

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

**CRR No.1256 of 2016 (O&M)
Date of Decision: July 12, 2016**

Ashwani Kumar

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Arora, Advocate
for the petitioner.

Mr.Varun Sharma, Asstt.Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Ashwani Kumar against respondent State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 28.03.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹500/- and in default of payment of fine, to undergo imprisonment for a period of one month under Section 409 IPC and also challenging the judgment dated 11.03.2016 passed by learned Sessions Judge, Jalandhar, vide which appeal filed by petitioner was dismissed but the sentence of the petitioner was reduced and he was directed to undergo simple imprisonment for a period of one year.

Notice of motion was issued qua quantum of sentence only and learned State counsel appeared and contested the petition.

From the record, I find that the challan was presented against petitioner in case FIR No.62 dated 08.09.1998. The brief facts of the case as noted down in the judgment passed by learned JMIC, Jalandhar, are as under:-

“2. Briefly stated, the case of the prosecution is that on 08.09.1998, a complaint no. 1863 dated 04.09.1998 was received from Additional Deputy Commissioner Development, Jalandhar/ No. 1447/SD dated 08.09.1998 DSP/R against accused Ashwani Kumar, Gram Sewak. Contents of the complaint were that in reference to the cited subject, Block Development and Panchayat officer of Bhogpur had filed a written report that Sarpanches of Gram Panchayat Sangranwali, Laroya, Dumuli and Sadha Chak had informed in writing that accused Ashwani Kumar, Gram Sewak, who works in his block, had been appointed as an administrator for the aforementioned Panchayats. It has been alleged that the said accused gave land of the said Panchayats on lease through competitive bidding, but did not deposit the amount received therefrom. The accused is said to have misappropriated the said amount. Apart from this, Gram Panchayat of village Nangal Fidda, Manak Rai and Dumuli elected new Sarpanch, but their charge was not handed over by the accused to the newly elected Sarpanches. Complainant stated that a request has already been made for registration of FIR vide letter no. (Superintendent) 88/23731 dated 28.09.1998 of Deputy Director of Village Development and Panchayat Department. However, no action was stated to have been taken and a request was consequently again made to register an FIR against the accused so that the misappropriated amount could be recovered and new Sarpanches could be vested with the charge. Upon direction of senior officials, SI Sarabjit Singh, SHO, PS Bhogpur registered the instant FIR and forwarded a copy of the same for investigation to Sh. Rajinder Singh, DSP Rural. Preliminary investigation was commenced by DSP Rajinder Singh. It was revealed during investigation that the accused has deposited the alleged amount with a subordinate of BDPO, Chohla Saheb, Baldev Singh. After investigation, it came to light that there was no such subordinate named Baldev Singh attached with BDPO Chohla Saheb and also that the accused has not deposited the amount in the said office. The said fact was sent in writing by the BDPO, Chohla Saheb. The investigation of the case was thereafter handed over to SI

Sarabjit Singh, SHO PS Bhogpur. During investigation, he arrested the accused on 04.11.1998. The misappropriated amount of Rs.91,800/- was recovered from the accused. The record of the Panchayats was also recovered from the accused. Further, investigation of the case was conducted by ASI Kulwant Singh, who completed the said investigation. Finding prima facie commission of offence under section 409 IPC, instant challan was presented before Court.”

Learned JMIC, Jalandhar. after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Sessions Judge, Jalandhar vide judgment dated 11.03.2016 with the modification in the sentence as stated above.

Aggrieved from the above-said judgments, present revision petition has been filed.

At the time of arguments, learned counsel for the petitioner prayed for reduction of sentence on the ground that FIR is of the year 1998 and the petitioner is suffering from the criminal trial for the last about 18 years. He further contended that the petitioner has already deposited the amount with the department and he is an old person, only bread earner of the family and is first offender.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

Keeping in view the facts and circumstances of the present case and in view of the fact that petitioner is facing criminal proceedings since 1998 i.e. for the last about eighteen years and is first offender, only bread earner of the family, the sentence imposed upon the petitioner is reduced and he is directed to undergo simple imprisonment for a period of ten months instead of one year under Section 409 IPC. However, the sentence

of fine and in default thereof, will remain the same.

With the above-said modification in the sentence, the present revision petition stands dismissed.

July 12, 2016
Vgulati

(INDERJIT SINGH)
JUDGE