

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2025:PHHC:031458-DB



CRM-A-545-2020 (O&M)

Date of Decision: 04.03.2025.

Bhupinder Singh

....Applicant/Appellant.

Versus

State of Haryana and others

...Respondents.

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

.....

Present: Mr. Parminder Singh, Advocate and
Mr. Chirag Wadhwa, Advocate
for the applicant/ appellant.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Sukhvinder Kaur, J.

1. Applicant/ complainant Bhupinder Singh has preferred the instant application under Section 378(4) Cr.P.C. seeking leave to appeal against judgment dated 30.11.2019, passed by learned Additional Sessions Judge, Karnal, vide which respondents No.2 to 5 have been acquitted of offences punishable under Sections 120-B, 409, 467, 468, 471, 201 read with Section 120-B IPC and Section 13 of the Prevention of Corruption Act.

2. The factual scenario, as highlighted by the prosecution, is that complainant Bhupinder Singh son of Singara Singh, resident of village Dungra, Tehsil Indri, District Karnal filed a complaint dated 09.07.2014 Ex.P3 before ADGP, CID, Haryana for taking action against accused Ajit Singh Sarpanch for embezzling funds of the Panchayats by making

payments of bills for development works, which were carried out with sub-standard materials and not as per specifications of the government. On the basis of aforesaid complaint Ex.P3, police registered enquiry No.74/FSO/CM/2015. During the enquiry, statement of the complainant Ex.P4 was recorded on 08.09.2014, in which details of such works, in which either sub-standard material was used or complete material was not used, were given. These details included execution of work of cleaning the pond of village Dungra, construction of pucca street from the house of Harsukh to the main road, filling earth with JCB, for making village pond pucca, making road of village Phirni pucca, laying down pipeline for drainage of dirty water from the pond of village Gumto to the main old drain, construction of RCC road from the house of Satpal to pond. As per the allegations, in the year 2010 accused Ajit Singh was elected Sarpanch of Panchayats of villages Dungra and Gumto, Block and Tehsil Indri, District Karnal for a period of five years. Various development works were executed in the village falling under said Panchayats, during his tenure from 2010 to 2015. In the said works complete material as per specifications was not used and rather works were executed with sub-standard material. It was alleged that accused Ajit Singh Sarpanch, co-accused Prabhjot Singh, supplier of material along with Dharambir and Baldhir Singh, Gram Sachivs of the Panchayats hatched criminal conspiracy to embezzle funds/ grants given to the Panchayats by the Government. In the enquiry conducted by DSP Sham Lal, it was concluded that all the four accused in conspiracy with one another embezzled Rs.1,65,595/- of the Panchayat by using sub-standard and incomplete material in the aforesaid development works, by making forgery in the muster-rolls, by inflating the bills of material equipments etc.

3. On the basis of enquiry report, Ex.P-71, FIR No.427 dated 08.10.2015, under sections 120B, 406, 409, 420 IPC, Police Station Indri (Ex.P1), was registered. During the course of investigation, statements of witnesses under section 161 Cr.P.C. were recorded. Various documents and records of the Panchayats were taken into possession by the investigating team. Specimen handwriting of the accused was taken for comparison. Samples of material used were taken from the spot and sent for analysis to the Forensic Science Laboratory, Haryana, Madhuban, Karnal, which analyzed the samples and gave its report Ex.PW18/A dated 28.03.2018. Disclosure statements of accused were also recorded.

4. After conclusion of investigation, report prepared under section 173 Cr.P.C. was put before competent authorities for according prosecution sanction of public servants, namely, Dharambir and Baldhir Singh, Gram Sachivs. Competent authority i.e. D.C. Karnal vide order dated 29.03.2017 Ex.P83 accorded prosecution sanction to prosecute accused Dharambir Singh Gram Sachiv and regarding Baldhir Singh Gram Sachiv, it was opined that as he had retired from service so there was no requirement to get sanction by said authority.

5. After completion of entire formalities of investigation challan under sections 120B, 409, 467, 468, 471, 201 read with section 120B IPC and section 13 of the Prevention of Corruption Act, was filed against all the four accused persons.

