

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 2884 of 2012 (O&M)
Date of Decision: 3.4.2019

Rajinder Singh @ Rana

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

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

Mr. Sarabjit Singh Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J.

The present petition has arisen out of the judgment dated 28.8.2012 passed by Sessions Judge, Hoshiarpur vide which the appeal filed by the petitioner, challenging the judgment of conviction and order of sentence dated 5.10.2009, passed by Additional Chief Judicial Magistrate, Hoshiarpur in case FIR No. 193 dated 25.6.2002 under Section 408 of the Indian Penal Code, registered at Police Station Sadar, Hoshiarpur, was dismissed. However, while monitoring the conviction of the petitioner, the substantive sentence awarded by the trial Court, was modified and reduced to one year.

The brief facts of the present case are that on the complaint of Satish Kumar, partner of M/s Super Star Rubber Industries, the above said FIR was registered against petitioner-Rajinder Singh @ Rana who had been employed as Salesman-cum-clerk in the said company since 1.7.2001 and

his job was to promote the sale and collect cash from the parties and deposit the same in the account of the company. It is alleged that in the year 2000-2001, the material prepared by the company was sent to various customers in Rajasthan, against proper bills and there were more than 56 customers from whom the due amount was to be collected. Petitioner-Rajinder Singh was deputed to collect the due amount from the companies from Rajasthan in the month of March 2002. On 10.5.2012, the petitioner returned from Rajasthan and had produced few receipts of cash credited by him from various customers. He was asked by the company to produce all receipts of cash collected by him but he could not give satisfactory reply and after calculation, it was found that he had collected Rs. 2,53,692/- from various parties/customers. It was further alleged that Rajinder Singh @ Rana had deposited only Rs. 53,290/- out of the above said amount in the account of the company and he had retained the remaining amount for his personal use and, thus, had misappropriated the same. Accordingly, FIR under Section 408 of the Indian Penal Code was registered against the petitioner whereafter he was arrested and the investigating officer had recorded his statement under Section 161 of the Code of Criminal Procedure.

Charge was framed against the petitioner under Sections 408 IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 Satish Kumar-complainant, PW-2 Satnam Singh and PW-3 Head Constable Tarsem Singh.

In the statement recorded under Section 313 Cr.P.C., the accused denied the prosecution case and pleaded false implication.

After taking into consideration the evidence on record and the

testimonies of the witnesses, the trial Court vide judgement and order dated 5.10.2009 convicted the petitioner under Section 408 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 1500/- and, in default of payment of fine, to further undergo imprisonment for 15 days.

Aggrieved of the said judgment and order, petitioner preferred an appeal before the Sessions Judge, Hoshiarpur. The said appeal was dismissed by the Appellate Court vide judgment dated 28.8.2012. However, the substantive sentence awarded by the trial Court was modified and the same was reduced to one year.

I have heard the learned counsel for the petitioner as well as the learned State counsel and with their able assistance, I have gone through the records of the Courts below.

It has been argued by the counsel for the petitioner that it has not been appreciated by the Courts below that the disputed amount was Rs. 2,53,692/- and the petitioner had deposited the amount of Rs. 53,290/- with the company of the complainant. Another amount of Rs. 20,000/- was received by the complainant from the petitioner in the presence of his brother and wife. It has been further argued that the complainant had received a cheque of Rs. 1,80,000/- from the wife of the petitioner which was not mentioned in the statement. Since the cheque issued in favour of the complainant was bounced, a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed against the wife of the petitioner which was ultimately withdrawn as the parties had settled the dispute and compromise was effected. Thus, learned counsel for the petitioner prays for setting aside the impugned judgments and order of the Courts below as alleged amount

stands realised.

Per contra, learned State counsel has argued that the petitioner had misappropriated the amount which was collected by him on behalf of the company, therefore, the offence punishable under Section 408 of the Indian Penal Code is made out against the petitioner. It is further argued that the petitioner has admitted all the facts, thus, the Courts below have rightly convicted the petitioner under Section 408 of the Indian Penal Code.

It is not disputed that the petitioner had collected the amount of Rs. 2,53,692/- from 53 customers, but deposited only Rs. 53,290/- in the account of the firm. It has also come on record that the amount of Rs. 20,000/- was paid by the petitioner later on and also a cheque for an amount of Rs. 1,80,004/-, issued by the wife of the petitioner, was given to the company. Since said cheque was bounced, the complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881. During the proceedings, the matter was settled and ultimately, the complaint was withdrawn. Copy of the complaint is Ex. D1 and the certified copy of the statement of the complainant, withdrawing the complaint, is Ex. D-2.

Thus, in my view, ultimately the company through complainant Satish Kumar had realized the entire amount from the petitioner and to that effect statement of Satish Kumar recorded before the Additional Chief Judicial Magistrate, Hoshiarpur and the order dated 24.3.2009 passed by Additional Chief Judicial Magistrate, Hoshiarpur, withdrawing the complaint, show that the amount has been realized by the complainant from the petitioner even though at the belated stage.

The Hon'ble Supreme Court in *Khodidas Manjibhai Saviraya versus State of Gujarat 1994 SCC (Criminal) 1410*, wherein the accused

was found guilty of Section 408 IPC and had already undergone substantive sentence of conviction, held that there was no ground to send him back to the jail. As a result, while upholding the conviction, substantive sentence of imprisonment was reduced to the period already undergone.

In the present case, the petitioner was convicted and sentenced by the trial Court vide judgment and order dated 5.10.2009. The appeal preferred by him was dismissed by the Sessions Court on 28.8.2012 and as noticed above, the sentenced awarded to him was modified and reduced to one year, out of which, the petitioner has already undergone 03 months and 26 days of actual sentence. As per the compromise effected between the parties, the entire due amount has been realized from the petitioner. Thus, I do not find any ground to send the petitioner behind the bars once again. The petitioner is the first offender and has been facing the agony of trial for the last more than 17 years and has to look after his family. There is no other case pending or decided against him. There is no report of misuse of concession of bail by him.

Taking into consideration the cogent and trustworthy evidence produced by prosecution and well reasoned judgments of the Courts below, the findings recorded by the Courts below convicting and sentencing the petitioner, do not call for any interference and the same are accordingly affirmed.

However, keeping in view the fact that the petitioner has already undergone more than three months of actual sentence and the fact that the amount has been repaid by the petitioner, I feel that ends of justice would be suitably met, if the sentence awarded to the petitioner is reduced to the period already undergone.

Accordingly, the conviction of the petitioner under Section 408 IPC is maintained. However, sentence qua imprisonment of the petitioner, is reduced to the period already undergone by him. However, there shall be no modification in the fine.

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

(HARNARESH SINGH GILL)
JUDGE

April 3, 2019
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes