

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

**IOIN-CRR-723-2013 IN/AND
CRR No.723 of 2013 (O&M)
Date of decision: 24.09.2018**

Anil Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. M.S. Dhani, Advocate for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

IOIN-CRR-723-2013

Report of the Chief Judicial Magistrate, S.B.S. Nagar,
perused.

On oral request made by counsel for the petitioner, the
revision petition is taken up today for hearing.

CRR No.723 of 2013 (O&M)

Challenge in this revision petition is for setting-aside the
judgment of conviction and order of sentence dated 08.04.2011 vide
which the petitioner was held guilty of offence punishable under
Section 409 of the Indian Penal Code, 1860 (in short 'IPC') and was
sentenced to undergo rigorous imprisonment for a period of 02 years
and to pay a fine of Rs.2,000/- and in default of payment of fine to
further undergo simple imprisonment for a period of 01 month as well
as the judgment dated 20.12.2012 vide which, the appeal filed by the
petitioner was dismissed.

On 26.03.2013, the following order was passed by this

Court:-

“....Conviction of the petitioner is well founded. The petitioner as Panchayat Secretary was working as Administrator of Gram Panchayat and is said to have embezzled more than ₹70,000/- of the Panchayat funds. The embezzlement of the said amount by the petitioner is fully proved because Manager of the concerned Bank has been examined as witness to prove that the amount was drawn from the bank by the petitioner. The petitioner has failed to depict the utilization thereof. It is established that the petitioner embezzled the said amount.

Both the courts below after analyzing the evidence led by the prosecution have come to concurrent finding of guilt of the petitioner. The said finding is not shown to be perverse or illegal or suffering from any jurisdictional error nor the same is based on misreading or misappreciation of the evidence on record so as to warrant interference in exercise of revisional jurisdiction. Accordingly, conviction of the petitioner is upheld.

Notice of motion re: quantum of sentence only for 27.05.2013.”

While issuing notice regarding quantum of sentence only, it was noticed that the petitioner has embezzled an amount of Rs.70,000/- of the Panchayat Fund and the finding of both the Courts below convicting the petitioner under Section 409 IPC was upheld.

Thereafter, this revision petition remain pending for a considerable long time as the petitioner has not surrendered before the Jail Authorities and the petitioner surrendered on 15.12.2017 before the trial Court and since then, he is in judicial custody.

Counsel for the petitioner has argued that out of 02 years rigorous imprisonment awarded by both the Courts below, the petitioner

has already undergone 09 months and 07 days and he is ready to deposit an amount of Rs.70,000/- with the trial Court, to be deposited in the concerned Gram Panchayat Fund.

Counsel for the petitioner has further submitted that the petitioner is the first offender and is not involved in any other case. It is also submitted that the petitioner has faced the agony of protracted trial since 2005 and is aged about 50 years and has his own family to support. It is further argued that the petitioner is the only bread earner of the family and has undergone substantive sentence of 09 months and 07 days.

Counsel for the State has filed the Custody Certificate today in the Court and as per the Custody Certificate, the petitioner has undergone 09 months and 07 days of actual sentence and he is not involved in any other case.

In view of the order dated 26.03.2013, the conviction of the petitioner stands upheld. Since the notice regarding quantum of sentence only was issued, therefore, considering the fact that the petitioner is the first offender; he is not facing any other trial; he has surrendered on 15.12.2017 and till date, he has undergone 09 months and 07 days of actual sentence and has given an undertaking to deposit an amount of Rs.70,000/-, the sentence of the petitioner is reduced to the period already undergone by him. This will, however, be subject to deposit of an amount of Rs.70,000/- with the Chief Judicial Magistrate, Nawanshahar.

The petitioner shall be released by the Chief Judicial Magistrate, Nawanshahar, after he deposits the aforesaid amount of Rs.70,000/-.

With the aforesaid modification, the revision petition is disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

24.09.2018

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No