6. After finding a prima facie case against the accused, they were charge-sheeted for commission of offences punishable under Sections 120B, 409, 467, 468, 471, 201 read with section 120B IPC and section 13 of the Prevention of Corruption Act, to which they did not plead guilty and

claimed trial.

7. As many as 33 witnesses were examined by the prosecution to prove its case. Statements of accused under Section 313 Cr.P.C. were recorded while putting incriminating evidence against them. They claimed innocence and false implication. Accused Ajit Singh Sarpanch stated that this case was politically motivated as he had defeated Smt. Kuldeep Kaur wife of complainant Bhupinder Singh in the elections of Sarpanch and after taking over, he had pursued a case of recovery of outstanding sum of Rs.13,00,000/- from Smt. Kuldeep Kaur Sarpanch, which was due, pertaining to her tenure in the year 2005-2010. He also stated that payments of works executed in his tenure were made as per procedure prescribed and after inspection, measurement of the works made by J.E., SDO and other senior officials like DDPO etc.

8. Accused Baldhir and Dharambir, Gram Sachivs stated that work in question was approved by majority of the Panches in the meetings of the Panchayat and thereafter work was started and completed by J.E. and SDO, who made measurements at the spot and thereafter, bills were processed for release of payments by the Sarpanch and there was no fault on their part since they performed their official duty as per rules.

9. Accused Prabhjot Singh, owner of Sardar Tractor, village Dungra, Tehsil Indri, stated that he had executed the construction work of village Panchayat of village Dungra and village Gumto and had received the payments as per actual work recorded in the measurements done by J.E. and other competent authorities of the Panchayat.

10. In the defence evidence accused examined DW-1 ASI Sumer Singh, Record-Keeper, CM Flying Squad Office, Panchakula, who proved

enquiry report Ex.DW1/A conducted by ASI Karambir, in which accused Ajit Singh Sarpanch was found innocent.

DW-2 Virender Singh, Clerk office of Director Panchayat, Haryana, from official record proved enquiry report Ex.DW2/A, which was conducted by Deputy Chief Executive Officer, Zila Parishad, Karnal, in which allegations of complainant Bhupinder Singh against accused were found false.

11. After considering the evidence on record, learned trial Court acquitted all the four accused of the offences for which they had been charge sheeted, vide judgment dated 30.11.2019.

12. Aggrieved by the said decision, complainant-Bhupinder Singh has preferred the present appeal along with application for seeking leave to file an appeal against acquittal of the accused/ respondents No.2 to 5.

13. Learned counsel for the applicant has vehemently contended that the case of the prosecution has been duly proved from evidence of the complainant, officials of Panchayati Raj Department as well by Engineers of Panchayati Raj as well PWD (B&R), who conducted measurement of the work got done by accused Ajit Singh Sarpanch during his tenure and it was found that not only the incomplete material was used but the quality of material used was also sub-standard. He further contended that from the prosecution evidence on record, it was also proved that payments were shown to have been made by accused Ajit Singh Sarpanch in connivance with co-accused, who were Gram Sachivs and a supplier of material. He urged that there was embezzlement of sum of Rs.1,65,000/- of the government money, which was done by forging the bills etc. He argued that the trial Court has wrongly brushed aside the enquiry report by merely

relying upon the testimony of one of the independent witness, who turned hostile. Learned trial Court has overlooked the fact that the fictitious bills were got prepared by the Sarpanch in the name of Sardar Tractors for supply of material, whereas the said firm had not dealt with the said material. There were no signatures of the labourers in the muster roll. He submitted that the judgment of acquittal overlooking the testimony of PW3 to PW33 and enquiry report Ex.P-71 is absolutely illegal and is not sustainable in the eyes of law and prayed that the present appeal be accepted by setting aside the judgment dated 30.11.2019 and accused be convicted for the offences charged with and be punished as per law.

14. A glance at the prosecution evidence shows that in order to prove its case prosecution has examined PW-1 SI Ashok Kumar, who had registered formal FIR Ex.P1 and made Endorsement Ex.P2.

