

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

CRR No.1032 of 2010

Date of Decision: May 08, 2015

The Ghula, Primary Agriculture Cooperative
Society, Guhla

...Petitioners

Versus

Jaswant Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Surender Dhull, Advocate
for the petitioner.

Mr. Harsh Garg, Advocate
for the respondent.

FATEH DEEP SINGH, J.

CRM No.17692 of 2010

For the reasons mentioned in the application which is duly supported by an affidavit of the appellant and in the interest of justice the same is allowed. Delay of 156 days in filing the present revision petition is condoned.

CRM. Stands disposed off.

CRR No.1032 of 2010

The present revision petitioner, who also happens to be the complainant of this case got registered a case by way of FIR No.20 dated 15.2.2001 under Section 409 IPC pertaining to Police Station, Ghula against respondent Jaswant Singh and now has challenged in this revision petition the judgment dated 22.5.2009 of learned Additional Sessions Judge

Kaithal, whereby, the respondent Jaswant Singh was released on probation. At the relevant time respondent Jaswant Singh was working as a Clerk of the complainant-Co-operative Society and was found guilty for commission of an offence under Section 409 IPC by the learned Sub Divisional Judicial Magistrate, Ghula through his order dated 24.8.2007 and had been sentenced to under go rigorous imprisonment for a period of three years and to pay a fine of ₹3000/- and in default thereof to further undergo rigorous imprisonment of six months and his appeal though was dismissed but his prayer was allowed by the learned first Appellate Court by releasing him on probation. It is this very finding which is subject matter of present invocation.

The factual background is that while working as a Clerk of the Co-operative Society the petitioner received a sum of ₹.68,749 from five members of the society namely Surjit Singh, Balwant Singh, Gurjit Singh, Ajmer Singh and Baljit Singh. However, instead of depositing the same the accused is alleged to have embezzled this amount. The lone argument of this challenge so canvassed on behalf the petitioner is that the findings of the learned Additional Sessions Judge that the accused had deposited a sum of ₹15840/- with a Society on 20.5.2009 and on 16.11.2000 had deposited ₹62800/- (totalling to ₹78640/-) is factually incorrect and is the basis of this concession and which is opposed and argued that the convict-appellant was an old aged person and has undergone trauma of investigations and trial for 16 years and the Court has exercised its powers in terms of Section 360 Cr.P.C. and released him on probation.

Appreciating the arguments of the two sides the

very provisions of Section 360 Cr.P.C. empowers the Court that whenever a person not under 21 years of age is convicted for an offence punishable with fine only or with imprisonment for a term of 7 years or less and who is not a person with previous conviction and it appears to the Court that having regard to his age, character and antecedents it is expedient to release him on probation of good conduct the Court may instead of sentencing him at once, direct that he be released on probation of his entering into a bond with or without sureties. The convict has paid as per the findings arrived at in the impugned judgment instead of ₹68740/- a sum of ₹78640/- which fact was neither orally controverted nor documentarily opposed by the present revisionist before lower Court and has suffered agony of investigations and trial since February, 2001 for a period of 8 years when the impugned judgment was pronounced and till now as has been brought to the notice of the Court for a period of almost 14 years and being as has been submitted a senior citizen the ends of justice demands that since the learned lower Court has exercised its inherent power within the framework of law and keeping in mind this peculiar situation as has been spelled out in the impugned judgment deters this Court from impinging upon powers of the learned Additional Sessions Court as there is no utter violation or flagrant misuse of the powers and which ordinarily need not be interfered by this Court and when nothing has been put before this court that the impugned finding has resulted in flagrant misuse of powers or has resulted in miscarriage of justice. The provisions of Section 360 Cr.P.C. are handiwork to save first offender from becoming hardened criminals and is an

embodiment of the English First Offenders Act which calls upon the Courts to deal such cases with leniency, and, therefore, finding no illegality or impropriety in the findings of the learned First Appellate Court the same as such does not calls for showing any indulgence.

Thus, in the light of these discussions, the present criminal revision petition stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 08, 2015
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