

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

CRR-3311-2012 (O&M)

Date of Decision: December 4, 2015

Harbhinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.D.S.Malwai, Advocate
for the petitioner.

Mr.K.S.Pannu, DAG, Punjab.

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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?*

NARESH KUMAR SANGHI, J.(Oral)

Challenge in the present criminal revision petition is to the judgment, dated 03.09.2012 passed by learned Additional Sessions Judge, Bathinda, whereby the appeal filed by the petitioner challenging the conviction and sentence for the offence punishable under Section 409, IPC, recorded by learned Judicial Magistrate First Class, Bathinda, was dismissed.

At the very outset, learned counsel for the petitioner

submits that in view of the concurrent findings of both the Courts below, he does not propose to challenge the conviction of the petitioner for the offence punishable under Section 409, IPC. He, however, submits that during the pendency of the present petition the better sense has prevailed and the petitioner has decided to return the embezzled amount to the Panchayat as per the consent of the concerned department. He further submits that the only allegation against the petitioner was that in the year 2003-04, when he was Sarpanch of Gram Panchayat, village Mallwala, District Bathinda, he had leased out the *shamlat* land @ ₹1,83,200/- (Rupees one lac eighty three thousand and two hundred only), but he failed to deposit the said amount in the account of Gram Panchayat and, as such, he was prosecuted for the offence punishable under Section 409, IPC. He further submits that the said amount along with interest has been calculated and the petitioner has handed over a bank draft of ₹4,00,000/- (Rupees four lacs only), photostat copy of the same has been placed on record, to Panchayat Secretary, Shri Harpal Chand, Block Sangat, District Bathinda. He further submits that the petitioner has also suffered the jail sentence of 2 months and 19 days and, as such, the further incarceration of the petitioner

would not be of any consequence. He also points out that in view of the sentence imposed upon the petitioner, he would not be able to contest the election of the Gram Panchayat and, as such, the substantive sentence be reduced to the period already undergone by him. It has also been pointed out that the fine imposed by the learned trial Court was deposited at the time of passing of the sentence. He further points out that the petitioner is neither required nor involved in any other case. He further points out that during his incarceration at Central Jail, Bathinda, the petitioner earned four days jail remission, which would show that the petitioner was in the process of improving himself.

Learned counsel for the State submits that the embezzled amount along with the interest has been calculated which would come to ₹4,87,446/- (Rupees four lacs eighty seven thousand four hundred and forty-six only). The Panchayat Department has accorded sanction to accept the principal amount along with interest, alleged to have been embezzled by the petitioner and, as such, after obtaining necessary permission, Secretary, Gram Panchayat, Shri Harpal Chand, is present in Court and a bank draft of ₹4,000,00/- (Rupees four lacs only) has been handed over to him (Panchayat Secretary). The same has

been accepted by him (Panchayat Secretary) after obtaining his receipt on the photostat copy of the bank draft placed on record. He further admits that the petitioner has suffered incarceration for 2 months and 23 days including jail remissions granted to him (petitioner). He also admits that the petitioner is neither required nor involved in any other case.

Though learned counsel for the petitioner has opted not to challenge the conviction of the petitioner for the offence punishable under Section 409, IPC, but to satisfy the conscience of this Court, the material available on record has been perused and it is found that on the basis of oral evidence led and the documents produced on record, it is clearly made out that the petitioner failed to deposit ₹1,83,200/- (Rupees one lac eighty three thousand and two hundred only) which were charged as lease money from the lessee in the year 2003-04 and, as such, the Courts below have rightly return the verdict of the guilt of the offence punishable under Section 409, IPC. Learned counsel for the petitioner has rightly opted not to challenge the conviction in view of the above circumstances.

There appears to be substance in the submissions of the learned counsel for the petitioner that the amount calculated

by the Panchayat Department, Punjab, is ₹4,87,446/- (Rupees four lacs eighty seven thousand four hundred and forty-six only), which would be returned by the petitioner. Out of the said amount, a sum of ₹4,000,00/- (Rupees four lacs only) by way of bank draft has been handed over to the Panchayat Secretary. Learned counsel has stated at Bar that remaining amount of ₹87,446/- (Rupees eighty seven thousand four hundred and forty six only) would be deposited with the Gram Panchayat by way of bank draft within one month of passing of this order and if the petitioner fails to do so then it will be open for the Gram Panchayat or the State to move an application for recalling the present order.

In view of the totality of the facts of the case, the substantive sentence of the petitioner for the offence punishable under Section 409, IPC, is reduced to the period already undergone, i.e. 2 months and 23 days. The fine imposed and the sentence passed in default thereof would remain undisturbed.

With the above modification in the order of sentence, the present criminal revision petition is partly allowed. In case the petitioner fails to pay the remaining amount to the Gram Panchayat, as discussed hereinabove, then it will be open for the

State/Gram Panchayat to move an application for recalling of the present order.

December 4, 2015
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(NARESH KUMAR SANGHI)
JUDGE