

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRR-407 to 409 of 2006 and
CRR-317-2006
Date of decision:9.9.2015**

Dilbag Singh and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Rajnish Gupta, Advocate for the petitioners.
Mr. Manoj Kumar Sangwan, DAG, Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

These four identical criminal revision petitions between the same parties, bearing Criminal Revision Nos. 407, 408 and 409 of 2006 and Criminal Revision No.317 of 2006, are being decided together vide this common order, as the same are directed against the similar impugned judgments, arising out of the same FIR. However, for the facility of reference, facts are being culled out from CRR No.407 of 2006.

Brief facts of the case, as recorded by the learned Additional Sessions Judge, in para 2 of his impugned judgment, are that on 16.8.1996, on a letter No.5269 dated 25.7.1996 moved by Assistant Registrar Co-op. Societies Limited, Kaithal, wherein it was stated that the Development Officer, Haryana State Co-op. Housing Federation Limited Mani Majra vide letter No.96-97/124 dated 22.5.1996 informed that as per audit report submitted by the Cheeka Development Officer Building Construction Society Limited, Cheeka for the period 1.4.1991 to 31.3.1995, both the above

named appellant-accused misusing their post of Secretary and President misappropriated total amount Rs.3,49,218.82 paise by hatching conspiracy with each other. In this regard, notices for recovery were issued to both the accused but the same were received being undelivered. Therefore, the Director Haryana State Co-op. Housing Federation Limited recommended for lodging FIR against them. After registration of the case the investigation was handed over to ASI Mohinder Pal and it was completed by ASI Amar Singh. The appellant-accused Dilbag Singh was arrested on 8.12.1996. The investigating officer collected records of societies and recorded statements of witnesses under Section 161 Cr.P.C. During investigation the total embezzlement of Rs.3,49,268.54 paise was found. After completion of investigation the challan for the embezzlement of Rs.46735.11 paise wrongly shown as Rs.10,624.69 paise during the year of 1992-93 was prepared and presented in the court for trial.

Copy of report under Section 173 (2) Cr.P.C. along with documents attached therewith was supplied to the accused, as required under Section 207 Cr.P.C. Finding a prima facie case against the accused, learned trial Court framed the charges against the accused for commission of offences punishable under Sections 408 and 120-B IPC, to which they pleaded not guilty and claimed trial.

The prosecution, with a view to prove its case, produced as many as 18 prosecution witnesses, besides placing on record other documentary evidence. On conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. They denied the allegations,

alleged false implication and claimed complete innocence. The accused opted to lead their evidence but finally they did not lead any defence evidence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has duly proved its case, bringing home the guilt against the accused. Accordingly, both the accused were held guilty and convicted for the offences punishable under Sections 408 and 120-B IPC, vide impugned judgment of conviction dated 28.11.2013 passed by the learned Sub-Divisional Judicial Magistrate, Guhla. Thereafter, vide order of sentence dated 1.12.2003, the convicts were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.800/- each, for the commission of offence punishable under Section 408 IPC. In default of payment of fine, they were ordered to undergo rigorous imprisonment for a period of one month. The convicts were also sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.400/- each for commission of offence punishable under Section 120-B IPC. In default of payment of fine, they were directed to undergo rigorous imprisonment for a period of 15 days. Both the sentences were ordered to run concurrently. The fine was paid by the convicts.

Feeling aggrieved against the above-said judgment of conviction and order of sentence, the convicts filed their appeal which also came to be dismissed by the learned Additional Sessions Judge, by passing separate but identical judgments. Hence these four criminal revision petitions, at the hands of convicts.

It is pertinent to note here that since the embezzlement alleged against the petitioners was pertaining to four different financial years, involving different amounts of embezzlement, they were tried separately and that is how, these four identical matters. All these four revision petitions were admitted for regular hearing and sentences of the petitioners were ordered to be suspended in the year 2006. That is how, this Court is seized of the matter.

Learned counsel for the petitioners, at the very outset, submits that during the pendency of these petitions since Mewa Singh son of Jai Singh has expired, three petitions out of these four criminal revision petitions, wherein Mewa Singh was second petitioner, have been rendered infructuous qua him and survive only qua petitioner No.1 namely Dilbag Singh. He further submits that he does not intend to press these petitions on merits and these petitions may be considered only for the purpose of releasing the petitioner Dilbag Singh on probation, directing him to deposit the total embezzled amount along with interest, from the date of embezzlement till today.

Highlighting other mitigating circumstances in favour of petitioner No.1-Dilbag Singh, learned counsel for the petitioner submits that petitioner was the first offender. He has not been found involved in any other case. Petitioner has been facing agony of trial for the last 19 years and he was the only bread winner of the family. He prays for allowing all these four criminal revision petitions.

