

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1075-2004

Date of Decision: November 18, 2015

Nirmal Singh

...Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Yogesh Goel, Advocate
for the petitioner.

Mr. Kuldeep Tiwari, Addl.A.G., Haryana.

Naresh Kumar Sanghi, J.(Oral)

Challenge in the present criminal revision petition is to the judgment, dated 29.03.2004, passed by learned Additional Sessions Judge, Ambala, whereby the appeal filed by the petitioner challenging his conviction and sentence for the offence punishable under Section 409 IPC recorded by learned Chief Judicial Magistrate, Ambala, was dismissed.

At the very outset, Mr. Yogesh Goel, Advocate, who is

present in Court with the petitioner, after taking instructions from him submits that in view of the concurrent findings of the Courts below, he does not want to challenge the conviction of the petitioner for the offence punishable under Section 409 IPC. He, however, submits that the petitioner was entrusted with the revolver and 30 cartridges along with the holster in the year 1988, when he (petitioner) was posted as Sub Inspector of police at Police Station, City, Ambala. On his promotion as Inspector of Police, he was transferred to Haryana Armed Police (Batalion-II) at Madhuban but he failed to return the said revolver, 30 cartridges and the holster to the concerned branch of police at Ambala. He further submits that the revolver and 13 live cartridges and an empty shell were allegedly recovered from the petitioner by Punjab police in a case arising out of FIR No.84 dated 31.03.1991, for the offences punishable under Sections 148, 307, 332 and 353 read with Section 149 IPC and Section 25 of the Arms Act, registered at Police Station, Sadar, Patiala. He further submits that the petitioner was of the opinion that till he was in service, he could retain the revolver, cartridges and the holster. Therefore, he did not return the same to the police at Ambala. He further submits that on receipt of the information from the Punjab Police with regard to the recovery of the revolver, 13 cartridges and one empty shell, the impugned FIR was registered on 24.06.1992. Since then, the petitioner is

facing the agony of investigation, trial and the present revision petition. During the pendency of the investigation, trial, appeal and the present revision petition, the petitioner did not misuse the concession of bail, which was granted to him by different Courts at different stages except on 12.08.2015 before this Court when the case remained unattended and his presence was ordered to be secured by way of bailable warrants. He further submits that the petitioner had retired from the post of Inspector of Police in the year 1998 and thereafter he met with an accident and suffered multiple injuries including an injury to his brain. As a result thereof, he has lost his partial memory. He further submits that petitioner is 73 year old at present. He further submits that the petitioner is neither required nor involved in any other case, at present. It has also been pointed out that after the conviction in the present case, the pension, to which the petitioner is entitled, has been stopped by his department.

Learned counsel for the State has produced the affidavit of Superintendent, Central Jail, Ambala, showing the period of incarceration suffered by the petitioner which is taken on record.

Learned counsel for the State has not controverted the factual aspects narrated by learned counsel for the petitioner. However, he submits that there is no explanation by the petitioner regarding 16 live cartridges which remained due

towards the petitioner. Therefore, the sentence passed by the learned trial Court and affirmed by the learned Appellate Court be maintained. However, he has not disputed the fact that the petitioner had met with a road side accident and sustained injuries.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

Though the learned counsel for the petitioner has opted not to challenge the conviction of the petitioner, but to satisfy the conscience of this Court, the material available on record has been re-scanned. As per prosecution version, the revolver, 30 live cartridges and a holster was entrusted to the petitioner on 07.11.1988 by Head Constable Shamsheer Singh (PW3), while the petitioner was posted as Sub Inspector of Police at Police Station City Ambala. Despite his promotion and transfer from the said Police Station, he did not deposit the revolver, live cartridges and the holster with his department. Later on, the petitioner was arrested by Punjab Police in a case arising out of FIR No. 84 dated 31.03.1991, registered at Police Station, Sadar, Patiala and the said revolver, 13 live cartridges and an empty shell were recovered and taken into possession of the Punjab Police. On the information received from the Police Station, Sadar, Patiala, an FIR of the present case was registered

on 24.06.1992, on the complaint of Sub Inspector Labh Singh (PW2). The petitioner was arrested, and after completion of the investigation, charge-sheet (challan) was presented before the learned trial Court. The charge for the offence punishable under Section 409 IPC was framed to which he pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined Sub Inspector Ajmer Singh (PW-1) of Punjab Police regarding the registration of FIR No. 84 dated 31.03.1991, registered at Police Station, Sadar, Patiala and arrest of the petitioner. He also deposed regarding the recovery of pistol, 13 live cartridges and an empty shell. Sub Inspector Labh Singh (PW2) deposed regarding the registration of FIR of present case. He further deposed that the petitioner had failed to return the revolver, live cartridges and the holster issued to him. Head Constable Shamsheer Singh (PW3) deposed that on 07.11.1988, the petitioner was entrusted with a revolver, 30 live cartridges and a holster, by him (PW3) and the said fact in that regard was entered into the register. Head Constable Prem Chand (PW4) also deposed regarding the entrustment of the articles to the petitioner.

In his statement under Section 313, Cr.P.C., the petitioner fairly admitted that the above said revolver etc. were entrusted to him being a police official. However, he denied the

fact that he was supposed to return the same.

No evidence in defence was led by the petitioner.

Learned trial Court held the petitioner guilty for the offence punishable under Section 409 IPC and ordered him to undergo rigorous imprisonment for two years and payment of fine of Rs.200/- and in default thereof to undergo further simple imprisonment for two months.

Dissatisfied with the judgment of conviction and the order of sentence, recorded by the learned Chief Judicial Magistrate, Ambala, the petitioner preferred an appeal, which was heard and dismissed by learned Additional Sessions Judge, Ambala, vide order dated 29.03.2004.

After perusing the record received from the learned Courts below, this Court is satisfied that the conviction of the petitioner for the offence punishable under Section 409 IPC is well based and as such, learned counsel for the petitioner has rightly opted not to challenge his conviction.

However, there appears to be substance in the contention of learned counsel for the petitioner that for more than 23 years, the petitioner has suffered the agony of investigation, trial, appeal and pendency of the present revision petition; the petitioner was entrusted with the revolver etc. being the Sub Inspector of the Police but he was negligent in not returning the same to his parent department; one revolver and

13 live cartridges have already been recovered from the petitioner and as such, the loss was of 17 live cartridges only; the petitioner is neither required nor involved in any other case at present; at present petitioner is 73 year old and his pension has also been stopped by his department, therefore, the sentence of rigorous imprisonment for two years appears to be on higher side and the same is reduced to rigorous imprisonment for six months. The order of fine and the sentence in default thereof passed by the Courts below, are maintained.

With the above modification in the order of sentence, the present criminal petition is partly accepted.

Since the presence of the petitioner has been secured by way of bailable warrants and he failed to furnish the bail bonds to the satisfaction of the Arresting Officer, therefore, he has been produced in custody by Sub Inspector Darya Singh of Police Station Police Line, Ambala before this Court. Therefore, the petitioner be sent to concerned jail for undergoing the sentence awarded by this Court.

A short order under the signature of the Court Secretary be given *dasti* to the learned counsel for the State for further necessary action.

(NARESH KUMAR SANGHI)
JUDGE

November 18, 2015
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