PW-2 SI Sher Singh, conducted part investigation and during such course arrested accused Ajit Singh Dharambir (Secretary) and Baldir Singh (Ex.Secretary).

PW-3 Bhupinder Singh son of Singara Singh, resident of village Dungra, P.S.Indri, District Karnal, who is the complainant in this case who proved his complaint Ex.P3 and his statement Ex.P4 recorded during the enquiry.

PW-4 Head Constable Sandeep Kumar joined in the investigation with Investigating Officer/ ASI Harbhajan Singh on 27.06.2016 and Investigating Officer arrested accused Prabhjot Singh in this case.

PW-5 ASI Rajinder Kumar - Investigating Officer deposed regarding collecting of Panchayat record vide application given to BDPO

Indri and recording statements of witnesses under Section 161 Cr.P.C.

PW-6 Vikas Kumar owner of M/s Kishan Enterprises Second Gate, New Grain Market, Kurukshetra, proved bill No.711 dated 19.06.2013 of Rs.1,67,889/- regarding purchasing of pipe line by Ajit Singh Sarpanch, during his tenure.

PW-7 Lakhwinder Singh son of Sucha Singh, resident of village Dungra, stated that no pucca Ghat was made at the village and the government money of Rs.1,00,000/- was embezzled by Sarpanch Ajit Singh.

PW-8 Sunil son of Lachhman Singh, a resident of village Dungra, stated that Pucca Ghat at village Pond was not made. He was declared hostile when he stated that he did not know whether any amount was embezzled by the Sarpanch or not.

PW-9 Ramesh Kumar, Secretary Panchayat, Gumto, Tehsil Indri, District Karnal, proved copies of record Ex.P11 to Ex.P14 of Panchayat regarding taking over of charge by Sarpanch Ajit Singh and handing over charge to Sarpanch Nishi Devi.

PW-10 Smt.Nishi wife of Om Parkash, resident of village Gumto, present Sarpanch of village Gumto, deposed regarding handing over of Panchayat record Ex.P15 to Ex.P51 and Ex.P70 to DSP Indri.

PW-11 Jitender Kasanwal, Manager, Union Bank of India, Indri, deposed regarding handing over account opening form Ex.P52 to Ex.P54 of Sardar Tractors Dungra to DSP Indri and proved his signature on recovery memo Ex.P55.

PW-12 Kuldeep Singh J.E. Panchayati Raj, Indri, deposed regarding handing over Measurement Book (MB) to DSP Indri and also proved measurement entries Ex.P56 and Ex.P57.

PW-13 Raj Kumar, BDPO, Indri, deposed regarding handing over of Ex.P58 to Ex.P63 regarding posting orders of accused Baldhir Singh and Dharambir Singh Gram Sachivs and proved his signatures on recovery memo Ex.P64.

PW-14 HC Krishan Kumar joined investigation with DSP Kushal Pal on 14.03.2017 and deposed regarding inspecting of several sites by SDO Gaurav Bhardwaj at village Gumto and village Dungra and proved his signature on recovery memo Ex.P65.

PW-15 HC Rajiv Kumar, joined investigation with DSP Kushal Pal Investigating Officer on 09.03.2017 and deposed regarding investigating proceedings conducted by him and proved his signature on recovery memo Ex.P66 and Ex.P67.

PW-16 Surender Singh J.E., PWD (B&R), Karnal checked and measured the work at the sites in village Gumto and Dungra and proved Measurement Reports Ex.P67 and Ex.P67/1, which were conducted in the presence of DSP, Indri.

PW-17 Santokh Singh son of Mohar Singh, resident of village Dungra, stated no Pucca Ghat of pond was built in village Dungra by Ex. Sarpanch Ajit Singh. He was declared hostile as having suppressed the exact amount of embezzlement.

PW-18 R.S.Punia, Sr.Scientific Officer, FSL, Madhuban, proved Lab report Ex.PW18/A.

PW-19 Inspector Narender Singh, after completion of investigation had prepared final report under section 173 Cr.P.C. against accused and presented the same in the court.

