

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRR-3618-2012 (O&M)  
Date of Decision: 22.2.2019

Mohinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sarju Puri, Advocate, for the petitioner.

Mr. Sarabjit Singh Cheema, Assistant A.G., Punjab

**Harnaresh Singh Gill, J.**

The petitioner was tried for committing the offence under Section 408 IPC. The Sub Divisional Judicial Magistrate, Garhshankar, vide judgment and order dated 23.10.2010, found the petitioner guilty for the aforesaid offence and sentenced him to undergo RI for a period of three years and to pay a fine of Rs.500/- and, in default of payment of fine, to further undergo simple imprisonment for one month.

Aggrieved of the judgment and order passed by the Sub Divisional Judicial Magistrate, Garhshankar, the petitioner filed an appeal. However, vide order dated 5.10.2012, the learned Additional Sessions Judge (Adhoc) Fast Track Court, Hoshiarpur, dismissed the appeal filed by the petitioner. Still aggrieved, the petitioner has filed the present revision petition.

The FIR in the present case had been registered on the basis of the letter dated 22.4.1999, issued by the Assistant Registrar, Cooperative Societies, Hoshiarpur to the Senior

Superintendent of Police, Hoshiarpur, to the effect that the petitioner had worked as Secretary to the Kalewal Beet Cooperative Agricultural Service Society and while working as such, the petitioner, on the basis of an interim audit report, was found to have embezzled an amount of Rs.64,335.90p. Thereafter, on the basis of the complete final audit report for the year 1996-1998, the petitioner was found to have embezzled an amount of Rs.164,638.66p, besides committing the financial irregularities to the tune of Rs.22,698/-. It was, thus, alleged that in this way, the total amount deflected against the petitioner was Rs.1,87,336.65p.

After framing the charge against the petitioner for the offence committed, his statement under Section 313 Cr.P.C. was recorded wherein he denied the charge and claimed trial.

The petitioner was convicted under Section 408 IPC and sentenced accordingly, as noticed above.

This Court on 16.11.2012 issued notice of motion regarding quantum of sentence only.

At the very outset, learned counsel for the petitioner contends that he does not dispute the conviction part and restricts his submissions only to the extent of the sentence imposed upon the petitioner. Learned counsel contends that out of the total embezzled amount, the petitioner has already deposited the entire amount. Besides, the petitioner has already undergone 7-1/2 months, including remission of 8 days out of the total substantive sentence of three years. He thus, submits

that the substantive sentence imposed upon the petitioner may be reduced to the one already undergone by him.

The FIR in this case was registered on 18.10.2002. The petitioner has been facing the agony of trial for the last more 18 years. An amount of Rs.122,258/- had already been deposited by the petitioner even before the passing of the impugned judgment of conviction and order of sentence. The said fact finds mention in para 19 of the trial Court judgment. Thereafter, in compliance with the order dated 15.1.2013, the petitioner had deposited an amount of Rs.47,508/- on 13.3.2013 with the Kalewal Beet Cooperative Agricultural Service Society and receipt to this effect was placed on record on 15.3.2013. Thus, as per the counsel for the petitioner, the petitioner has since deposited the entire embezzled amount. Besides, the petitioner has already undergone a period of 7-1/2 months out of the total substantive sentence of three years imposed upon him and he is now 65 years of the age.

In support of his contentions, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in Khodidas Manjibhai Savriaya Vs. State of Gujarat, 1994 SCC (Criminal) 1410 and the judgment of this Court reported as Tara Chand Vs. State of Haryana, 1997(3) R.C.R. (Criminal) 537.

Per contra, Mr. Sarabjit Singh Cheema, learned Assistant A.G., appearing on behalf of the State has argued that the judgments and order passed by the Courts below are based on the facts and evidence on record and the petitioner has been rightly convicted and sentenced and rather a lenient view has

been taken by the Courts below as the petitioner has embezzled the funds of the Society, being Secretary.

Taking into account the totality of the facts and circumstances of the case and further taking into consideration that the learned counsel for the petitioner has restricted his prayer only to the extent of quantum of sentence, coupled with the fact that the petitioner has since deposited the entire amount with the Cooperative Society, in my opinion, no useful purpose will be served by sending the petitioner behind the bars once again. The ends of justice would be fully met, if the substantive sentence imposed upon the petitioner is reduced to be one already undergone by him.

In view of above, while upholding the conviction of the petitioner under Section 408 IPC, the substantive sentence imposed upon the petitioner, is reduced to the one already undergone by him.

The petition stands disposed of accordingly.

**(HARNARESH SINGH GILL)**  
**JUDGE**

22.02.2019  
ds

Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No