

CNR No.PBH0B1-000778-2018
IPC Challan No.73 of 2018
C.I.S. No.179/2018
Date of institution : 13-12-2018
Date of decision : 14-08-2019

.....Accused

FIR No.132 dated 30.06.2018
Under section 408 IPC,
Police Station Garhshankar,

Present:- Shri Charanjit Singh Learned APP for the State.
Accused on bail with counsel Sh. Pankaj Kirpal advocate

JUDGMENT

1. Accused Ravinder Kumar @ Babbal detailed here in above has been sent by the SHO, P.S. Garhshankar, to face trial for the offence under Section 408 IPC.

2. Genesis of the prosecution case is the complaint made by Teg Bahadur Singh to ASI Darshan Lal on 30.06.2018 while the said police official was present on patrol duty at bus stand Garhshankar along with HC Subhash Chander, PHG Jaspal. Teg Bahadur complainant had stated that he is owner of 'Diamond Filling Station' at village Gollian where he had employed Ravinder Kumar @ Babbal s/o Munshi Ram r/o Takipur Chelia PS Kangra(HP) since last approximately one year. Complainant added that Ravinder Kumar @ Babbal performed the duty

Amandeep Kamboj
SDJM, Garhshankar

of salesman at the said petrol pump from 5:00 pm to 7:00 am daily and he used to give the daily account of sale and the sale proceeds/cash of the previous day on the next morning everyday. Complainant added that on 06.06.2018 reported to duty as usual in the evening and in the morning on 7.06.2018 at 7:00 am he took the entire cash of Rs 71,360/- of the previous night's sale proceeds and left the petrol pump. Complainant alleged that Ravinder Kumar @ Babbal never gave that amount to him. He added that for all this time he had been trying to find the whereabouts of Ravinder Kumar above said, but when Ravinder Kumar could not be traced, he reported the matter to the police. He prayed that necessary legal action be initiated. On his complainant FIR was registered and investigation was initiated. During the course of investigation, site plan of place of incident was prepared. Statements of witnesses were recorded. Accused was arrested on 01-07-2018 and amount of Rs. 4000/- was recovered from him. After completion of necessary formalities of investigation, challan was presented against the accused.

3 On appearance of accused, copies of the challan was supplied to the accused free of costs as stipulated under Section 207 Cr.P.C.

4. Finding a prima facie case, charge was framed against the accused under sections 408 IPC. Charge was read over and explained to the accused in vernacular, to which he pleaded not guilty and claimed trial.

5. In order to bring home the guilt of the accused, the

prosecution has examined HC Subhash Chander as PW1; complainant Teg Bahadur Singh as PW2; ASI Darshan Lal as PW3 and Kuldeep Kaur as PW4. Thereafter learned APP for the State closed the prosecution evidence.

6. Statement of accused under Section 313 Cr.P.C. was recorded, in which the incriminating evidence was put across to him . The accused denied the same and pleaded false implication submitting that he was not deputed on night duty on the intervening night of 06-06-2018 and 07-06-2018 and that he was never entrusted with amount of Rs. 71,360/-.

7. Learned APP for the State argued that the testimony of the complainant and the prosecution witnesses duly proves the guilt of the accused beyond the shadow of doubt. So the accused deserves to be convicted and sentenced severely.

8. Per contra, learned defence counsel argued that the complainant was not the owner of the “Diamond Filling Station”, his wife Kuldeep Kaur claimed to be the owner but she did not know anything about the running, accounts, employees of the said filling station. Ld counsel added that in his cross-examination complainant has admitted that the petrol pump remains closed at night so how could there be any sales in the night. Ld counsel further argued that no proof of sale /any sale ledger etc have been produced on record to show that there actually was any sale to the tune of Rs 71,360/- on 06.06.2018 which shows that a false case has been foisted on the accused. With these

submissions learned counsel prayed that the accused is an innocent person and deserves to be acquitted.

