the offence, that is dishonest misappropriation remains conspicuously unestablished. The admission extracted from IO PW10 ASI Satnam is of decisive importance in this regard. PW10 candidly admitted that the accused had already deposited a sum of Rs. 50,62,132 towards EPF, ESI, and service tax dues in the concerned SBI branches at Jind and Faridabad which substantially exceeds the total amount alleged to be in default, namely Rs.

12,76,647 towards EPF and Rs. 2,01,156 towards ESI, as per the original complaint. More tellingly, PW10 was unable to show how the offence of criminal breach of trust was committed, whether any specific amount was dishonestly retained by the accused as opposed to merely delayed in remittance, or what portion, if any, of the deposited sum corresponded to the disputed amount. No calculation sheet, statement of account, ledger extract, or any statement was prepared during investigation or proved during trial to enable this Court to arrive at any definite finding regarding the precise quantum allegedly misappropriated. Criminal liability cannot be founded on inference, conjecture, or approximation; the prosecution was required to establish, with reasonable precision, the specific sum entrusted, the specific sum deposited, and the resultant shortfall, if any, attributable to dishonest intent on the part of the accused. In the complete absence of any such reconciliation, it would be wholly unsafe for this Court to record a finding of misappropriation. This gap is rendered irreparable by the non-examination of any official from the EPF or ESI department, who alone would have been competent, on the strength of departmental records, to depose to the exact outstanding liability of the accused, the period for which contributions remained unpaid, and whether any assessment, demand, or penal proceeding was ever initiated against him under the respective enactments.

Fourthly, it is argued by the learned counsel for the accused person that the contract executed between the accused and HVPNL obligates the contractor/accused to furnish a performance security of Rs. 1,00,000, expressly forfeitable in the event of breach of the terms and conditions of the contract, including presumably non-compliance with statutory labour obligations such as EPF/ESI deposit, however it stands admitted, and is not disputed by the prosecution, that this performance security was never forfeited by HVPNL at any stage. Had the department genuinely found the accused to be in default of his EPF/ESI obligations to the extent alleged, the natural and expected course of action, forfeiture of the security furnished precisely for such contingencies, would have followed. Equally significant is the fact that it is not the case of the prosecution, nor has any witness so deposed, that the contract of the accused with HVPNL was ever terminated, suspended, or blacklisted on account of non-deposit of EPF/ESI dues during the relevant period.

Fifthly, PW8 Rampal, through whom the original written complaint (Mark-A) was sought to be proved, has himself demolished the evidentiary value of his testimony by admitting that his statement was never recorded during investigation, that his signatures were never obtained by the investigating agency, and that he never had any occasion to meet any police official in connection with the investigation of this case. He has further admitted that Exhibits 8/B and 8/C do not bear his signatures at all, an admission that directly undermines the mode of proof of these documents and renders them of no evidentiary value insofar as their authorship or authenticity through this witness is concerned. The deposition of PW9 Anita Malik is confined to the formal fact that she has held the post of Circle Superintendent since July 2025, long after the events in question, and that her predecessor had furnished certain documents to the Investigating Officer. She admitted in her cross examination that she was never contacted by the police, and that her statement was never recorded during investigation, reduces her testimony to a bare formality incapable of advancing the prosecution's case on any substantive issue. Likewise, PW11 to PW14, being officials of the State Bank of India, have deposed only to the formal fact of deposit made by the accused into the relevant accounts, a fact that, in any event, stands admitted by the IO himself and their testimony throws no light whatsoever on the questions of entrustment or dishonest misappropriation that lie at the heart of the charge.

Lastly, the original complainant Executive Engineer Rajpal Chauhan has passed away before his deposition could be recorded in the present case and thus the same has deprived the prosecution of the one witness who could have explained, under oath and subject to cross-examination, the basis and source of the allegation that the accused had misappropriated EPF/ESI dues. Similarly, the death of the first IO Atam Prakash, before his deposition could be recorded has left unexplained the manner in which the initial investigation was conducted and the documents were collected. The subsequent Investigating Officer, PW10 ASI Satnam, has himself admitted that he did not verify the documents collected by his predecessor before proceeding further, thereby leaving a critical and unaddressed gap in the continuity and reliability of the investigation. These circumstances, though attributable to no fault of either party, nevertheless operate to the detriment of the prosecution, since it is the prosecution which bears the burden of proving its case beyond reasonable doubt, and it cannot discharge that burden merely by relying on documents whose collection and verification remain unexplained on record.

13. It is settled principle of criminal jurisprudence that howsoever serious may be the allegations, a person cannot be held guilty on mere assumptions. The evidence has to be so credible so that even a man of reasonable prudence and intelligence can believe it without any hesitation. This is what *degree of proof beyond reasonable doubt* demands. In **Navneethakrishnan Vs. State by Inspector of Police: (2018) 16 SCC 161**, it has been held by Hon'ble Supreme Court that *every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against guilt is possible*.

14. In another recent pronouncement titled **Narendrasinh Keshubhai Zala Vs. State of Gujarat: 2023 SCC Online SC 284**, the Apex Court held that *doubt cannot replace proof. Suspicion, howsoever great it may be, is no substitute of proof in criminal jurisprudence.*

15. It is well-settled that in criminal jurisprudence the burden rests on the

prosecution to prove its case beyond reasonable doubt and that any such doubt must enure to the benefit of the accused. Consequently, this Court is of the considered view that the prosecution has miserably failed to prove the offence under Section 406 IPC against accused Ajay and consequently, the accused Ajay is **acquitted** from the charge framed against him. His bail bonds and surety bonds also stand discharged. Fresh personal bond in sum of ₹ 40,000/- as per the amended provision of Section 437-A of Cr.P.C is obtained from the accused which would remain in force for six months to secure his presence before the learned Appellate Court if need be, if any appeal against this judgment is preferred by the prosecution-complainant. Case property, if any, be disposed of as per rules. Superdarginama, if any, stands discharged. File after needful be consigned to the record room.

Pronounced in open Court: (Karandeep)
Judicial Magistrate First Class,
Dated:04.07.2026 Rohtak/ UID No. HR 0604

Note:-This judgment containing Fourteen pages and each page is checked and and signed by me.

(Karandeep)
Judicial Magistrate First Class,
Rohtak/ UID No. HR 0604

Vinay
Stenographer Gr.-III

Karandeep
Judicial Magistrate - First Class
Rohtak, 04.07.2026