

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

**CRR No.622 of 2009 (O&M)
Decided on: 30.11.2017**

Prem Parkash

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Bipan Ghai, Sr. Advocate
with Mr. Deepanshu Mehta, Advocate
for the petitioner with Prem Parkash – petitioner in person.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting-aside the judgment of conviction dated 14.07.2007 vide which the petitioner was held guilty of offence punishable under Section 409 of the Indian Penal Code (in short 'IPC') and the order of sentence awarding him rigorous imprisonment for a period of 01 year and to pay a fine of Rs.5,000/- as well as the judgment dated 28.02.2009, whereby while dismissing the appeal filed by the petitioner, the appeal filed by State of Haryana was allowed and the sentence awarded to the petitioner was enhanced to 03 years rigorous imprisonment and to pay a fine of Rs.20,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 06 months.

Brief facts of the case are that FIR No.81 dated 16.03.1999

under Section 408 IPC at Police Station Hodel, District Faridabad was registered against the petitioner on account of embezzlement of stock of wheat and other articles, based on an enquiry report dated 19.09.2002 submitted by the District Manager, HAFED, Faridabad.

The trial Court, after recording the statements of the prosecution witnesses and statement of accused under Section 313 of the Code of Criminal Procedure (in short 'Cr.P.C') held the petitioner guilty of offence punishable under Section 409 IPC and sentenced him to undergo rigorous imprisonment for a period of 01 years and to pay a fine of Rs.5,000/-.

Thereafter, the petitioner filed an appeal challenging the judgment of conviction and order of sentence dated 14.07.2007. Another appeal was also filed by State of Haryana praying for enhancement of sentence awarded by the trial Court.

Vide impugned judgment dated 28.02.2009, the Lower Appellate Court dismissed the appeal filed by the petitioner – Prem Parkash and allowed the appeal filed by State of Haryana and thereby enhanced the sentence of the petitioner from 01 year rigorous imprisonment to 03 years rigorous imprisonment and also enhanced the fine of Rs.5,000/- to Rs.20,000/- along with a default clause.

The present revision petition was filed in the year 2009 and was admitted on 30.04.2009 and the sentence of the petitioner was suspended during pendency of the revision petition.

Counsel for the State has filed the Custody Certificate on record and as per the Custody Certificate, the petitioner has undergone

02 years and 03 days of actual sentence out of 03 years rigorous imprisonment awarded by the Lower Appellate Court.

Learned Senior Counsel for the petitioner, at the very outset, has submitted that he do not intend to contest the conviction awarded by both the Courts below and has restricted his argument only qua reduction of sentence awarded to the petitioner to the period already undergone by him.

Learned Senior Counsel on instruction from the petitioner, who is present in the Court has further submitted that the petitioner is ready to pay the amount of Rs.5.73 lacs as per the enquiry report dated 19.09.2002. It is further submitted that after this amount was found due against the petitioner, the petitioner failed to deposit the said amount and, therefore, the aforesaid FIR was registered against the petitioner and he has faced the trial in which he has been convicted. It is further submitted that the petitioner is presently aged about 66 years and he has already lost his job on account of registration of the FIR.

Learned Senior Counsel has further argued that the petitioner is not a previous convict and is not involved in any other case/FIR. It is further submitted that this FIR pertains to the year 1999 and the petitioner was on bail during pendency of the trial as well as the revision petition which was filed in the year 2009. It is further argued that the petitioner has never misused the concession of bail and he is not involved in any other subsequent FIR. It is further submitted that on account of his old age, the petitioner do not maintain a good health and it will not be appropriate to direct the petitioner to undergo the remaining imprisonment as awarded by the Lower Appellate Court.

Learned Senior Counsel for the petitioner has further submitted that the sentence of 01 year rigorous imprisonment was awarded by the trial Court, which was enhanced by the Lower Appellate Court vide impugned judgment dated 28.02.2009, without forming any opinion or making out an exception case for enhancing the sentence.

Learned Senior Counsel for the petitioner has relied upon the judgment ***“Bed Raj vs State of U.P.”*** 1956 AIR (SC) 778, wherein the Hon'ble Supreme Court has held that the power of the Appellate Court to enhance the sentence has to be exercised judiciously and the Appellate Court should not interfere to the detriment of an accused person except for a very strong reasons which must be disclosed on the face of the judgment. Similar view has been taken in ***“Ravindra Tukaram Hiwale vs State of Maharashtra”***, 2010(4) RCR (Criminal) 115, wherein the Hon'ble Supreme Court has held that the Appellate Court should interfere in the quantum of sentence in a rare and only in exceptional case. It is, thus, submitted that the sentence which was enhanced by the Lower Appellate Court from 01 year to 03 years rigorous imprisonment is illegal as no reasons have been assigned by the Lower Appellate Court to enhance the sentence by making out a rare case in favour of State.

On the other hand, counsel for the State on the basis of the Custody Certificate has not disputed the actual sentence undergone by the petitioner. However, he has submitted that the petitioner has caused loss of Rs.5.73 lacs and since, he failed to deposit the said amount and, therefore, on the basis of the complaint made by HAFED, the present

FIR was registered and the petitioner was convicted.

After hearing counsel for the parties, I find merit in the present revision petition. In view of the judgment ***Bed Raj's case (supra)*** and ***Ravindra Tukaram Hiwale case (supra)*** where it has been held by the Hon'ble Supreme Court that the sentence awarded by the trial Court should not be enhanced without assigning any specific/strong reason and only in exceptional cases. A perusal of the judgment passed by the Lower Appellate Court show that while upholding the conviction of the petitioner, without assigning any specific reasons that it is an exceptional case, the sentence of the petitioner has been enhanced from 01 year to 03 years rigorous imprisonment and, therefore, I set-aside the judgment dated 28.02.2009 passed by the Lower Appellate Court qua enhancement of sentence.

In view of the fact that the petitioner is 66 years of age; he has lost his job on account of registration of the FIR; he is not a previous convict; he has not misused the concession of bail during pendency of the trial; he has faced the agony of protracted trial since 1999 and in view of the fact that an undertaking has been given by the petitioner that he is ready to deposit the amount of Rs.5.73 lacs before the trial Court, the present revision petition is allowed and the sentence awarded to the petitioner i.e. 01 year by the trial Court is reduced to the period already undergone by him subject to the condition that the petitioner shall deposit the aforesaid amount of Rs.5.73 lacs before the Chief Judicial Magistrate, Faridabad on or before 30.05.2018.

The amount of Rs.5.73 lacs, so deposited by the petitioner before the Chief Judicial Magistrate, Faridabad shall be reimbursed to

the HAFED through its General Manager.

It is made clear that in case, the petitioner fail to deposit the said amount before 30.05.2018, the present revision petition shall be deemed to be dismissed without any further reference or order.

The Chief Judicial Magistrate, Faridabad shall ensure the compliance of this order.

(ARVIND SINGH SANGWAN)
JUDGE

30.11.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No