

Rakesh Kumar and anotherPetitioners

VERSUS

State of PunjabRespondent

Present : Mr. SS Sachin, Advocate, for the petitioners
Mr. P.S.Grewal, DAG, Punjab

KULDEEP TIWARI,J.

1. The instant revision petition is directed against the judgment of conviction and order of sentence dated 30.10.2009, as passed by the learned Judicial Magistrate Ist Class, Bathinda, vide which, petitioner No. 1-Rakesh Kumar was convicted for the offences punishable under Sections 379 and 411 IPC, petitioner No. 2-Sunil Kumar was convicted for the offence punishable under Section 379 IPC, and, one of the co-accused namely Amar Nath was convicted for the offence punishable under Section 411 IPC, and, they were sentenced as under:-

Rakesh Kumar-petitioner

U/s 379 IPC	RI for a period of one year and six months and fine of Rs 500/- and in default of payment of fine, to further undergo RI for one month.
U/s 411 IPC	RI for a period of one year and fine of Rs 200/- and in default of payment of fine, to further undergo RI for 15 days

Sunil Kumar-petitioner

U/s 379 IPC	RI for a period of one year and six months and fine of Rs 500/- and in default of payment of fine, to further undergo RI for one month.
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Amar Nath-accused (non-petitioner)

U/s 411 IPC	RI for a period of one year and fine of Rs 200/- and in default of payment of fine, to further undergo RI for 15 days.
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2. Having aggrieved with the judgment and order (supra), the present petitioners, including Amar Nath (non-petitioner) preferred a statutory appeal. The same was dismissed *qua* the present petitioners, whereas, the appeal *qua* Amar Nath (non-petitioner), was accepted and he was acquitted of the charges framed against him, by the learned Sessions Judge, Bathinda, vide judgment and order dated 3.3.2011. However, the sentence of the present petitioners were modified and reduced as under:-

Rakesh Kumar-petitioner

U/s 379 IPC	RI for a period of six months and fine of Rs 500/- and in default of payment of fine, to further undergo RI for one month.
U/s 411 IPC	RI for a period six months and fine of Rs 200/- and in default of payment of fine, to further undergo RI for 15 days

Sunil Kumar-petitioner

U/s 379 IPC	RI for a period of six months and fine of Rs 500/- and in default of payment of fine, to further undergo RI for one month.
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3. In the instant case, the prosecution agency was set into motion by a written complaint made by the Food Corporation of India.

The gist of the allegations, is read as under:-

“Sir, it is brought to your kind notice that last month this office has loaded twenty two rice Grade-A Specials ex Rampura Phul. Abnormal transit loss have been received from destination. In these days, huge theft is occurring at rail head, Rampura Phul. It is confirmed information that with the connivance of shopkeepers Sunil and Rakesh, stolen stock from rail head is being purchased and disposed off. You are requested to take action immediately to recover the stolen stocks.”

4. The investigation was carried out, and the final report *qua* three persons namely Rakesh Kumar, Sunil Kumar, (present petitioners), and one Amar Nath (non-petitioner) was filed. Charges were framed against all of them under Sections 379, 411 IPC.

5. The prosecution, in order to establish charges against the accused person, examined PW1-Gian Chand, Assistant Manager, FCI, PW2-Bhupinder Singh, Head Clerk, Railway Station, Tappa, PW3-SI Ravinder Mohan, PW4-Constable Jasvir Singh, PW5-Charanjit Ram, Manager, FCI, PW6-Kewal Krishan. In defence, the accused examined 07 witnesses.

6. After examining the entire evidence, the learned trial court concerned held the present petitioners, along with one, Amar Nath, guilty of the charges, framed against them and sentenced as aforesaid.

7. Learned counsel for the petitioners at the very outset

submits that he does not want to address arguments on merits of the instant petition. However, considering the mitigating and aggravating circumstances, he made a prayer to reduce the sentence of the petitioners as imposed by the learned appellate court concerned, to the period already undergone. He further submits that the present case was registered in the year 2004, and it is almost 19 years that the petitioners are facing the agony of the pendency of the present criminal proceedings. Further, at the time of commission of offence, the age of petitioner-Rakesh Kumar was 35 years, and that of petitioner-Sunil Kumar was 36 years. Further, they are now well settled in their life, having grown up children, to look after and they have not committed any criminal offence since then, which further proves that the petitioners have mend their ways, and now are very much settled in the society. Both the petitioners remained on bail during the pendency of the present revision and they never misused the concession of the same.

8. On the other hand, the learned State counsel, while opposing the asked for relief, filed custody certificates of both the petitioners. The custody certificate of Rakesh Kumar-petitioner No. 1 reveals that he has undergone RI for 01 month 26 days out of total sentence of 06 months imposed upon him. Further the custody certificate of Sunil Kumar-petitioner No. 2 reveals that he has undergone RI for 22 days out of 6 months imposed upon him.

9. This Court finds merit in the prayer made by the counsel for the petitioners, *qua* reduction of sentence. Considering the age

of the petitioners at the time of offence and other aggravating and mitigating circumstances, as explained above, while maintaining balance between deterrence against crime viz-a-viz re-formative approach of punishment, this Court deems it appropriate to reduce the period of sentence, as imposed upon the petitioners, to the period already undergone by them.

10. In view of the above, the instant revision petition is **partly allowed**. The judgment of conviction and order of sentence dated 30.10.2009 passed by the learned Judicial Magistrate Ist Class, Bathinda, and judgment dated 3.3.2011, passed by the learned Sessions Judge, Bathinda, are upheld. However, the sentence imposed upon the petitioners is reduced to the period already undergone, subject to the condition, that both the petitioners shall pay Rs 10,000/- each, as costs, to the High Court Legal Services Committee, Chandigarh.

December 04, 2023

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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ?	Yes/No
Whether Reportable ?	Yes/No