

2023:PHHC:122065

CRM-26167-2019 in
CRR-4469-2016 (O & M)
(225)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-26167-2019 in
CRR-4469-2016 (O & M)
Date of Decision: 15.09.2023

Dinesh Kumar Gupta and anr.

... Applicant-petitioners

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Pritam Saini, Advocate,
for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J.

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On joint request of the learned counsel for the parties, the
revision petition is taken up on board for hearing.

CRR-4469-2016 (O&M)

The present revision petition has been filed against the
judgment dated 09.11.2016 passed by the Sessions Judge, Rupnagar in
Crl. Appeal No.79/2016 whereby the judgment of conviction and order
of sentence dated 13.05.2016 passed by the Chief Judicial Magistrate
Rupnagar, has been affirmed.

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2. The brief facts of the case are that the present FIR came to be registered on the basis of a complaint of Kuldeep Kumar, Post Master, Head Post Office, Ropar with the allegations that the accused-petitioner No.1/Dinesh Kumar Gupta (since expired on 11.10.2022) who was attached with the Head Office, Ropar and had an agency for Public Provident Fund had misappropriated public money to the extent of Rs.60,000/- from the accounts of depositors by making false entries in the pass-books of the said depositors. However, on an enquiry being initiated, he had voluntarily deposited Rs.60,000/- alongwith interest of Rs.5,000/- at the Head Office, Ropar on 19.03.2010. Similarly, three complaints had been filed against accused-petitioner No.2 Veena Rani for having misappropriated an amount of Rs.73,700/-. Based on the evidence collected, the report under Section 173(2) Cr.P.C. was submitted.

3. While recording a finding that the entire defalcated amount of Rs.60,000/- alongwith interest stood deposited after the complaints had been filed against the petitioners, the petitioners came to be convicted by the Court of the Chief Judicial Magistrate, Rupnagar vide judgment of conviction and order of sentence dated 13.05.2016 as under:-.

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Name	Under Section	Sentence
Dinesh Kumar	409 IPC	To undergo rigorous imprisonment for a period of 02 years and to pay fine of Rs.2000/- and in default of payment of fine, to undergo simple imprisonment for 02 months.
	120-B IPC	To undergo rigorous imprisonment for a period of 02 years and to pay fine of Rs.2000/- and in default of payment of fine, to undergo simple imprisonment for 02 months.
Veena Rani	409 IPC	To undergo rigorous imprisonment for a period of 02 years and to pay fine of Rs.2000/- and in default of payment of fine, to undergo simple imprisonment for 02 months.
	120-B IPC	To undergo rigorous imprisonment for a period of 02 years and to pay fine of Rs.2000/- and in default of payment of fine, to undergo simple imprisonment for 02 months.

All the sentences were ordered to run concurrently.

4. An appeal was preferred by the petitioners which came to be dismissed vide judgment dated 09.11.2016 passed by the Sessions Judge, Rupnagar.

5. The present petition has been filed against the aforementioned judgments of conviction and imposition of sentence.

6. The learned counsel for the petitioners right at the very outset states that he wishes to withdraw the present petition as regards petitioner No.1-Dinesh Kumar Gupta who has died on 11.10.2022.

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7. In view of the statement made by the learned counsel for the petitioners, the present petition stands withdrawn qua petitioner No.1-Dinesh Kumar Gupta (now deceased).

8. So far as the petitioner No.2-Veena Rani is concerned, he contends that even as per the prosecution version, the entire amount allegedly defalcated by the petitioners had been deposited alongwith interest prior to the registration of the FIR, and therefore, no offence was made out. PW-2-Shashi, PW-3-Dr. Sat Pal, PW-4 Usha Devi and PW-5-Mahesh Kumar, have all stated that they had received their money. Therefore, in the light of the statements of these witnesses, no offence was made out. Even otherwise, merely because there was a delay in the deposit of the amount, the said act by itself would not amount to the commission of an offence under Section 409 IPC. In the alternative, it is contended that in case this Court came to the conclusion that the offence was made out, the substantive sentence of petitioner No.2 be reduced to the period already undergone by her as the FIR was registered way back on 29.04.2010 she was a lady of the age of 59 years and the entire defalcated amount already stood deposited prior to the registration of the FIR.

9. The learned counsel for the State has placed on record the custody certificate dated 14.09.2023 of petitioner No.2-Veena Rani, as per which she has undergone an actual custody period of 02 months and 05 days out of her substantive sentence of 02 years. He also admits the

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fact that the petitioner No.1-Dinesh Kumar Gupta has passed away on 11.10.2022. However, he contends that the offence was well-established against the petitioner. The evidence of PW-2/Shashi, PW-3/Dr. Sat Pal, PW-4/Usha Devi and PW-5/Mahesh Kumar, if read in its entirety would show that the entire defalcated amount had been deposited after the complaint had been made to the Post Office Authorities, and therefore, the offence was clearly established beyond any reasonable doubt. He, therefore, contends that there was no reason to interfere with the judgments recorded by the Court below. As regards the reduction of sentence, he contends that no indulgence should be shown by this Court in view of the serious nature of the offence committed by the petitioner No.2-Veena Rani and her deceased husband-Dinesh Kumar Gupta (petitioner No.1).

10. I have heard the learned counsel for the parties.

11. A perusal of the evidence on record would clearly establish that the petitioners had misappropriated an amount of Rs.60,000/- from the accounts of the depositors by making false entries in their pass-books. Only on complaints being instituted was the said Rs.60,000/- alongwith Rs.5,000/- deposited back with the Post Office. Therefore, the offence is established beyond any reasonable doubt against the petitioners.

12. In view of the aforementioned discussion, I do not find any reason to interfere with the well-reasoned judgments of the Trial Court

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and the Lower Appellate Court. Therefore, the present petition stands dismissed.

13. As regards the imposition of sentence, it is apparent that the petitioner No.1, the husband of the petitioner No.2-Veena Rani, passed away on 11.10.2022. The petitioner No.2 is a lady of the age of 59 years with no criminal antecedents. Further, she has maintained a clear record post the instant FIR and conviction. The occurrence itself pertains to the years 2009-2010 and the entire defalcated amount was admittedly deposited with the Post Office prior to the registration of the FIR. In this view of the matter, it would be appropriate to reduce the substantive sentence of petitioner No.2-Veena Rani while enhancing the fine imposed upon her. Accordingly, the petitioner No.2-Veena Rani is sentenced as under:-

Name	Under Section	Sentence	Fine (Rs.)	In default of payment of Fine
Veena Rani	409 IPC	To undergo the period already undergone by her i.e. 02 months and 05 days	Rs.25,000/-	To undergo simple imprisonment for 02 months
	120-B IPC	To undergo the period already undergone by her i.e. 02 months and 05 days	Rs.25,000/-	To undergo simple imprisonment for 02 months

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All the sentences are ordered to run concurrently. However,
the sentence in default of payment of fine shall remain intact.

14. Since the main revision petition stands disposed of, no order
is required to be passed in the pending application(s), if any.

**(JASJIT SINGH BEDI)
JUDGE**

September 15, 2023
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No