PW-20 Constable Dheeraj, handed over photocopy of statement

of enquiry No.74/FSO/CM/15 to ASI Rajinder Singh which was taken into police possession vide recovery memo Ex.P8.

PW-21 Ved Pal, Gram Sachiv, village Panchayat Gumto, deposed regarding handing over photocopy of Cash Book, muster roll register, proceeding book to DSP Kushal Singh.

PW-22 ASI Jagbir Singh also deposed regarding handing over of aforesaid documents by Ved Pal to the Investigating Officer.

PW-23 Shyam Lal, DSP, CM Flying Squad, proved his enquiry report Ex.P71, which was prepared by him after conducting the enquiry.

PW-24 Harvinder Singh son of Sadhu Singh, resident of village Dungra, was a witness in the enquiry conducted, on a complaint made by him against accused Ajit Singh Sarpanch, regarding allegations of embezzlement of money.

PW-25 ASI Karambir Singh, deposed regarding collecting of enquiry report Ex.P71 from ASI Sanjeev Kumar, which was taken into police possession vide recovery memo Ex.P72.

PW-26 Gaurav Bhardwaj, SDO, Panchayati Raj, Indri, inspected the sites of work at village Gumto and Dungra in the presence of DSP Kushal Pal/ I.O. and had taken samples i.e. 8/8 tiles from both streets and two samples of concrete from each street total four samples, which were taken into police possession vide memo Ex.P65.

PW-27 ASI Harbhajan Singh, formally arrested accused Prabhjot Singh on 27.06.2016.

PW-28 ASI Sanjeev Kumar deposed regarding handing over enquiry report Ex.P71 to ASI Karambir on 21.03.2017, which was taken into possession vide recovery memo Ex.P72.

PW-29 HC Bijender Singh, deposed that MM of Police Station, Indri, handed over the case property i.e. samples to him and he handed over the same for being deposited in FSL Madhuban for testing and proved entry in register No.19 Ex.P73.

PW-30 Kushal Pal, DSP is the Investigating Officer, who deposed regarding various investigation proceedings conducted by him during the course of investigation.

PW-31 Ashok Rawal, Reader to learned Judicial Magistrate Indri, proved signatures of learned Magistrate on orders dated 24.03.2017 Ex.P81 and Ex.P82.

PW-32 Kulbhushan Bansal, DDPO, Karnal, proved prosecution sanction order Ex.P83 against accused Dharambir, Gram Sachiv.

PW-33 Ashwani Malik, Gram Sachiv, Block Indri, deposed regarding handing over of Panchayat record i.e. Proceeding Book Ex.P16, Muster-Roll Ex.P17, bills of Sardar Tractor Ex.P28, Proceeding Book Ex.P29, MB Ex.P57 and Stock Register Ex.P18 to police, on 26.11.2015.

15. After having heard learned counsel for the applicant/ appellant and perusing the impugned judgment as well as other relevant record, we are of the considered opinion that the prosecution in the instant matter was unable to prove its case against the accused/ respondents No.2 to 5 beyond reasonable doubt.

16. Scrutiny of the prosecution evidence on record reveals that PW5-ASI Rajinder, PW23-Sham Lal DSP and PW30-Kushal Pal DSP were the officers, who conducted enquiry and investigation and these officers were assisted by PW1-SI Ashok, PW2-SI Sher Singh, PW4-HC Sandeep Kumar, PW14-HC Krishan Kumar, PW15-HC Rajiv Kumar, PW20-

Constable Dheeraj, PW22-ASI Jagbir Singh, PW25-ASI Karambir Singh, PW27-ASI Harbhajan Singh, PW28-ASI Sanjeev Kumar and PW29-HC Bijender Singh and PW19-Inspector Narender Singh, had prepared final police report under section 173 Cr.P.C.

17. PW3-Bhupinder Singh, PW6-Vikas Kumar, owner of M/s Kishan Enterprises, Kurukshetra, supplied material vide bill dated 19.06.2013 of Rs.1,67,889/- for the execution of works in question. PW7-Lakhwinder Singh, PW8-Sunil, PW17-Santokh Singh and PW24-Harvinder Singh were the villagers who complained about low quality of works executed by Panchayat.

