



2025:DHC:10001



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 11.11.2025

+ **CRL.A. 183/2018**

STATE (NCT OF DELHI)Appellant
Through: Mr Pradeep Gahalot, APP for State
with SI Vikas Kasana PS Paharganj,
Delhi.

Versus

NAME SINGH @ MOHIT KUMARRespondent
Through: Mr. Dinesh Malik, Advocate
(DHCLSC)

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the State has assailed the judgment dated 17.09.2016 passed by the learned Special Judge (PC Act), CBI-09, Central District, Tis Hazari Courts, Delhi, arising out of FIR No. 120/2008, registered under Sections 408/419/471/411 IPC at P.S. Paharganj. Vide the impugned judgment, the Sessions Court set aside the judgement of conviction dated 28.09.2015 and order on sentence dated 02.02.2016 rendered by the learned ACMM-01, Central, and acquitted the respondent/accused Name Singh @ Mohit Kumar of all charges.
2. The case of the prosecution, briefly put, is that on 22.04.2008, the respondent, who was allegedly working with CMS Securitas under the name



“Mohit Kumar,” was entrusted with cash collections while functioning as a custodian. It was alleged that a sum of Rs. 13,14,577/-, stated to have been kept in a bag, was specifically entrusted to him for deposit at the Jhandewalan vault, the said bag was never deposited, and the respondent allegedly absconded thereafter. On the basis of the complaint lodged by PW-1, FIR No.120/2008 was registered. During investigation, an empty CMS-marked bag was recovered from the respondent’s house.

3. At trial, the prosecution examined 12 witnesses. PW-1 Anuj Dobhal, Senior Manager, lodged the complaint and deposed regarding the alleged entrustment of cash. PW-3 Sushil Kumar, co-custodian, stated that the respondent was carrying the bag amount. PW-4 and PW-5, both cashiers, supported the movement of cash orders. PW-8, a police official from Etawah, proved the recovery of an empty CMS bag from the respondent’s residence. The remaining witnesses were formal or investigation witnesses. In his statement under Section 313 Cr.P.C., the respondent denied all allegations, asserting that he had merely submitted documents for seeking employment and had been falsely implicated. No defence evidence was led.

4. Learned APP for the State argued that the learned ASJ erred in reversing the conviction despite the consistent evidence of PW-1, PW-3, PW-4 and PW-5 regarding the entrustment of the bag amount to the respondent, and that the recovery of the CMS-marked bag from his residence further corroborated the prosecute on version. It was contended that the Trial Court had rightly drawn the inference of misappropriation, and that the Learned ASJ failed to appreciate that the chain of circumstances stood proved.



5. Per contra, learned counsel for the respondent supported the impugned judgment and submitted that the prosecution had failed to prove the foundational facts of employment and entrustment. It was pointed out that no employment records such as the appointment letter, attendance register, salary slips or identity documents of the respondent were seized and that no verification of the signatures on the cash movement orders was carried out. It was further contended that the recovery of an empty bag after several months could not, by itself, prove misappropriation.

6. A perusal of the trial court record shows that material gaps and inconsistencies exist in the prosecution evidence regarding the respondent's employment and the alleged entrustment. PW-1 admitted that he had not personally handed over cash to the respondent. PW-4 and PW-5 relied on documents that were never verified. The IO (PW-12) admitted that he did not seize any original appointment records from CMS. PW-8 claimed that a dirty-green CMS bag was recovered from under a cot, but the recovery was made several months after the incident and no money was recovered and PW-9, a neighbour cited to have witnessed the police interrogation, turned hostile. Further, the prosecution withheld key witnesses, most notably Rajesh Dass and Deepak Mishra who were said to be the supervisor and vault-in-charge, respectively, without any explanation.

7. Having perused the Trial Court Record and the impugned judgment, I find myself in agreement with the view taken by the learned ASJ. I find that the prosecution has not been able to establish either the respondent's employment or the entrustment of the allegedly misappropriated amount through reliable and cogent evidence. The testimonial inconsistencies, absence of documentary proof of employment, non-examination of crucial



witnesses, and the inconclusive nature of the recovery collectively cast a significant doubt on the prosecution story.

8. The law pertaining to double presumption of innocence operating in favor of an accused at the appellate stage after his acquittal by the Sessions Court is fortunately a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as (2022) 8 SCC 536, wherein it was observed, as hereunder:

"8. ...We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)

"25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.""

9. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as (2020) 10 SCC 166, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

"14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)



“ ...

13. In *Sheo Swarup v. King Emperor* [*Sheo Swarup v. King Emperor*, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

‘... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.’

...

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.’

10. In the absence of any recovery or corroborative material, the case of the prosecution rests entirely on these inconsistent testimonies. While the presumption under Section 29 of the POCSO Act is a statutory safeguard, it is rebuttable.

11. In the present case, the gaps and inconsistencies in the prosecution evidence, particularly on the foundational issues of employment and entrustment, coupled with the non-examination of material witnesses and the absence of any documentary proof linking the respondent to the alleged role, are sufficient to dilute the prosecution version even without any independent



2025:DHC:10001



defence evidence. The recovery of an empty CMS-marked bag after several months, without any forensic linkage or recovery of the alleged misappropriated amount, also does not assist the prosecution in establishing the requisite chain of circumstances.

12. I find no illegality or perversity in the appreciation of evidence by the learned ASJ. The prosecution's failure to prove the respondent's employment, the entrustment of the alleged amount, and the deliberate withholding of key witnesses such as the supervisor and vault in-charge created substantial doubt regarding the prosecution story. The Sessions Court's conclusion that the chain of circumstances was incomplete is supported by the material on record.

13. In view thereof, the appeal is dismissed.

14. A copy of this judgment be communicated to the learned Trial Court along with the concerned Jail Superintendent.

**MANOJ KUMAR OHRI
(JUDGE)**

NOVEMBER 11, 2025/kb