

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

**Criminal Revision 1294 of 2008
Date of Decision: November 15, 2017**

Kashmir Singh		Petitioner
	Versus	
State of Haryana		 Respondent

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

Present : Mr. Vaneet Soni, Advocate
for the petitioner.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

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

The petitioner was tried for committing offences punishable under Sections 407 and 420 IPC. Vide judgment and order dated 25/27.7.2006, learned Judicial Magistrate 1st Class, Karnal acquitted him of the offence under Section 420 IPC. However, he was convicted under Section 407 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal but remained unsuccessful as it came to be dismissed by learned Additional Sessions Judge Karnal vide judgment dated 15.7.2008. Still not satisfied, the

petitioner filed the present revision, which was admitted on 25.8.2008 and the sentence of imprisonment was suspended.

The case of the prosecution in nutshell is that on 10.2.1998, a tanker bearing No. HYS-6951 came to Farm Section, NDRI at 9 a.m. for supplying 12000 litres diesel. The tanker had received diesel from Indian Oil Depot, Ambala on 9.2.1998 at 6.18 p.m. Before transferring the diesel from the tanker to storage tank in the NDRI, the inspection committee inspected the quantity of diesel in the tanker by way of dip test and found it correct. There were three members in the committee, namely, Jitender Dabas, Deepak Kumar Chopra and Om Parkash. At the time of inspection of the tanker, Inspector, Farm Section was also present and in his presence, dip test of the storage tank was also done. 17 c.m. (874 litres) diesel was detected in the storage tank, after which the diesel from the tanker was transferred to the storage tank. After transferring the entire diesel, dip test of the tank was again done and test revealed 102 cm (11285 litres). Thus, total 10411 litres diesel was found received in the storage tank. About 100 litres diesel collected in the drum due to leakage. In this manner, a total quantity of 10511 litres diesel was received. Out of 12000 litres diesel, 1498 litres diesel was received less. The driver could not furnish any explanation regarding the deficiency. Thereafter, all

the members left for lunch. Gurdial Verma, Junior Clerk observed during lunch hours that the driver and cleaner climbed up on the tanker, opened the mainhole and removed some pipes. On seeing him, the driver hid the pipes inside the tanker. The pipes were recovered immediately from the vehicle in the presence of members of the committee. Due to presence of the pipes in the tanker, the dip showed more diesel than actually present. When, the committee asked the driver to open the mainhole for checking the diesel, he refused saying that the company had sealed the mainhole. Thereafter, he himself opened the mainhole. It was requested that the matter be investigated and Indian Oil Depot, Ambala Cantt. be informed.

During the trial of the case, it was the petitioner, who himself gave a writing to the effect that he had committed a mistake and sold the diesel from the tanker while coming to Karnal. When the said confession was put to him during his cross-examination under Section 313 Cr.P.C., he admitted his signatures though he denied the contents of the same. Fact remains that the petitioner had admitted his guilt. Under these circumstances, no case is made out for any interference in his conviction under Section 407 IPC.

As regards the question of sentence, it may be noticed that the petitioner is facing the agony of criminal

prosecution for the last about twenty years. When he was heard by the learned trial Court on the quantum of sentence, he had pleaded that he was married and had no child. His wife and aged mother were dependent upon him. He was the sole bread winner of his family and also a first offender.

As per the custody certificate dated 21.10.2016 already brought on record by the learned State counsel, the petitioner has undergone an actual sentence of one month and fifteen days. Nowhere, it has been mentioned that apart from the present case, he is either involved or convicted in any other 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 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 under Section 407 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.2,000/- imposed upon him is, however, enhanced to Rs.10,000/-. The enhanced fine amount shall be deposited by him in the Court of the Chief Judicial Magistrate, Karnal within a period of three months from today, failing which, he shall undergo

rigorous imprisonment for two months.

The revision is, accordingly, disposed of.

November 15, 2017

amit rana

(T.P.S. MANN)
JUDGE

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