

**ALLAHABAD HIGH COURT**  
**Before : Jyotsna Sharma, J.**  
**Decided on : 06-11-2023**

Criminal Revision No. 40 of 1993

**PRADEEP KUMAR — Appellant**

**Vs.**

**STATE OF U. P. — Respondent**

**Sections, Acts, Rules, and Articles Mentioned:**

Section 408 of the Indian Penal Code (IPC)

Section 313 of the Code of Criminal Procedure (Cr.P.C.)

**Subject of the Judgment:**

Criminal Revision - Appeal against conviction under Section 408 IPC for alleged misappropriation of stock from a godown.

**Headnotes**

**Criminal Revision – Insufficient Evidence:** Revision filed against conviction under section 408 IPC for stock misappropriation. Acquittal due to lack of evidence establishing actual entrustment of goods to the accused and specific details of missing stock. [Paras 2, 7, 10]

**Evidence Assessment – Stock Records Inadequacy:** Failure to present stock register and relevant documents to substantiate the quantity and condition of stock allegedly misappropriated. [Paras 7, 9]

**Responsibility Determination – Accused’s Role Unclear:** Ambiguity in the accused's role and responsibilities concerning the maintenance and oversight of the godown stock. [Paras 5, 8, 9]

**Judicial Decision – Acquittal on Grounds of Inadequate Proof:** Overturning lower courts' verdicts due to insufficient evidence to prove the accused's guilt beyond reasonable doubt. [Paras 10, 11]

**Legal Procedure – Discharge of Bonds:** Release of the accused from bail bond and personal bond obligations following acquittal. [Para 12]

**JUDGMENT**

**Mrs. Jyotsna Sharma, J.** - Heard Sri Avneesh Tripathi, learned counsel for the revisionist and learned AGA for the State.

2. This criminal revision has been filed challenging the order passed by the C.J.M., Rampur in criminal case no. 128 of 1990 (State vs. Pradeep Kumar), by which the accused was convicted for offence under section 408 IPC and was sentenced to 2 year R.I. and a fine of Rs. 20,000/- by judgment and order dated 24.08.1992 and also the judgment passed by the Additional Sessions

Judge in Criminal Appeal No. 60 of 1991, by which the order of the trial court was affirmed by order dated 02.12.1992.

3. Relevant facts are as below:-

An FIR was lodged against the accused by Secretary, Sadhan Sahkari Samiti Block, Swar, District Rampur that the accused Pradeep Kumar, the accountant, without handing over the charge to any other person, has not been attending his duties in the Office of Sadhan Sahkari Samiti Limited, Vikas Chetra, Swar, District Rampur registration no. 429 dated 21.07.1955. The information was sent to the Registrar, Sahkari Samiti through a letter dated 19.07.1985 and 02.08.1985. The Tehsildar, Swar, in pursuance of order of District Collector, Rampur, got the locks of the godown of the Samiti opened on 31.08.1985 and prepared an inventory. It was found that 28 gunny bags of 20kgs each of DAP, 39 gunny bags of NPK, 37 gunny bags of urea, 48kgs of paddy, 3 packs of delron, 16.65 quintals of wheat, empty bags total number 83, were less in the stock. A case under section 408 IPC was registered and investigated upon. The accused was charge sheeted. He was put to trial. A charge under section 408 IPC was framed. The prosecution produced PW1-Bhagirath Singh (M.D.), PW2-Shanti Prasad (accountant), PW3-Ajay Singh (salesman), PW4-Suresh Chand (retired tehsildar, Swar), PW5-Abdul Azim (block pramukh) and PW6- S.I. Mahendra Singh.

The statements under section 313 Cr.P.C. were recorded. The accused, in his statement, said that he was posted on 10.04.1984, as in charge fertilizers and that he was on leave after taking due permission and that he has been falsely implicated by Bhagirath Singh and Ajim and that he was not handed over the charge of any goods.

4. From the perusal of the papers, it is disclosed as below:-

PW1-Bhagirath Singh stated that the accused absented himself since 12.07.1985, without giving any information or without handing over charge to any other person. The information was given to the District Assistant Registrar, Sahkari Samiti and he was suspended. He also stated that an inventory was prepared after breaking open the locks and goods like gunny bags of DAP, NPK, urea etc were found missing worth Rs. 19,195.25/-.

PW2-Shanti Prasad stated that the goods kept in godown were in charge of accused-Pradeep Kumar and he had the keys. The secretary sent several letters to him but keys were not returned, therefore, on the orders of the District Collector, the locks of the godown was broken open.

PW3-Ajay Singh mainly identified the signatures of the accused Pradeep Kumar on several papers of register.

PW4-Suresh Chand is a person, who broke open the locks of the godown and prepared the inventory. He said that he prepared the list of all the goods kept in godown.