9. I have heard the rival contentions and have perused the record carefully. The point for determination in this case are:-

Whether on 07-06-2018 in the area of Diamond Filling Station, Golian, the above named accused being deputed as salesman of said filling station was entrusted with sale amount of Rs.71,360/- and he committed criminal breach of trust of said sale amount and committed an offence under Section 408 IPC. If so its effect?

10. PW1 HC Subhash Chander deposed that on 01-07-2018 after receiving secret information, he alongwith ASI Darshan Lal reached at Adda Golian and arrested accused Ravinder Kumar and recovered Rs.4000/- from his possession . He proved cause of arrest memo of accused Ex.PW1/A; personal search memo Ex.PW1/B; recovery memo Ex.PW1/C; disclosure statement of accused Ex.PW1/D and site plan of place of recovery Ex.PW1/E. He stated that no independent witness/respectable from the village was jointed at the time of affecting arrest or recovery from the accused.

11 PW2 Teg Bahadur Singh complainant reiterated the prosecution story in his examination in chief and proved his statement got recorded to the investigating officer ASI Darshan Lal as Ex.P1 and identified his signature on the same besides proving attested copies of

attendance register of employees maintained at his filling station as Ex.P2 to Ex.P10; bank account statements of Diamond Filling station as Ex.P11 to Ex.P13 and attested copy of sale register on 7.6.2018 as Ex.P14. In his cross examination he admitted that he is not the owner of the 'Diamond Filling Station'. He admitted that the record of attendance of the employees produced by him in his examination in chief-in-chief doesn't bear the signatures of Ravinder Kumar accused. He was at a loss to produce any document showing employment of Ravinder Kumaras Salesman during the night hours from 5:00 p.m. to 7:00 am next day. He admitted that the extract of sale record for 06.06.2018 is not from any ledger. On being specifically asked about the sales ledgers maintained as per company norms(Oil Company) he was at a loss to answer. He stated that on 07.06.2018 he had filed a written complaint to the police, but when asked to produce its copy he remained evasive.

12 PW3 ASI Darshan Lal investigating officer deposed as per investigation conducted by him in the present case. He has also proved on record statement of complainant as Ex.P1; Ruqa Ex.PW3/A; FIR Ex.PW3/B;Endorsement on ruqa Ex.PW3/C; site plan of place of occurrence Ex.PW3/D; Cause of arrest memo of accused Ex.PW1/A; personal search memo Ex.PW1/B; recovery memo Ex.PW1/C; disclosure statement of accused Ex.PW1/D and site plan of place of recovery Ex.PW1/E; Attendance record of filling stationEx.P2 to Ex.P10; bank account statements of Diamond Filling station as Ex.P11 to Ex.P13 and attested copy of sale register on 7.6.2018 as Ex.P14 and

case property as MO1. In cross examination, he maintained that no prior written complaint was ever made by Teg Bahadur Singh about the alleged occurrence and the first information was received only on 30.06.2018. He admitted that he had not made any investigation from any records of the filling station about the sale on 06.06.2018 or about the employment of accused.

13 PW4 Kuldeep Kaur testified that she owned a petrol pump at village Golian namely “Diamond Filling Station” and she had appointed his husband Teg Bahadur Singh as her attorney and proved the same as Ex.PW1/A. She also deposed that her husband looked after the business of petrol pump and on 07-06-2018 he had told her that their salesman Ravinder Kumar had taken away sale amount of Rs.71,360/- and he had lodged FIR in this regard against accused. In her cross examination, she was at a loss to answer any question pertaining to the sales at the filling station, employees thereof etc and contended that her husband complainant Teg Bahadur Singh was at the helm of affairs and she had no personal knowledge of anything.

