

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

**CRR-1896-2012 (O&M)
Date of decision : 30.11.2017**

Basau Ram

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. S.K. Garg Narwana, Senior Advocate with
Ms. Sherya Gupta, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J. (Oral)

Basau Ram an accused in FIR No.68 dated 18.3.2008 for offence under Section 409 IPC registered with Police Station Sadar, Jind was convicted by Additional Chief Judicial Magistrate, Jind vide judgement dated 06.12.2011 and vide order of even date was sentenced as under:-

“Rigorous imprisonment for a period of two years and to pay a fine of ₹5,000/- and in case of non-payment of fine convict shall further undergo rigorous imprisonment for a

period of six month under Section 409 IPC.”

Briefly stated facts of the case as per prosecution version are that Block Development and Panchayat Officer, Jind had lodged FIR against accused Basau Ram on the allegations that on 25.2.2008 wheat weighing 41 quintal 60 Kgs. had been entrusted to accused in his capacity as Sarpanch of village Ahirka for the purpose of distribution of the same amongst labourers under a Government Scheme, however when the record of Gram Panchayat was checked on 17.3.2008 it was found that such wheat was not mentioned in the stock register; that Manoj and Pardeep were intercepted with a trolley loaded with such wheat which they were going to sell in the open market and they named the petitioner. In that way accused had cheated the Government agency and had committed criminal breach of trust with respect to wheat entrusted to him for the purpose of distribution amongst the labourers. The wheat stock had since been recovered. Accused was arrested in this case.

After completion of investigation and other formalities, he was challaned. On presentation of challan in the Court, copies of documents were supplied to the accused free of cost as envisaged under Section 207 Cr.P.C.

Finding that a prima facie case punishable under Section 409 IPC, was made out against the accused and he was charge-sheeted accordingly, to which he pleaded not guilty and claimed trial.

During course of prosecution evidence, it examined as many as fifteen witnesses i.e. Satbir Singh BDPO as PW-1, Sant Ram as PW-2, Raju as PW-3, Pardeep as PW-4, Ramesh Kumar as PW-5, Manoj as PW-6, Jai

Singh as PW-7, Rajbir as PW-8, Dariya as PW-9, Azad Singh as PW-10, Rohtash HC as PW-11, Kamlesh Devi ASI as PW-12, Surender Kumar EHC as PW-13, Satyawar as PW-14 and Azad Singh SI as PW-15. Since the prosecution failed to conclude its evidence, it was closed by Court order.

Statement of accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against accused were put to him, but he denied the allegations contending that he is innocent and has been falsely implicated in the present case.

Accused did not lead any evidence in defence.

After hearing arguments, the trial Court convicted and sentenced the accused for offences under Section 409 IPC mentioned above. Feeling dissatisfied against the said judgment of conviction and order of sentence had preferred an appeal to the Court of Sessions, who vide judgement dated 04.06.2012 upheld the judgement of conviction and order of sentence passed by the trial Magistrate, whereas the appeal was dismissed.

Feeling dissatisfied with the impugned judgment, he has filed the criminal revision before this Court.

I have heard learned counsel for the parties, besides going through the record.

At the very outset, learned counsel for the petitioner – convict submitted that he does not challenge the judgments passed by the Courts below on the point of conviction but has got submissions to make as regards the sentence part. He has contended that the instant case relates to year

2008 i.e. more than 7 years earlier; that the quantity of wheat so entrusted was quite small and that too had been recovered by the Police and presently the petitioner is aged about 61 years and he has not indulged a in any criminal act prior to the incident and even thereafter, that he has faced trial for several years and has already undergone a substantial period of imprisonment, therefore a lenient view in the matter be taken and sentence awarded to him be reduced.

On the other hand learned State counsel submits that the sentence imposed should not be interfered with and rather should be confirmed. A perusal of the custody certificate of the petitioner submitted by the State counsel goes to show that the he has already undergone seven months and five days of total sentence including remissions out of total of two years.

After hearing the rival contentions, I find that ends of justice would be properly met if petitioner – Basau Ram is sentenced to imprisonment already undergone by him while in custody in the present case, whereas the part of conviction relating to payment of fine is kept as intact. Therefore, the impugned judgment is upheld as regards conviction part qua petitioner – Basau Ram.

However, as far as sentence part is concerned the same is modified and he is sentenced to imprisonment already undergone by him in this case i.e. total sentence including remissions i.e. seven months and five days. Whereas the sentence regarding payment of fine of ₹5,000/- in default of payment of fine to undergo rigorous imprisonment for six months remains intact.

With such modification the criminal revision petition of petitioner – Basau Ram stands disposed of. He be released from the custody (if he is in custody) on deposit of fine if not required in any other case.

Intimation in this regard be sent to the quarter concerned.

30.11.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**