

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

CRR-47-2007

Date of decision:28.9.2016

Ajaib Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.GS Sandhu, Advocate for the petitioner

Mr.Surjeet Singh Chaudhary, Advocate General, Punjab

SNEH PRASHAR, J.

The present revision petition has been filed by the petitioner assailing judgment / order dated 28.4.2004 passed by learned trial Court vide which, he (petitioner) was convicted under Sections 409 and 201 of the Indian Penal Code (for short 'IPC') and was sentenced as under:-

- (i) to undergo rigorous imprisonment for 1½ years and to pay fine of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month under Section 409 IPC; and
- (ii) to undergo rigorous imprisonment for six months and to pay fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days for commission of offence under Section 201

IPC.

The judgment of conviction and order of sentence passed by learned trial Court was upheld by learned Additional Sessions Judge, Barnala vide judgment dated 14.12.2006.

Precisely, the facts are that a written complaint dated 5.8.1996 was made by District Manager, PUNSUP, Sangrur to Senior Superintendent of Police Barnala stating that Ajaib Singh, PDC (present petitioner) was working as Incharge at PUNSUP Centre, Tapa since 20.9.1995. On 10.6.1996, Field Officer, Barnala conducted a checking at the centre and 23 bales of gunny bags (valued about Rs.1,38,000/-) were found to be short. On 1.7.1996 statement of Ajaib Singh PDC was recorded and he admitted the shortage of 23 bales. A departmental inquiry was conducted by the Deputy District Manager (Field), PUNSUP and vide report dated 2.7.1996, he confirmed that 23 bales were short. On the basis of the said complaint, the case was registered.

On completion of investigation, final report under Section 173 of the Code of Criminal Procedure (for short 'Cr.P.C.') was presented in the Court. Finding a prima facie case, the petitioner was charged under Sections 409 and 201 of IPC, to which he pleaded not guilty and claimed trial. To substantiate its case, the prosecution examined as many as eight witnesses in all. Thereafter, statement of petitioner under Section 313 Cr.P.C. was recorded wherein he pleaded his false implication.

On evaluating the evidence led by the parties and the submissions made by learned Assistant Public Prosecutor for the State as

well as the defence counsel, learned trial Court finding that the prosecution has successfully proved the guilt of the petitioner, convicted and sentenced him vide judgment / order dated 28.4.2004 as noticed above. Feeling aggrieved, the petitioner filed an appeal, which was dismissed by learned Additional Sessions Judge, Barnala vide judgment dated 14.12.2004.

Being dissatisfied by the judgment of conviction and order of sentence, the petitioner preferred the instant criminal revision.

The submissions made by Mr.G.S.Sandhu, Advocate representing the petitioner and Mr.Surjeet Singh Chaudhary, Deputy Advocate General, Punjab have been heard and perused the record.

At the very outset, it is submitted by learned counsel for the petitioner that he does not want to challenge the judgment of conviction dated 28.4.2004 recorded by learned Judicial Magistrate, 1st Class, Barnala, which was affirmed by learned Additional Sessions Judge, Barnala vide judgment dated 14.12.2004, however, he submitted that the petitioner is facing agony of criminal prosecution for the last more than 20 years. The petitioner was a government employee and due to said embezzlement, now he is out of job. At the time of trial, he was about 50 years aged. Out of the total substantive sentence of 1½ years, he has already undergone one year, one month and five days of actual sentence. There is no material on the record, which may indicate that after being granted the concession of bail, he had misused the same in any manner. The petitioner is not a previous convict and as such, the substantive

sentence of imprisonment awarded to the petitioner be reduced to the one already undergone by him.

Learned counsel for the State submits that the petitioner was proved to be involved in corrupt practices and had misappropriated government property. Therefore, he was rightly convicted and sentenced by learned trial Court.

Since, learned counsel for the petitioner does not challenge the judgment of conviction passed by learned trial Court and upheld by learned first appellate court, this Court is not inclined to go into the details with regard to the factual aspects of the case. However, on scrutinizing the impugned judgments as well as evidence led by the prosecution before the trial Court, apparently there is no scope for any interference in the concurrent findings recorded by both the courts below and as such, the conviction of the petitioner is maintained.

A fair, just and reasonable procedure implicit in Article 21 of the Constitution of India creates a right to the accused to be tried speedily. The said right is one of the most valuable and cherished right guaranteed under the Constitution, whereas in the instant case, the petitioner is facing a protracted trial for the last 20 years.

In **Chander Bhan vs. State of Haryana 1996(1) Recent Criminal Reports 125**, this Court has held as under:-

“It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial

compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of a protracted trial due to the fault of the prosecution by this Court in the exercise of its extra-ordinary jurisdiction.

Reverting to the case in hand and taking into account the age of the petitioner, who may be around 70 years aged by now, and also keeping in view the exceptionally long period of protracted trial faced by him, in my considered opinion, no useful purpose will be served by sending the petitioner behind the bars once again for undergoing his remaining sentence of imprisonment. The ends of justice would be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him.

Consequently, the conviction of the petitioner for the offence punishable under Sections 409 & 201 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him but the fine of Rs.3000/-, imposed by learned trial Court, which has already been deposited by the petitioner, shall remain the same.

With the aforesaid modification in the order of sentence dated 28.4.2004, the present revision petition stands dismissed.

28.9.2016
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking/ reasoned?

Yes/No

Whether reportable?

Yes/No