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

**CRR No.2338 of 2015 (O&M)
Date of decision: October 06, 2015**

Kamal Kishore

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Hitesh Sood, Advocate
for the petitioner.

SABINA, J

Petitioner had faced trial in FIR No.25 dated 26.03.2007, under Section 409 of Indian Penal Code, 1860 ('IPC' for short), registered at Police Station Sarhali.

Trial Court vide order dated 30.07.2014 ordered the conviction and sentence of the petitioner qua commission of offence punishable under Section 409 IPC. The conviction and sentence of the petitioner, as ordered by the trial Court, were upheld by the Appellate Court vide order dated 08.05.2015. Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that petitioner has been falsely involved in this case. In fact, petitioner was working as a Manager and the entire responsibility qua maintenance of stock was of Naresh Kumar-Store Keeper. As per Annexure P-1 (Exhibit PW2/A), it could not be said that there had been any shortage.

Prosecution story, in brief, is that physical

verification of the stock was conducted from 16.02.2007 to 20.02.2007 by Sikander Singh, Technical Officer and he submitted his report dated 22.02.2007. The said report was duly signed by the petitioner-Manager and Naresh Kumar-Store Keeper. As per the said report, following shortages as reproduced in Para-2 of the judgment passed by the Appellate Court vide order dated 08.05.2015, were noticed:-

“Rice crop 9681 bags (50 kg each) approximate value Rs.58,76,367/-,

Broken rice 3340 bags (50 kg each) of Rs.15,03,000/-,

Nakku rice 137 bags (50 kg each) of Rs.47,950/-,

Rice Bran 1001 bags (32 kg each) of Rs.2,08,208/-.”

On account of above shortages, FIR in question was registered against the petitioner and his co-accused. During investigation of the case, Naresh Kumar-Store Keeper died on 10.06.2007. After completion of investigation and necessary formalities, challan was presented against the petitioner.

Prosecution in order to prove its case, examined complainant-Pardeep Sharma PW1 who deposed as per the prosecution case and stated that as per Exhibit PB, accused had caused loss to the tune of ₹47,00,000/- to the Markefd. PW2 Sikander Singh, Technical Officer proved his report Exhibit PW2/A and stated that stock which was found missing was under the custody of Store Keeper and under overall supervision of the petitioner-Manager. The shortages reported by him were assessed by the Accounts Department to the tune of ₹47,00,000/-. PW4 Jaspal Singh proved on record

balance-sheet of the Department. As per the said balance sheet, the Department had suffered loss to the tune of ₹45,33,625/-. It has also been noticed by the trial Court that the petitioner had admitted to make up the loss caused to the Department to the extent of 2/3rd share, whereas, Store Keeper had agreed to make up the loss caused to the Department to the extent of 1/3rd share but they had failed to honor the undertaking given to PW2 Sikander Singh on 23.02.2007, i.e. one day after the physical verification was conducted by the Technical Officer and the same was proved on record as Exhibit PW4/D.

Report Annexure P-1 reads as under:-

"Sr. No.	Name of Article	Stock Register Page No.	Book Balance As per stock register filled	Physical Balance	Excess/ Shortage
1	Paddy	20	184873-35 kg	184873	-----
2	Rice Crop 2005-2006 Rice Crop 2006-2007	23	16827-50 kg	7146	-9681
3	Broken	27	907-50 kg	4247	+3340
4	Nakku	31	1482-50 kg	1619	+137
5	Rice Brain	35	1461-32 kg filled	460	-1001

Note: In the report of physical verification showing that the results of broken & nakku is on higher side but ever the rice is made on lower side."

Thus, as per the above report, although, broken and nakku were on the higher side but the rice was on the lower side. A perusal of the Annexure P-1 further shows that the argument raised by the learned counsel for the petitioner that as per Annexure P-1, there was no shortage, is without any force. Rather a perusal of Annexure P-1 leads to the inference that on physical verification, shortage of rice was detected.

From the evidence lead by the prosecution, it was established that the Department had suffered loss to the tune of ₹47,00,000/-. Petitioner was working as a Manager and was overall in-charge of the stock maintained by the Store Keeper. Hence, it cannot be said that petitioner who was working as a Manager could not be held responsible for any shortage of paddy stock. Hence, the prosecution had been successful in proving its case. Thus, the Courts below had rightly ordered the conviction and sentence of the petitioner for commission of offence punishable under Section 409 IPC.

Keeping in view the seriousness of allegations levelled against the petitioner, no ground for reduction of sentence qua imprisonment of the petitioner, is made out.

Dismissed.

(SABINA)
JUDGE

October 06, 2015
mahavir