

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

CRR No.1407 of 2018 (O&M).

Decided on:-July 25, 2018.

Kulwant Devi.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Rajbir Attri, Advocate
for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab
for the respondent-State.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against the judgment dated 10.04.2018 passed by learned Additional Sessions Judge, Fazilka, whereby her appeal against the judgment of conviction and order of sentence dated 18.08.2015 passed by learned Judicial Magistrate 1st Class, Abohar, was dismissed.

Briefly stated, FIR No.126 dated 30.04.2009 under Section 409 IPC was registered against the petitioner-accused at Police Station City Abohar with the allegations that on 12.02.2009, complainant Anita Kumari moved an application against the petitioner-accused to the effect that she being Block Primary Education Officer, Abohar-I had illegally got withdrawn an amount of Rs.30,000/- from the GPF account No.3985 belonging to the complainant, who was posted as JBT teacher at Government Primary School, Chakra.

On receipt of the aforesaid application, investigation was conducted by the police. The petitioner-accused was arrested and produced in the Court. Statements of witnesses were recorded and after completion of investigation, Challan was filed in the Court.

The copy of Challan as envisaged under Section 207 Cr.PC was supplied to the petitioner-accused. On finding a prima facie case against the petitioner, she was charge-sheeted under Section 409 IPC, to which she did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment and order dated 18.08.2015 held the petitioner guilty for the commission of offence punishable under Section 409 IPC and sentenced her to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for a period of two months.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment and order of sentence before the Court of Session. However, vide judgment dated 10.04.2018 passed by learned Additional Sessions Judge, Fazilka, appeal of the petitioner was dismissed.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

At the outset, learned counsel for the petitioner has not challenged the conviction of the petitioner and confined his submissions only for a lenient view regarding quantum of sentence. He has contended that as against the awarded sentence of two years, the petitioner is in custody since

10.04.2018 i.e. the date when the impugned judgment was passed by learned appellate Court.

Learned counsel for the petitioner has further submitted that the petitioner is a first time offender and there is no other criminal case pending against her. She is about 60 years of age and has been suffering the agony of criminal proceedings since 30.04.2009 i.e. the date of registration of the FIR in question. Thus, he has prayed that the sentence of the petitioner may be reduced to the period already undergone by her.

On the other hand, learned State counsel has not disputed the custody of the petitioner, but has opposed the plea of taking a liberal view, as pleaded by learned counsel for the petitioner. However, he states that there is no other case against the petitioner. Custody certificate filed by learned State counsel in Court, is taken on record.

I have heard learned counsel for the parties.

Perusal of the impugned judgments passed by the Courts below shows that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Section 409 IPC. The appellate Court has also dismissed her appeal. There is no illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, learned counsel for the petitioner has not assailed the judgments of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the petitioner is, therefore, affirmed.

So far as the issue on quantum of sentence is concerned, as against the awarded sentence of two years, the petitioner is in custody since

10.04.2018 i.e. the date of passing of the impugned judgment by learned appellate Court. As per the custody certificate, she has undergone imprisonment for a period of 3 months and 24 days including remission. She is a first time offender and there is no other case pending against her. She has been facing the agony of criminal proceedings since 30.04.2009 i.e. the date when the FIR in question was registered against her. Therefore, taking into account the protracted trial, antecedents of the petitioner coupled with the fact that she has already suffered incarceration for a period of more than 3 months and 24 days including remission, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioner is reduced to the period already undergone by her, subject to payment of fine of Rs.10,000/- instead of Rs.5,000/-, as imposed by learned trial Court and affirmed by learned appellate Court.

Ordered accordingly.

On deposit of the amount of fine, the petitioner be released forthwith, if not required in any other case.

With aforesaid modification in the order of sentence, the present revision petition stands dismissed.

July 25, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No