On the other hand, learned counsel for the State submits that petitioner No.1 is not entitled for any further leniency either for reduction of

sentence or even for the benefit of probation, because the learned courts below have already shown sufficient leniency, while awarding the sentences to the petitioners. He prays for dismissal of all these four petitions.

Having heard the learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noted hereinabove, it is just and expedient to extend the benefit of probation to the petitioner namely Dilbag Singh, for the following more than one reasons.

It is a matter of record that alleged incident took place during the financial years 1990-91, 1991-92, 1992-93 and 1993-94. In this view of the matter, a period of more than 20 years have passed and the petitioner has been facing the agony of criminal trial. As per custody certificate dated 8.4.2011, petitioner has undergone the sentence for 21 days, out of the total sentence awarded to him for 2 years. After the death of his co-convict namely Mewa Singh during the course of pendency of these petitions, petitioner No.1 alone will pay the total amount in question and that too with interest right from the date of incident till today.

Under these facts and circumstances of the case, this Court do not find any justification that any useful purpose will be served in sending the petitioner to jail, at this point of time, for undergoing remaining part of his sentence, though ordinarily, in anti social offences like embezzlement, the court should normally take a strict view. It is so said, because petitioner has been found to be a first offender and only bread winner of the family.

The above-said view taken by this Court also finds support

from the following judgments:-

1. **M.C.D. v. State of Delhi and another, 2005 (4) SCC 605;**
2. **Ramesh Dass v. Raghu Nath and others, 2008(2) SCC (Crl.) 470;**
3. **State through CBI, Anti Corruption Branch, Chandigarh v. Sanjiv Bhalla and another, 2014 (8) Scale 377;**
4. **Sant Lal v. State of Haryana, 1999 (2) RCR (Crl.) 563 (P&H);**
5. **Chuni Lal v. State of Haryana, 2006(1) RCR (Crl.) 844;**
6. **State of Punjab v. Harinder Singh @ Raju, 2008 (2) RCR (Crl.) 294 P&H);**
7. **CRR No.97 of 2002 (Mani Ram v. State of Punjab), decided on 30.7.2010 (P&H);**
8. **CRR No.1385 of 2012 (Chander Parkash v. State of UT Chandigarh), decided on 15.5.2012 (P&H); and**
9. **CRR No.1289 of 2015 (Pardeep and others v. State of Haryana), decided on 30.4.2015.**

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 and circumstances of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the judgments referred to hereinabove, it is unhesitatingly held that striking a balance between the parties and also keeping in view the peculiar fact situation obtaining in the present case,

petitioner-Dilbag Singh has been found entitled for the benefit of Probation of Offenders Act, 1958.

In view of what has been discussed hereinabove, petitioner deserves to be released on probation, however, directing him to deposit the amount in question with along with interest, with the complainant-Society.

Consequently, petitioner-Dilbag Singh is directed to deposit an amount of Rs.10,264/- in CRR No. 409 of 2006 w.e.f. 1.4.1991. He will deposit an amount of Rs.29,839/- w.e.f. 1.4.1992 in CRR No.407 of 2006. Petitioner shall deposit an amount of Rs.52,279/- w.e.f. 1.4.1993 in CRR No. 408 of 2006 and he will deposit Rs.18510/- w.e.f. 1.4.1994 in CRR No. 317 of 2006.

Petitioner shall deposit all the above-said different amounts along with interest @ 6% per annum within a period of three months from today, failing which all these four petitions shall be deemed to have been dismissed. Petitioner shall deposit the above-said amount with the complainant-society. If the complainant-society is found no more existing, as apprehended by the learned counsel for the parties, then the amount shall be deposited by the petitioner with the complainant, i.e. Assistant Registrar Cooperative Society, Kaithal, who shall ensure disbursement thereof to the rightful claimants within three months thereafter.

Thus, keeping in view the totality of facts and circumstances of the cases noted above, including the age, character and antecedents, it would be just and expedient that instead of sentencing the petitioner for imprisonment, he should be released on probation under Section 4(1) of the Probation of Offenders Act, 1958, on his furnishing personal bonds in the

sum of Rs.25,000/- with one surety in the like amount to the satisfaction of learned trial Court for a period of one year. Petitioner is directed to furnish surety bond before the learned trial Court within a period of three months from the date of certified copy of this order.

Resultantly, with the above-said observations made, directions issue and modification in the quantum of sentence, as indicated above, all these four criminal revision petitions stand disposed of.

9.9.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE