

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1733-2007

Date of decision: 30.09.2015

Om Parkash

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. D.D. Sharma, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl. AG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition is directed against the impugned judgment dated 08.09.2007 passed by the learned Sessions Judge, Kaithal, whereby appeal of the petitioner was dismissed, upholding his conviction recorded vide impugned judgment of conviction dated 27.01.2005 and also the order of sentence dated 28.01.2005, passed by the learned Additional Chief Judicial Magistrate, Kaithal.

The facts relevant for disposal of the present petition, as recorded by the learned trial Court in paras 2 to 6, are that the case was registered on the latter EX.PJA with the following averments that Karam Singh, Inspector conducted the enquiry and submitted his report dated 26.10.1993, as under: -

That one Ram Kumar son of Jeeta raised a loan from the Cooperative Society, Peedal in connivance with other employees of the Society after introducing himself as Ram Chander son of Basanta resident of Village Theh Newal. Ram Chander also placed his photo of account No.40 duly attested by Om Parkash, being Secretary, Raghbir Singh, Executive Officer on the verification of Talwinder Singh, Salesman and Kulwinder Singh Peon. Ram Chander had withdrawn a sum of ₹2700/- on 25.01.1988 through cheque No.295306. Apart from this, Daljeet Singh Secretary appointed 17 members of the Society on the payment of ₹22/- each as membership fees. The receipt No.356984 to 357000 were issued but this amount was not deposited in the Society and it was misappropriated. The photocopy of the register of membership was obtained and after verification, it was found that the entries were issued in the account No.2 as against all these members. These receipts were issued for ₹12/- each from receipt No.356984 to 357000 dated 12.02.1992. But, there was no entry in the cash book regarding this amount. These receipts were prepared by Ajit Singh, Mahender Singh, Zora Singh, Jasminder Singh, Gian Singh, Surender Singh, Bir Bhan, Om Pati, Kirhan Lal, Rampat, Gurdev Singh, Mita Devi, Janssi, Phoolpati, Krishan Lal, Sahab Singh and Banto Devi. According to voter list prepared for the year 1992, their names were entered in the voter list on Sr. No.823 to 839 and it appears that they have paid ₹22/- each as membership fees to Daljeet Singh, Secretary but total amount of ₹374/- was deposited in the account of the Society and it was misappropriated. Upon which offence under Section 406 of the Indian Penal Code was made out.

As against allegation No.7, Partap Singh, D.D.O. was involved in misappropriation of the amount withheld by the officials of the Society and it was found that after verification of the record, Daljeet Singh had kept the amount in hand ₹20/- on 28.01.1991, ₹ 9000/- on 11.12.1991, ₹1000/- on 31.03.1992 and ₹15187.28 Ps. and total ₹25207.28 Ps. Behal Singh had shown entries of ₹980/- as payment for two times and misappropriated the amount. This amount was with him on 31.03.1992. Amount of ₹2.20 Ps. was left with him. In this manner, total ₹261.08 Paise was misappropriated by him. Offence under Sections 406, 408 of the Indian Penal Code was made out.

In this manner, after verification, it was found that Om Parkash, Secretary, Raghbir Singh, Executive Officer Ram Kumar son of Jeeta, Kulwinder Singh, Peon, Daljit Singh, Secretary were involved in the commission of offences punishable under Sections 406/408/468/471 IPC.

Rukka was sent for the registration of the case through Constable Ravinder Singh, upon which formal FIR was registered on 09.10.1995 under Sections 419, 420, 468, 471 read with Section 120-B of the Indian Penal Code.

During the investigation, thumb impression of accused Ram Kumar and Ram Chander were taken in the Court and sent for verification to F.S.L. Madhuban and it was found that Ram Chander had affixed photograph of Ram Kumar and it was verified by Om Parkash, Secretary. Then photo was attested by Raghbir Singh, Executive Officer whereas Raghbir Singh, Executive Officer during the investigation, found innocent the photo of that person, who was produced before him by Talwinder Singh, Salesman. It was

attested on the verification Om Parkash, Secretary. No connivance with Om Parkash and Ram Kumar was found during the investigation. Accused Om Parkash was arrested on 13.01.1996 and Ram Kumar was arrested on 19.01.1996 and the challan was presented against the accused Ram Kumar and Om Parkash under Sections 408/406/468/471 read with Section 120-B IPC. Accused Raghbir Singh was kept in column No.2 of the report under Section 173 Cr.P.C. During investigation, all the necessary documents were taken into possession. Statements of witnesses under Section 161 Cr.P.C. were recorded and challan was submitted in the Court.

The challan under Section 173 (2) of the Code of Criminal Procedure ('Cr.P.C.' for short) having been presented, copy thereof along with documents attached therewith, was supplied to the accused, as envisaged under Section 207 Cr.P.C. A prima facie case was found to be made out against the accused and accordingly they were charge-sheeted for the commission of offences punishable under Sections 408, 419, 420, 467, 468, 471 of the Indian Penal Code ('IPC' for short). Accused pleaded not guilty and claimed trial. In order to prove its case, prosecution examined as many as 10 PWs, besides producing on record other relevant documentary evidence.

On conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material available on record was put to the accused. They denied the allegations, alleged false implication and pleaded complete innocence. However, they did not lead evidence in their defence.

After hearing the learned counsel for both the parties and going through the evidence brought on record, the learned trial Court came to the

conclusion that the prosecution has successfully proved its case, bringing home guilt against the accused. Accordingly, accused were held guilty for the commission of offences punishable under Sections 408, 419, 420, 467, 468, 471 IPC and they were convicted vide impugned judgment of conviction dated 27.01.2005. Consequently, the convicts were sentenced vide impugned order of sentence dated 28.01.2005. Sentences awarded to the petitioner, read as under: -

<i>“U/s 408 IPC</i>	<i>One year rigorous imprisonment and to pay a fine of ₹500/- each. In default of payment of fine, each convict will further undergo rigorous imprisonment for a period of 30 days.</i>
<i>U/s 409 IPC</i>	<i>One year rigorous imprisonment.</i>
<i>U/s 420 IPC</i>	<i>Two years R.I. and to pay a fine of ₹500/- each. In default of payment of fine, each convict will further undergo R.I. for 30 days.</i>
<i>U/s 467 IPC</i>	<i>Two years R.I. and to pay a fine of ₹1000/- each. In default of payment of fine, each convict will further undergo R.I. for 60 days.</i>
<i>U/s 468 IPC</i>	<i>Two years R.I. and to pay a fine of ₹500/- each. In default of payment of fine, each convict will further undergo R.I. for 30 days.</i>
<i>U/s 471 IPC</i>	<i>Two years R.I. and to pay a fine of ₹500/- each. In default of payment of fine, each convict will further undergo for 30 days.”</i>

All the abovesaid sentences were ordered to run concurrently.

Feeling aggrieved, petitioner filed his appeal which also came to be dismissed by the learned Additional Sessions Judge, vide impugned judgment dated 08.09.2007. Hence this criminal revision petition.

When the case came up for hearing on 01.10.2007, learned counsel for the petitioner contended that let the present criminal revision petition be considered only for the limited purpose of reduction of sentence or for releasing the petitioner on probation, while upholding his conviction. Accordingly, notice of motion was issued regarding quantum of sentence only. Sentence of the petitioner was suspended by this Court vide order dated 15.07.2008, while admitting the revision petition for regular hearing. That is how this Court is seized of the matter.

Learned counsel for the petitioner, on instructions from the petitioner who is present in the Court, at the very outset, fairly states that he has got the instructions to say that petitioner will deposit the disputed amount of ₹2700/- along with interest @ 6 % w.e.f. 28.02.1998 till today, with the complainant-Cooperative Society, Peedal, Tehsil Guhla, District Kaithal. Highlighting the other mitigating circumstances in favour of the petitioner, learned counsel for the petitioner submits that the alleged incident is more than 25 years old. The FIR was registered on 09.10.1995. In the meantime, petitioner has retired from service. He is not a previous convict and only bread-winner of the family. He further submits that petitioner had been facing the agony of criminal trial for the last about 20 long years. He prays for extending the benefit of probation to the petitioner, directing him to deposit the amount of ₹2700/- along with interest @ 6%, by allowing the present petition.

