

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3929-2014 (O&M)
Date of decision: 06.03.2020

Naib Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rahul Arora, Advocate for
Mr. Raman Goklaney, Advocate
for the petitioner.

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

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting aside the judgment of conviction as well as the order of sentence dated 05.02.2011, vide which the petitioner was convicted for offence punishable under Section 408 of the Indian Penal Code (in short 'IPC') and was sentenced to undergo rigorous imprisonment for a period of 03 years along with a fine of Rs.5,000/- and in default of payment of fine, he was further ordered to undergo R.I. for one month as well as the judgment dated 23.08.2014, vide which the appeal filed by the petitioner was also dismissed.

Brief facts of the case are that FIR No.14 dated 05.02.2002 under Sections 406, 408 IPC was registered at Police Station Mallanwala against the accused, on the complaint given by Assistant Registrar, Cooperative Society, Zira to the Senior Superintendent of Police, Ferozepur and the same was marked to SHO, Police Station Mallanwala, with the allegations that in the year

2001, Mr. Harbans Singh was appointed to inspect the record of Cooperative Society, Zira and he submitted his report to the Assistant Registrar, Cooperative Society, Zira on 30.08.2004, in which it was reported that Naib Singh, Salesman embezzled an amount of Rs.5,88,269/- by effecting recovery from 29 members, illegally showing the loan due towards them. Six members, out of 08 members, including the President were relatives of Naib Singh. On 06.11.2001, the inspection was done by Harbans Singh, Inspector and Chowkidar of the godown disclosed that there were 400 bags of DAP and 1300 bags urea fertilizer, whereas in the record, accused Naib Singh shown that 1300 bags of urea fertilizer had been lifted from the godown. On 08.11.2001, a cheque of sale of 790 bags of DAP was deposited by Naib Singh, Salesman in the account, but no sale register was shown by him. Subsequently, on presentation of the sale register, the sale of 982 DAP fertilizer was shown and the sale of urea was shown to be 25 bags. It is further stated that 418 bags of DAP were found missing from the godown, true value of which was Rs.1,75,142/-. Besides this, recovery of Rs.5,88,269/- effected from 29 members was not credited in account of the Society by the accused and the said amount has been embezzled by him. It is also stated that thus, the accused embezzled total amount of Rs.6,12,250/-, including 418 bags of urea, worth Rs.1,75,142/-. It was prayed that a case be registered against the accused.

On completion of the investigation, challan against the accused was presented before the Illaqa Magistrate. Finding a prima facie case, charge under Section 408 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

In order to prove the charge, the prosecution examined PW1 Bhisu Ram, Assistant Registrar, PW2 Janak Raj, Junior Assistant, Cooperative

Society, Zira, PW3 Sukhjinder Singh, PW4 Gurjant Singh, PW5 Kulwant Singh, PW6 Manjit Singh, PW7 Harbans Singh, PW8 Paramjit Singh, PW9 Sukhwinder Singh, PW10 SI Gurmit Singh, PW11 Tarsem Singh and closed the evidence.

After conclusion of the prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution produced against him, was put to him to tender explanation for the same. The petitioner-accused denied the allegation of the prosecution and pleaded false implication.

The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, vide judgment of conviction and order of sentence of even date i.e. 05.02.2011, convicted and sentenced the petitioner/accused under Section 408 IPC. The petitioner preferred an appeal before the lower appellate Court, which was also dismissed vide judgment dated 23.08.2014.

Present revision petition has been filed challenging the aforesaid judgments passed by both the Courts below.

Learned counsel for the petitioner has argued that he does not want to challenge the judgment of conviction and prays for reduction of sentence of 03 years R.I. awarded by the trial Court, on the ground that the petitioner is first offender and as per allegations in the FIR, out of the embezzled amount of Rs.5,88,269/-, he has already deposited Rs.5,77,000/-. It is further argued that the petitioner is facing the agony of protracted trial since 2002 and has already undergone 01 year, 08 months and 22 days of sentence, out of 03 years R.I. awarded by the trial Court.

Learned counsel for the petitioner has further argued that the

petitioner is a poor person and has his own family to support and the trial Court has not granted the benefit of Probation of Offenders Act, therefore, by taking a lenient view, the sentence awarded to the petitioner may be reduced to the period already undergone by him.

Learned State counsel, on the basis of findings recorded by the trial Court, has not disputed that the petitioner has already deposited Rs.5,77,000/-, out of the embezzled amount.

After hearing learned counsel for the parties, I uphold the judgment of conviction passed by the trial Court, as the same is based on appreciation of prosecution evidence, however, considering the fact that the petitioner has faced the agony of protracted trial; he has already undergone 01 year, 08 months and 22 days of actual sentence; he is not involved in any other case, which shows that he has improved his character and has joined the mainstream of the society and also in view of the fact that he is a poor person and has his own family to support, the present revision petition is partly allowed and sentence of three years R.I. awarded by the trial Court is reduced to the period already undergone by the petitioner. However, the imposition of fine of Rs.5,000/- is upheld. The petitioner is directed to deposit the fine, if not deposited so far, within a period of 02 months from today.

Since sentence of the petitioner was suspended vide order dated 05.05.2015, his bail/surety bonds shall stand discharged.

[ARVIND SINGH SANGWAN]
JUDGE

06.03.2020
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No