18. Officials of the Department of Panchayat including non-technical officials were also examined i.e. PW9-Ramesh Kumar, Secretary Panchayat, who had produced record Ex.P11 to Ex.P14. PW10-Smt. Nishi, the present Sarpanch, handed over record to the Investigators. PW11-Jitender Kasanwal, Manager, Union Bank of India, produced bank record Ex.P53 and Ex.P54 regarding opening of bank account of Sardar Tractor Dungra and PW21-Ved Pal, Gram Sachiv Gumto produced and proved books of accounts Ex.P21 to Ex.P51 and Ex.P69. PW33-Ashwani Malik Gram Sachiv Indri proved documents Ex.P5 to Ex.P18 regarding proceedings of the Panchayat and bills of JCB.

19. The technical/engineering officers were also examined PW12-Kuldeep Singh J.E. Panchayati Raj, deposed regarding the entries in the Measurement Books Ex.P56 and Ex.P57. PW13-Raj Kumar BDPO Indri produced posting orders of accused Baldhir and Dharamvir Singh, Gram Sachivs as Ex.P58 to Ex.P63. PW16-Surinder Singh J.E. testified regarding measurements Ex.P67/1 and report Ex.P67 of works done by the Panchayat

and such measurements being made in the presence of Investigators. PW26-Gaurav Bhardwaj SDO Panchayati Raj, Indri, deposed regarding inspection of the spot made with Investigators and taking samples, which were taken into police possession vide recovery memo Ex.P65. PW32-Kulbhushan Bansal, DDPO, Karnal, proved prosecution sanction order Ex.P83 of accused Dharambir Gram Sachiv.

20. Prosecution also produced scientific evidence by way of examining PW18-Dr. R.S. Punia, Senior Scientific Officer, Physics, FSL, Madhuban, who proved FSL report Ex.PW18/A.

21. This fact had been admitted by PW3-Bhupinder Singh (PW3) during his cross-examination that his wife Kuldeep Kaur remained Sarpanch of Panchayat of village Dunga for the period 2005 to 2009 and audit of accounts of the Panchayat was done during her tenure. He also admitted that he had served in police department for 32 years. He denied the suggestion given by accused Ajit Singh that audit team found embellishment of sum of Rs.13,00,000/- in the tenure of his wife and accused Ajit Singh being the next Sarpanch pursued the matter of recovery of Rs.13,00,000/- from his wife.

22. The present case had been registered on the basis of enquiry report Ex.P71 conducted by PW23-DSP Sham Lal, in which it was concluded that all the four accused in furtherance of their common object and in conspiracy with one another embezzled sum of Rs.1,65,595/- of the Panchayat, by using either sub-standard or incomplete material and by making payments of bills for different works as narrated in the said enquiry report. While stepping into witness box as PW23, this witness has admitted in his cross-examination that during the course of enquiry he had not got the

works inspected at the spot or got these measured and even could not tell the name of the persons whose statements were recorded by him during the course of enquiry. A perusal of his enquiry report Ex.P71 reveals that he had mentioned therein that in the earlier enquiry conducted by ASI Karambir allegations of the complainant were found not true and complainant had made a complaint against ASI Karambir for giving a wrong enquiry report in order to help the accused. Trial Court has rightly pointed out that no material came in the enquiry of PW23 to show any wrongful act of ASI Karambir.

23. PW30-DSP Kushal Pal, the Investigating Officer, who had investigated the allegations after registration of FIR. Perusal of his deposition reveals that it is substantially based on the record collected during investigation and measurement reports of Engineers of Panchayati Raj Department and PWD, who inspected the spot of works and took samples and sent the same for analysis to the Laboratory and also collected bills of the suppliers of the material.

