

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1531 of 2007
DATE OF DECISION: **28.11.2017**

Makhan SinghPetitioner.

Versus

State of Punjab ...Respondent.

2. **CRR-1593 of 2007**

Makhan SinghPetitioner.

Versus

State of Punjab ...Respondent.

3. **CRR-1673 of 2007**

Makhan SinghPetitioner.

Versus

State of Punjab ...Respondent.

4. **CRR-1674 of 2007**

Makhan SinghPetitioner.

Versus

State of Punjab ...Respondent.

5. **CRR-1675 of 2007**

Makhan SinghPetitioner.

Versus

State of Punjab ...Respondent.

6. **CRR-1676 of 2007**

Makhan SinghPetitioner.

Versus

State of Punjab ...Respondent.

7. **CRR-1677 of 2007**

Makhan SinghPetitioner.

Versus

State of Punjab ...Respondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Ms. Navreet Dhaliwal, Advocate, (Amicus Curiae)
for the petitioner.

Mr. Sidakmeet Sandhu, AAG, Punjab.

Mr. Anupam Singla, Advocate for the complainant.

SHEKHER DHAWAN, J.

By this common judgment, the above titled seven revision petitions are being disposed of as they pertain to the same FIR No.76 dated 10.11.1991, under Section 408 IPC, registered at Police Station City, Sri Muktsar Sahib.

2. Makhan Singh, petitioner in all the cases has challenged the judgment dated 30.07.2007 passed by learned Additional Sessions Judge, (Ad hoc) Fast Tract Court, Muktsar dismissing his appeals upholding the judgment of conviction and order of sentence dated 29.11.2006 passed by learned Chief Judicial Magistrate, Muktsar, vide which the petitioner was held guilty for commission of offence punishable under Section 408 IPC

and was sentenced in following seven cases as under:-

Crl. Case No./ Date	Sentences	Fine Rs/-	In default
5-1/01.02.1994	R.I. for 02 years	3000/-	R.I. for 03 Months
6-1/01.02.1994	R.I. for 02 years	3000/-	R.I. for 03 Months
7-1/01.02.1994	R.I. for 03 years	5000/-	R.I. for 06 Months
8-1/01.02.1994	R.I. for 01 years	2000/-	R.I. for 02 Months
9-1/01.02.1994	R.I. for 01 years	2000/-	R.I. for 02 Months
10-1/01.02.1994	R.I. for 02 years	3000/-	R.I. for 03 Months
11-1/01.02.1994	R.I. for 02 years	3000/-	R.I. for 03 Months

3. Learned counsel for the petitioner, while assailing the judgments of conviction and orders of sentence passed by learned Chief Judicial Magistrate as well as judgment passed by learned Additional Sessions Judge, contended that the entire proceedings against the petitioner were contrary to law. The enquiry proceedings were conducted after 04 years. There may be different reasons for shortage except the misappropriation having been done by the petitioner. More so, the petitioner is already 80 years of age by now and he was dismissed from service long back. He has already undergone a period of sentence as detailed in the custody certificate.

4. Learned counsel for the complainant contended that it is a case of criminal breach of trust as the petitioner, who was custodian of stocks at the relevant time, had planned in such a manner that he had disposed of stocks worth of Rs.6,45,347/-, which fact stands established on the basis of departmental enquiry, and the petitioner was associated in the enquiry proceedings.

5. While arguing on this point, learned counsel for the petitioner contended that the petitioner was working only as 'Fertilizers Clerk' at the

relevant time and he was not custodian of the stocks, rather his duty was to maintain the record. There is nothing available on the file by way of evidence that this was part of his duty. As such, there was no entrustment of property and if entrustment goes, there cannot be breach of trust, as laid down under Section 408 IPC. Even if it is a case of being custodian of the record, there is no question of breach of trust. However, he mainly contended that as the petitioner is already 80 years of age and has already been dismissed from the service, the sentence awarded to him may be restricted to the period of sentences already undergone by him in all the seven cases.

6. Learned counsel for the State as well as learned counsel for the complainant contended that with regard to shortages of stocks, separate recovery proceedings are going on. Learned State counsel has placed on record custody certificate dated 31.10.2017 wherein the petitioner has been shown to have undergone imprisonment of 2 months and 14 days of the total sentence (including remission).

7. Having considered all these facts and the judgments recorded by learned Chief Judicial Magistrate, this Court is of the considered view that learned trial Judge had already considered all these aspects while recording the judgments of conviction. The judgments of conviction were recorded on the basis of statements of the witnesses, PW1-Sita Singh, Clerk from Punjab Agro Industries Corporation Limited who deposed about taking over charge from the petitioner; PW2, Sudarshan Mittal, Executive Accounts, Punjab Agro Industries Corporation Limited; PW3, Karnail Singh, Fertilizer Clerk, PW4 Kashmir Singh, Senior Fertilizers Clerk; PW5 Gosain Singh; PW6 S.S. Grewal of Punjab Agro Industries Corporation Limited

deposed that shortages were because of the present petitioner. The defence version, as put forward in the statement of accused under Section 313 Cr.P.C., is just a plea of denial. The only witness examined by the petitioner in his defence was Satnam Kaur, Executive General, Punjab Agro Industries Corporation Limited, and her version was rightly discarded by the trial Court. The prosecution case stands supported and corroborated by the documentary evidence as well. The said judgments have already been appreciated on the basis of record by learned first appellate Court. Thus, there is no ground to set aside the said judgments of conviction holding the petitioner guilty for commission of offence punishable under Section 408 IPC and the revision petitions against the said judgments of conviction are without any merit and same stand dismissed.

8. As regard to order of sentence, this Court is certainly of the view that as the petitioner is 80 years aged by now and has already been dismissed from the service, no purpose shall be served by sending him behind the bar again at this stage of life. According to the custody certificate dated 31.10.2017, the petitioner has already undergone total sentence of 2 months and 14 days. In **Nand Lal Vs. State of Uttarakhand and others; 2010 (2) R.C.R. (Criminal) 581**, Hon`ble Supreme Court maintained the conviction of appellant (therein), but considering his age to be more than 70, reduced the sentence to the period already undergone by him. As such, the orders of sentence are modified to the extent that the sentence awarded to the petitioner shall be reduced to the period already undergone by him while remaining in custody during the investigation and trial of the aforesaid cases. However, it is made clear that the complainant department shall be within its right to effect the recovery proceedings as

per law, which are already stated to be pending before the Court.

9. Resultantly, the aforementioned seven revision petitions against judgments of conviction stand dismissed and qua orders of sentence are partly allowed. The orders of sentence dated 29.11.2006 passed by learned Chief Judicial Magistrate, Muktsar are modified to the above extent that the sentence awarded to the petitioner shall be reduced to the period already undergone by him while remaining in custody.

10. The revision petitions stand partly allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

28.11.2017.
komal/som

Whether Speaking/reasoned	:	Yes
Whether Reportable	:	Yes