

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

(305-A)**CRR-2267-2006****Date of Decision: 17.02.2023**

Sudershan Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Narinder Singh, Advocate, for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARKESH MANUJA, J.(ORAL)

By way of present revision petition, challenge has been made to the judgment dated 09.10.2006 passed by the Additional Sessions Judge, Rohtak, followed by an order of sentence dated 27.09.2004. Relevant portion therein is reproduced herein:

“.....Thus, this Court is of the considered view that the ends of justice would be met if the convicts are sentenced to undergo rigorous imprisonment for two years and a fine of Rs.2000/- each under Section 409 IPC and default of payment, they shall undergo simple imprisonment for two months each and are further sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.2000/- each under Section 420 IPC and in default of payment, they shall undergo simple imprisonment for two months each and are further sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.2000/- each under Section 467 IPC and in default of payment, they shall undergo simple imprisonment for two months each and are further sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.2,000/- each under Section 467 IPC and in default of payment, they shall

undergo simple imprisonment for two months each and are further sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.2000/- each under Section 468 IPC and in default of payment, they shall undergo simple imprisonment for two months each and are further sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.2000/- each under section 471 IPC and in default of payment, they shall undergo simple imprisonment for two months each and are further sentenced to undergo rigorous imprisonment for a period of one year and a fine of Rs.1,000/- each under Section 120-B IPC and default of payment, they shall undergo simple imprisonment for one month each.....”

Briefly stating facts of the case are that as per allegations levelled by the prosecution against the petitioner, he along with one Uday Kumar Kakkar while posted as Clerk-cum- Cashier with the Haryana Kshetriya Gramin Bank, Sampla, misappropriated certain amount of the depositors by not making correct entries in the cash book register and thereby, caused financial loss of Rs.2,41,200/- to the Bank w.e.f. September, 1994 to November 1995 resulting into registration of FIR No.52 dated 14.02.1996 at Police Station, Sampla under Sections 409/420/467/468/471/120-B of Indian Penal Code.

Based thereupon, the petitioner as well as the co-accused Uday Kumar Kakkar were both charge-sheeted under Sections 409/420/467/468/461/120-B IPC. Upon trial, the petitioners and his co-accused were convicted for the offences punishable under Sections 409, 420, 467, 468, 471, 120-B IPC vide judgment dated 24.09.2004 and were awarded sentence vide order dated 27.09.2004.

Aggrieved thereof, the petitioner filed Criminal Appeal No.23 of 2004 which was dismissed by the Court of learned Additional Sessions Judge,

Rohtak, vide judgment dated 09.10.2006, thereby upholding the judgment passed by the trial Court, resulting into filing of the present revision petition.

Learned counsel for the petitioner, at the very outset, submits that the entire amount of alleged embezzlement i.e. Rs. 2,41,200/- already stood deposited with the Bank, even prior to the registration of the FIR in question and the same even finds mentioned in the impugned judgment passed by the Courts below. Learned counsel also submits that the petitioner remained employed as Clerk-cum-Casher at Sampla Branch only up to April, 1995 whereas, the total period of embezzlement as alleged by the prosecution has been w.e.f. September 1994 to November 1995. He also points out that there were only following three entries which relate to the petitioner even as per the case set up by the prosecution:

Sr. No.	Date	Amount
1	07.09.1994	Rs.26,000/-
2	28.12.1994	Rs.10000/-
3.	13.02.1995	Rs.4,900/-

In addition, learned counsel for the petitioner submits that the petitioner happens to be a first offender having faced agony of trial, including pendency of the first appeal and the present revision for a period of almost 26 years besides having lost his job has turned 57 now and thus, prays for setting aside of the impugned judgement and order with a further prayer for his acquittal of the charges or in the alternate for release of the petitioner on probation.

On the other hand, learned State counsel submits that the petitioner along with other co-accused namely Uday Kumar Kakkar embezzled huge amount by playing fraud upon the innocent depositors by

forging entries in the cash register of the bank which was only proved on record by the prosecution and thus, prays for upholding of the judgments passed by the Courts below.

I have heard learned counsel for the parties and gone through the paper book. In the present case, I am unable to accept the submissions made on behalf of petitioner as regards his acquittal on merits of the revision.

