

CRR-2536-2023 (O&M)
Date of decision: 20.12.2023

Jasvir Singh

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

Mr. I.P.S. Sabharwal, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 13.07.2023 passed by learned Additional Sessions Judge, Ludiana vide which judgment of conviction and order of quantum of sentence dated 17.02.2017 passed by Judicial Magistrate Ist Class, Jagraon in FIR No. 54 dated 21.02.2007 under Section 420, 408 of the registered at Police Station Jagraon was upheld and the order of quantum of sentence dated 31.10.2014 was modified. The petitioner was sentenced as under:-

Offence	Sentence
Section 408 IPC	Rigorous imprisonment of 2 years and a fine of Rs. 750/-, in default of which simple imprisonment for 7 days.
Section 420 IPC	Rigorous imprisonment of 2 years and a fine of Rs. 750/-, in default of which simple imprisonment for 7 days.

FACTUAL BACKGROUND

2. The facts, in brief, are that the petitioner was employed at the Gurleen Filling Station, Bhammipura, Tehsil Jagraon, District Ludhiana as a salesman-cum-accountant. While conducting an inspection of the accounts on 04.11.2005, owner of the filling station- complainant Mukhtiar Singh discovered that the petitioner had been misrepresenting the quantity of diesel sold on credit basis so as to embezzle money. As a whole, the petitioner has embezzled an amount of Rs. 45, 900/- and he has also failed to deposit the amount of Rs. 2,44,420/- collected by him pertaining to diesel sold on credit.

3. The prosecution examined as many as 5 witnesses to prove its case. The petitioner pleaded false implication and claimed trial, however, no evidence was led by him in his defence.

4. Accordingly, the petitioner was convicted by the learned trial Court vide judgment dated 17.02.2017. Aggrieved by the same, the petitioner preferred an appeal before the lower appellate Court, which was dismissed vide judgment dated 13.07.2023.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 17.02.2017 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioner as he has already undergone a period of 5 months 2 days of custody. Furthermore, no other case is pending against him.

6. Learned counsel for the petitioner further submits that petitioner is 53 years of age. He has reformed and intend to live his life as a law-abiding citizen.

7. Per contra, learned State counsel opposes the prayer of the petitioner as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned lower Appellate Court, as such, he does not deserve any leniency.

ANALYSIS AND OBSERVATIONS

8. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

9. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the

victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused. In order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

10. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner are tabulated as under:-

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	-
2.	Custody after conviction	21/07/2023 to 20/12/2023	5 months 2 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	21/07/2023 to 20/12/2023	5 months 2 days
5.	Actual undergone period	21/07/2023 to 20/12/2023	5 months 2 days
6.	Earned remission	-	-
7.	Total sentence including remission	21/07/2023 to 20/12/2023	5 months 2 days

11. A perusal of the judgment of conviction passed by the trial Court and the Lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Counsel for the petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

12. The FIR in the present case was lodged on 21.02.2007 and since his conviction, the petitioner has grown into a law-abiding citizen and desires to live a peaceful life. He is not involved in any other criminal activity after his conviction in the present case and during the pendency of the present revision. As per his custody certificate, there are no other criminal cases pending against him. Out of the total sentence of 2 years, he has undergone actual sentence of 5 months 2 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 2 years awarded to the petitioner is reduced to the period already undergone by him.

13. Consequently, the present revision is disposed of in the following terms:-

(i) The judgment dated 13.07.2023 passed by the Additional Sessions Judge, Ludhiana confirming the conviction of the petitioner is upheld, however, the order of sentence dated 17.02.2017 is modified to the extent that the sentence of rigorous imprisonment for 2 years awarded to the petitioner is reduced to the period of sentence already undergone by him.

(ii) The sentence of fine of an amount of Rs.750/- imposed upon the petitioner by the trial Court is increased to Rs.10,000/-. The petitioner is directed to deposit the amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioner shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

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14. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

20.12.2023
Neha

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