

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

Criminal Revision 1446 of 2008

Date of Decision : November 30, 2016

Babu Lal Sharma	Versus	Petitioner
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Sarfraj Hussain, Advocate
for the petitioner.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S.MANN, J. (Oral)

The petitioner alongwith Maan Singh and Ghanshyam was tried for committing offence punishable under Section 409 IPC. Vide judgment and order dated 19/20.9.2007, learned Judicial Magistrate 1st Class, Rewari, acquitted Maan Singh and Ghanshyam of the charge against them. However, the petitioner was convicted for the said offence and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.3,000/- and in default of payment of fine, to undergo simple imprisonment for one month. The period already undergone by him in custody during the trial was ordered to be set off against the substantive sentence.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal. Vide judgment dated 26.7.2008, learned Additional Sessions Judge, Rewari, found no merit in the same and, accordingly, while upholding his conviction and sentence, dismissed the same. Still not satisfied, he preferred the present revision, in which, notice was initially issued on the quantum of sentence. Subsequently, vide order dated 15.10.2008, a Co-ordinate Bench of this Court admitted the revision and suspended his sentence of imprisonment.

According to the prosecution, the petitioner was working as a store keeper with HAFED at the relevant time, when about 150 bags of wheat were stolen. The General Manager of HAFED got FIR registered against him. During the investigation and checking, shortage of 162 bags of wheat was noticed. Neither the lock of the door was found broken nor even the door.

Learned counsel for the petitioner submits that he does not challenge the conviction of the petitioner for the offence under Section 409 IPC. However, it is submitted that he is facing the agony of criminal prosecution for the last more than seventeen years. He already stands superannuated and presently aged about 74 years. He is neither involved nor convicted in any other criminal case. Out of the sentence of two years imposed upon him, he has already undergone a period of about four and half months. It is also submitted that he has a

large family consisting of five children and wife to look-after. The department has already effected the recovery. Prayer has, accordingly, been made for setting aside his remaining substantive sentence of imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that it was the petitioner, who was involved in committing theft of 162 bags of wheat and, therefore, the sentence of imprisonment imposed upon him is commensurate with the crime committed. Learned State counsel has, however, produced the custody certificate, as per which, the petitioner has undergone an actual sentence of four months and nine days. He is also not shown to be either involved or convicted in any other criminal case.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the petitioner behind the bars, once again, for undergoing his remaining substantive sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of the petitioner for the offence under Section 409 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. However, the fine of Rs.3,000/- which already stands paid, is enhanced to Rs.10,000/-. The enhanced amount of fine,

i.e. Rs.7,000/- be deposited by him with the trial Court within three months from today, failing which, he shall be required to undergo simple imprisonment for three months.

The revision is, accordingly, disposed of.

November 30, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No