On the other hand, learned counsel for the State submits that present one is not a fit case for extending the benefit of probation to the petitioner under the provisions of Probation of Offenders Act. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case, noticed hereinabove, petitioner deserves to be granted the benefit of probation under the provisions of Probation of Offenders Act, 1958 ('the Act' for short), while upholding his conviction, for the following more than one reasons.

It is a matter of record that petitioner was not a previous convict. He has not been found involved in any other case as well. As per the custody certificate filed by way of affidavit dated 15.09.2015, petitioner has undergone actual sentence for a period of 09 months and 13 days out of the total sentence awarded to him for a period of 02 years R.I. Petitioner has been found facing the agony of criminal trial for the last about 20 long years. He has been found to be the only bread-winner of the family. Further, petitioner has undertaken to deposit the amount in question along with interest right from 1998 till today with the complainant-Cooperative Society, Peedal, Tehsil Guhla, District Kaithal. Having said that, this Court feels no hesitation to conclude that petitioner deserves to be granted the benefit of probation.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***M.C.D. Vs. State of Delhi and another, 2005 (4) SCC 605. (Hon'ble Supreme Court)***
2. ***Ramesh Dass Vs. Raghu Nath and ors., 2008 (2) SCC (Crl.) 470. (Hon'ble Supreme Court)***
3. ***State through CBI, Anti Corruption Bureau, Chandigarh Vs. Sanjiv Bhalla and another, 2014 (4) RCR (Crl.) 17. (Hon'ble Supreme Court)***
4. ***Sant Lal Vs. State of Haryana, 1999 (2) RCR (Crl.) 563. (Pb & HR High Court)***
5. ***Chuni Lal Vs. State of Haryana, 2006 (1) RCR (Crl.) 844 (Pb & HR High Court)***
6. ***State of Punjab Vs. Harinder Singh @ Raju, 2008 (2) RCR (Crl.) 294. (Pb & HR High Court)***
7. ***Mani Ram Vs. State of Punjab in CRR No.97 of 2002, decided on 30.07.2010. (Pb & HR High Court)***
8. ***Chander Parkash Vs. State of UT Chandigarh in CRR No.1385 of 2012, decided on 15.05.2012. (Pb & HR High Court)***
9. ***Pardeep and others Vs. State of Haryana in CRR No.1289 of 2015, decided on 30.04.2015. (Pb & HR High Court)***

The relevant observations made by the Hon'ble Supreme Court in para 27 of its judgment in **Sanjiv Bhalla's** case (supra), which can be gainfully followed in the present case, read as under: -

“These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift – from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act, what is imperative for

*the judge is to strike a fine balance between releasing a convict after admonition *[18] or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing mission must not be forgotten.*

**[18] Probation of Offenders Act, 1958 Section 3: Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code, (45 of 1860), or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition.*

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or Section 4.”

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove, it is unhesitatingly held that keeping in view the peculiar facts and circumstances of the present case, instant one has been found to be a fit case, for extending the concession of release on probation of good conduct.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the view that petitioner has been found entitled for the benefit of probation and the same is accordingly granted. He will be released on probation of good conduct for a period of one year, subject to the appropriate undertaking furnished by him, to the satisfaction of the learned Chief Judicial Magistrate, Kaithal.

Accordingly, petitioner is directed, as undertaken by him before this Court, to deposit the amount of ₹2700/- along with simple interest @ 6% per annum from 01.01.1998 till today, with the complainant-Cooperative Society, Peedal, Tehsil Guhla, District Kaithal, within a period of six weeks from today, failing which the present criminal revision petition would be deemed to have been dismissed.

Resultantly, with the abovesaid observations made and directions issued, present criminal revision petition stands disposed of.

[RAMESHWAR SINGH MALIK]
JUDGE

30.09.2015
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