

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1079-2007

Date of decision : 28.09.2015

Narender Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Prateek Gupta, Advocate,
for the petitioner.

Mr. Arun Luthra, AAG, Haryana.

JITENDRA CHAUHAN, J.

Assailed in the present revision petition is the judgment dated 16.05.2007, passed by the learned Additional Sessions Judge, Fast Track Court, Faridabad, thereby, dismissing the appeal of the petitioner and affirming the judgment of conviction dated 18.12.2004 and order of sentence dated 20.12.2004, passed by the learned Sub Divisional Judicial Magistrate, Palwal. The petitioner stands convicted and sentenced as under:-

<i>Conviction under Section</i>	<i>Sentence</i>	<i>In default</i>
406 IPC	RI for 01 year and fine of Rs.500/-	SI for 01 month
408 IPC	RI for 01 year and fine of Rs.1000/-	SI for 02 months
468 IPC	RI for 01 year and fine of Rs.500/-	SI for 01 month
471 IPC	RI for 01 year and fine of Rs.500/-	SI for 01 months

Briefly stated facts of the present case are that on 29.05.1995, an application was received from the complainant, alleging therein that accused-Narender Kumar remained Secretary of the Bhagola Milk Production Society (for short, 'the Society'), from September, 1994 to November, 1994 and during this period, he was entrusted the entire record of the Society. It was alleged that the accused misappropriated a sum of Rs.2202.99. It was further alleged that the accused forged the record of the society by making wrong entries regarding purchase of milk by the Society from his brother Satish and misappropriated another amount of Rs.2561.64.

The learned counsel for the petitioner contends that the petitioner was appointed as Secretary of the Cooperative Society on temporary basis. He has deposited more than the amount allegedly embezzled by him. He lastly submits that in the event of dismissal of the present revision petition on merits, a lenient view may be taken in the matter of sentence.

On the other hand, the learned State counsel has opposed the present revision petition on the ground that the prosecution has successfully proved the case against the petitioner beyond reasonable doubt.

From the perusal of the record, it is clear that the petitioner remained Secretary of the Society from 05.09.1994 to 25.11.1994 and as such, he had been maintaining the 10-day register regarding collection of milk to work out payment due to each milk vendor, payment register regarding payments made to milk suppliers and cash book for payments made on misc expenses, etc. A perusal of

the 10-day register and payment register further reveals that the payment made to his brother Satish, who also had been supplying milk to the Society, was in excess. Apart from this, a perusal of cash book Ex.PW7/H and PW7/I shows that at page No.76, the petitioner had claimed payment of Rs.478-75 vide folio No.121 and he received the same payment once again on the same folio by showing it at page No.78. The petitioner also issued receipts to some persons as members, but did not make the entry of the amount received by him, as shown in cash book at page No.83. Miscellaneous expenses of Rs.182/-were also misappropriated by the the petitioner. The learned trial Court, on appraisal of the documentary and oral evidence, held that the petitioner forged the record by making false receipts, double entries and making an entry of more than the actual purchase and as such, offence under Sections 406, 408, 468, 471 IPC stood proved against him beyond a shadow of reasonable doubt. The deposition of the embezzled amount cannot be treated as a circumstance to upset the concurrent findings recorded by the learned Courts below.

In this view of the matter, the conviction of the petitioner as recorded by the trial Court is affirmed.

However, as far as the sentence of the petitioner is concerned, it is submitted that the petitioner is the only bread-winner in the family. The FIR was registered on 29.05.1995. He was a young man of 29 years on the date of conviction. He has suffered the agony of protracted trial for the last two decades. As per the custody certificate dated 01.09.2015, furnished by the learned State counsel in the Court, the petitioner has already undergone 02 months and 09 days out of the substantive sentence of 01 year. He is not involved in

any other FIR. Therefore, keeping in view the mitigating circumstances in favour of the petitioner, this Court is inclined to take a lenient view in the matter of sentence.

The Hon'ble Supreme Court in 2006(4) R.C.R. (Criminal) 645 titled as "**R. Soundarajan V. Seed Inspector, Coimbatore and another**" observed as under:-

"26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during the pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment"

For the aforesaid reasons, the conviction of the petitioner, as mentioned above, is maintained. However, the substantive sentence of rigorous imprisonment of 01 year is reduced to the period already undergone by him. However, the same shall be subject to payment of enhanced fine of Rs.25,000/-, besides the fine already

imposed by the learned trial Court. He shall deposit this amount before the learned trial Court, within a period of four months from the date of receipt of a certified copy of this order.

In case, the petitioner fails to comply with the direction of depositing the amount of fine in the trial Court within period stipulated above, this revision petition shall be deemed to have been dismissed without further notice.

The impugned sentence order stands modified to the extent indicated above. This revision petition is disposed of accordingly.

September 28, 2010

atulsethi

**(JITENDRA CHAUHAN)
JUDGE**