PW5-Abdul Aziz has given evidence that the accused Pradeep Kumar was appointed on 10.04.1984 and that by resolution dated 12.06.1984, he was deputed as in charge of fertilizers and by another resolution dated 18.04.1985, he was deputed as in charge of wheat procurement.

5. The contention of the accused petitioner are three fold. Firstly, he was not given charge of the goods; the prosecution has failed to show that he was in fact given charge of those goods, which were allegedly found missing from the godown; the prosecution has further failed to show that how many gunny bags consisting of which goods and of what weight were actually entrusted to

him. Secondly, he was posted as an accountant, therefore, heavy burden lied on the prosecution to show that it was his responsibility to keep track of the goods, which were purchased or bought in the godown and were kept there on his responsibility and that no other persons had any interference or role to play for keeping the stock in order. Thirdly, the evidence of Secretary is enough to destroy the case of the prosecution.

6. I went through both the judgments in the light of the above arguments. The trial court referred to the registers produced by the prosecution. From the perusal of those registers, inferences have been drawn that the things in godown were in the custody of the accused petitioner. My attention has been drawn to the statements given by PW1 which have been referred to in the judgment of the revisional court. From the perusal of the judgment, it comes to light that he was given charge of fertilizers on 12.06.1984 and charge of purchase of wheat by resolution dated 18.04.1985 and that he did not attend his duties since 12.07.1985 and absented himself, without informing his superiors and without handing over the charge to any other person.

7. There is nothing on record to even prima facie show that any time before 12.07.1985 i.e., the day since he was absent from duty, any inspection of the godown was made and that stock was checked and that what were the goods, the number of bags, the total weight of things just before the material dates. The documentary and oral evidence, as regard the presence of that much of stock is missing. The prosecution has failed to prove that he was entrusted duty to keep secure the stock or the receiving and release or distribution of stock or that it was his duty to maintain the data in stock register. Even if for the sake of arguments, it is taken as proved that he was in charge of the godown at material times, it was the duty of the prosecution to demonstrate by oral and documentary evidence that when he was given the charge of the godown, so and so goods of so and so weight and so and so number of gunny bags with certain weights were handed over to him and that during the course of his tenure certain stock was not duly maintained or that the goods found at the time of preparation of inventory were not as per stock register. It was duty of prosecution to duly prove that the goods, which were actually found in the godown at the time of preparation of the inventory were not complete by number or by weight etc. A concrete evidence is missing in this regard. Moreover, this has clearly come in the evidence given by PW1 that he inspected and checked the godown before the incident and further that some of the goods had rotten and whatever the goods were in the rotten gunny bags, were not weighed. In my view, the prosecution left a big lacuna in this case by not producing the stock register and the registers, in which the data as to sale and purchase was being maintained. Just because the accused did not attend his duties and disappeared without handing over the charge to anybody else, this inference cannot be drawn that he in fact bungled with the stock or misappropriated them.

8. This has come in the evidence that accused was in charge of the godown but overall responsibility of sale and purchase of the stocks was of the Secretary. Further this important fact has also come in the statement of PW3 that just before the inventory was prepared, the godown was checked. The ADO had inspected the godown and found that the stock was correct, however the inspection report or other relevant entries, if any, have not been produced. The prosecution should have produced the inspection report to show that when it was conducted, what was the stock found therein, at that time. This was necessary to bring home the point that the stock was found in order at the time of inspection. In my view, the evidence given by the prosecution is inadequate to prove the charge. The burden of proving the

charge beyond reasonable doubt has not been discharged by the prosecution properly.

9. In my opinion, the prosecution had the responsibility to prove first that who was entrusted with responsibility to duly maintain the stock register. In case it was the responsibility of the accused, two situations arise. First, when he was handed over charge of things in the godown everything was in order including the stock register. Secondly, that during his tenure, certain goods were brought to godown or removed from there, if any, in usual course of business of the Samiti. In case it happened, how much was added in the stock or was removed. This could have easily be shown by the prosecution by producing other relevant documents/registers or examining the witness. Again two situations arise. First that either necessary entries were not made in the stock register or in case entries were duly made, the stock was found missing and it mismatched with the entries in stock register.

10. In view of the above, I find that the inference of holding guilty has been drawn by the trial court as well as the appellate court, on the basis of inadequate evidence. Therefore, the accused deserves to be acquitted of the charges.

11. Accordingly, this revision is allowed and the order dated 24.08.1992 passed by the trial court as well as the order dated 02.12.1992 passed by the court of appeal, are set aside and the accused is acquitted of the charge of section 408 IPC.

12. The bail bond and the personal bond are hereby discharged from his liabilities.

13. Copy of judgment shall be transmitted to the trial court.

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