24. PW16-Surinder Singh, J.E., PWD (B&R), Karnal stated that he had visited the villages Gumto and Dungra, on 10.01.2017 and measured the work got done during the tenure of accused Ajit Singh Ex.Sarapnch and had given his report Ex.P67 and Ex.P67/1. But testimony of this witness is of no help to the prosecution as during his cross-examination this witness admitted the fact that before undertaking measurements, he had not obtained record from the Panchayat.

25. PW18-R.S. Punia, Senior Scientific Officer, FSL has also admitted during his cross-examination that by the passage of time strength of cement and concrete decreases. PW7-Lakhwinder, one of the villagers

had admitted in his cross-examination that he had not gone through the record of the Panchayat. The other villager PW8-Sunil turned hostile and did not support the case of the prosecution. PW10-Smt. Nishi, present Sarpanch of village Gumto, who was elected in the year 2016 for five years admitted in her cross-examination that previous Sarpanch i.e. accused Ajit Singh had handed over the charge of Panchayat record and articles to her, which included pipes about 300 in number.

26. From the testimony of DW1-ASI Sumer Singh, Record-Keeper, who proved enquiry report dated 28.11.2014 Ex.DW1/A of ASI Karambir Singh, it stands proved that the allegations of the complainant were found false. From Ex.DW2/A, letter dated 25.06.2014 of DGP, State Vigilance Buero and Ex.DW2/B, letter dated 10.09.2015 of Director, Panchayat respectively, it is proved that Director Panchayat had agreed with the enquiry report of Deputy CEO, Zila Parishad, Karnal, in which it was concluded that allegations of the complainant were not substantiated against the accused.

27. After comparative analysis of the prosecution evidence and defence evidence, trial Court has rightly held that although these facts stood proved that samples of the works executed during the tenure of accused Ajit Singh Sarpanch, were taken and tested in the Lab and shortcoming in the strength of material was found, yet at the same time officer of FSL admitted this fact that with the passage of time such strength of cement and concrete decreases and as such, FSL report ipso-facto could not be accepted as a conclusive evidence to believe the fact that material used in the works was sub-standard as alleged by the prosecution and some more and strong evidence, technical in nature, was required to prove the alleged fact, which

has not been produced by the prosecution.

28. Engineers of PWD and Panchayati Raj, who have been examined as prosecution witness have merely deposed regarding the fact that the work was measured at the spot and samples were drawn in their presence and measurement of such works was recorded in the Measurement Book kept in the office of Panchayat. There is no such evidence on record that entries made in the Measurement Books were forged by any of the accused. This fact has again been admitted by Officers/officials of Panchayati Raj Department that payments of works in question were made as per measurements recorded by Engineers in the Measurement Books. As already observed some of the villagers, who have been examined by the prosecution in support of its allegations have not supported the prosecution case and the villager, who supported such allegations admitted the fact that he had not gone through the record of the Panchayat. Complainant-Bhupinder Singh has also admitted the fact that her wife remained as Sarpanch before accused Ajit Singh was elected as Sarpanch. Trial Court has, thus, rightly reached at the conclusion that in the given circumstances possibility of motivated complaint due to village politics could not be ruled out against accused Ajit Singh Ex.Sarpanch. Stand of accused Dharambir and Baldir Singh Gram Sachivs stood vindicated that they had performed their duties and processed the correspondence and bills as per measurements furnished by technical/ engineering staff and payments were sanctioned and made as per authorization of the Panchayat and the drawing and disbursing officer. They cannot be held responsible for any fault in the measurement/ use of material, which would have been lapse on the part of technical/ engineering officials/ officers, who executed the work and measured said

work in the Measurement Books, who had not been prosecuted for the reasons best known to the prosecution.

29. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of Hon'ble the Supreme Court in 'Mahamadkhan Nathekan vs. State of Gujarat' **2014 (14) SCC 589.**

30. Learned counsel for the applicant/ appellant was unable to point out any illegality, infirmity or perversity in the impugned judgment dated 30.11.2019.

31. No other argument was addressed.

32. In view of the above, no case is made out for grant of leave to appeal against acquittal of respondents No.2 to 5 and the same is declined. Appeal is dismissed.

33. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(SUDHIR SINGH)
JUDGE

04.03.2025.

Komal

Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No