14. It percolates that no proper record of employment and of sales of the fuel from ‘Diamond Filling Station’ were furnished by complainant to the police, nor any such record was investigated into by the IO. The hand written sale summary Ex.P14 pertaining to sale on 06.06.2018 reveals that there is no mention of any meter reading as to what was the balance of petrol diesel etc in the tanks at the time of opening on 06.06.2018. There is no evidence brought on record to show

that Ravinder Kumar accused was employed as salesman and it was in his charter of duties to collect the entire cash of the day's sales and submit to the complainant. Admittedly the 'Diamond Filling Station' used to get closed for sales at 10:00 p.m. daily, so if duty of Ravinder Kumar accused commenced at 5:00 p.m. it is not proved that on 06.06.2018 from 5:00 p.m. to 10:00 p.m. sale to the tune of Rs 71,360/- was made. If such was not the case and the sum of Rs 71,360/- was the sale for the entire day then it is not explained that who had handed over the sale proceeds collected till 5:00 p.m. to Ravinder Kumar. It is noteworthy that there were atleast 5 to 7 employees at the said filling station, marking their attendance daily as percolates from the record of attendance furnished by complainant, but none of the other employees were joined in investigation. For reasons best known to the prosecution no other employee of the said filling station was cited as witness by the prosecution though they could have been the best evidence to prove entrustment of the day's sale proceeds to the accused. Surprisingly there is a delay of more than three weeks in registration of the FIR. The prosecution has miserably failed to explain the delay. The complainant in his cross-examination claimed that he had filed a written complaint to the police on 07.06.2018 itself but the IO stated that the complainant gave the first information to him only on 30.06.2018 and never before was any written complaint received pertaining to the allegations. Also despite having prior secret information of presence of accused at the bus stand on 01.07.2018, no independent witness was joined at the time of his arrest

and effecting alleged recovery from him, even though there was sufficient opportunity for the IO to intimate at least the village respectables about the prospective raid to arrest the accused. The discrepancies in the testimony of the prosecution witnesses coupled with the lack of document of employment of the accused Ravinder Kumar at Diamond Filling Station, the unexplained delay in registration of the FIR and not bringing any other employee of the said filling station in the witness box make the prosecution story very doubtful. The absence of even an iota of evidence to show that Ravinder Kumar was responsible to collect the day's sale proceeds and hand it over to complainant on the next day morning or that on 06.06.2018 Ravinder Kumar @ Babbal was entrusted with a sum of Rs 71,360/- in cash are even more brow raising. In absence of any cogent record of the sale made from Diamond Filling Station on 06.06.2018 the handwritten Ex.P14 produced by complainant and bald uncorroborated testimony of Teg Bahadur Singh are not suffice to dispel the shadows of doubt looming large on the prosecution story. So much so that the owner of the said Filling Station namely Smt Kuldeep Kaur who is wife of complainant had also testified only from hearsay as told to her by her husband. From the aforesaid discussion, I am of the considered opinion that the prosecution has been unable to prove the guilt of the accused beyond the shadow of doubt and benefit of doubt has to be afforded to the accused. Thus, accused is acquitted of the charges leveled against him. His bail bonds and surety bonds are discharged. Case property be disposed of under rules after awaiting the period of

appeal/revision if any. File be consigned to the record room.

Pronounced.

Dated:14-08-2019

Typed By: Balbir

(Amandeep Kamboj)
Sub Divisional Judicial Magistrate,
Garhshankar.
(UID No.PB0351)

Amandeep Kamboj
SDJM,Garhshankar

State Versus Ravinder Kumar

Present:- Shri Charanjit Singh Learned APP for the State,
Accused on bail with counsel Shri Pankaj Kirpal Adv.

Defence evidence closed. Arguments heard. Vide my separate judgment of even date, accused has been acquitted of the charge framed against him. Accused has been directed to furnish personal bonds in the sum of Rs.50,000/- in compliance of provision under Section 437-A of Cr.P.C., which shall remain in force for the period of six months from today. The requisite bonds have been furnished by the accused which are accepted and attested. Previous bail bonds and surety bonds of the accused are discharged. File be consigned to the record room after due compilation.

Pronounced.

Dated:14.08.2019
Typed By: Balbir

(Amandeep Kamboj),
Sub Divisional Judicial Magistrate,
Garhshankar.
(UID No.PB0351)