In the present case, the prosecution has been able to prove the guilt against the petitioner and his co-accused by leading cogent and convincing evidence. Having appreciated the same, the Courts below have passed judgments of conviction followed by order of sentence against the petitioner. Having perused the records, I am unable to find any illegality or perversity in the judgments passed by the Court below while invoking revisional jurisdiction and resultantly, the conviction of the petitioner is thus, affirmed.

So far as the prayer of learned counsel for the petitioner for releasing the petitioner on probation on good conduct is concerned, this Court is deeply conscious of the fact that the purpose of criminal law justice is not only to bring peace, harmony and discipline in the society, but also to give an opportunity to an erring individual to reform himself, so that there is everlasting peace in the society and the same has also been given a statutory support under Section 360 Cr.P.C. read with Sections 4 and 12 of the Probation of Offenders Act 1958. My aforesaid view can be traced out from the judgment of Hon'ble Supreme Court in the case of ***Karamjit Singh Versus State (Delhi Admn.), 2001(9) SCC 161***, relevant observations therefrom are reproduced hereunder:

“Punishment in criminal cases is both punitive and reformative.

The purpose is that the person found guilty of committing the

offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case the Court has to weight the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is what is needed in such a case, a balance between the interest of the individual and the concern of the society weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.”

Furthermore, the Hon’ble Supreme Court in ***Chandreshwar Sharma Vs. State of Bihar, (2000) 9 SCC 245***, while considering the mandate of Section 360 Cr.P.C. has held to the following effect:-

“3. The appellant herein was convicted under Sections 379 and 411 Indian Penal Code and was sentenced to rigorous imprisonment for one year as 3.5 kg of nonferrous metal was

recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the Tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negatived and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code should not be made applicable. Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance. From the perusal of the judgment of the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forum below had considered the question of applicability of Section 360 of the Criminal Procedure Code. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then shall record in its judgment the specific reasons for not having done so. (Emphasis Supplied). This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the Criminal Procedure Code. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reasons not to apply the provisions of Section 360 of the CrPC. We accordingly, while maintain the conviction of the appellant, direct that he will be dealt with under section 360, and as such, we direct that the appellant be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly.”

Besides it, even a perusal of Section 360 Cr.P.C., leaves no manner of doubt that a Court must consider the age, character or antecedents of the offender and the circumstances in which the offence was committed and then decide whether he is entitled to be released on probation of good conduct or not. As per the above noted judgments rendered by the Hon'ble Supreme Court of India, the Magistrate as well as the Court of Appeal and the High Court have to consider the question of applicability of Section 360 Cr.P.C. as Sections 360 and 361 Cr.P.C. on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 Cr.P.C. but does not want to grant the benefit of the said provision, then it shall record in its judgment the specific reasons for not having done so. Thus, it is the mandatory duty cast upon the Magistrate as well as the Appellate Court which in the case in hand has not been performed.

Considering the fact that the amount of embezzlement already stood deposited with the bank even prior to registration of FIR, petitioner being 57 years of age with no criminal antecedents, having lost his job and facing criminal proceedings for the past 26 years now, while upholding the conviction under Sections 409, 420, 467, 468 471 IPC, his substantive sentence of imprisonment is set side. Instead, he is ordered to be released on probation for a period of one year subject to his executing bonds to the satisfaction of the Chief Judicial Magistrate concerned, undertaking to keep peace and be of good behaviour for the said period and to appear and receive the sentence as and when called upon to do so in case of violation of any of the conditions of the bonds. The aforesaid view also finds supports from the Judgments passed by this Court in cases of **Sher Singh and others Vs. The State of Punjab**, 2003(2) All India Criminal Law Reporter, 670, **Mehanga**

Singh Vs. State of Punjab, 2001(2) RCR (Criminal) 523 and **Sanjeev Kumar Vs. State of Punjab**, 2016 (4) Law Herald, 3171.

However, the aforesaid order shall be subject to payment of costs of Rs.10,000/- to be deposited with the Punjab and Haryana High Court Association Lawyer’s Family Welfare fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, with a period of two weeks from today.

Revision petition stands disposed of in the above terms.

(HARKESH MANUJA)
JUDGE

17.02.2023
anil

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No