



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRA No.235-SB of 1997

Nem Chand Jain
... Appellant
Versus
State of Punjab & another
... Respondents

2. CRA No.236-SB of 1997

P.C. Jain
... Appellant
Versus
State of Punjab & another
... Respondents

3. CRA No.237-SB of 1997

Raj Kumar Jain
... Appellant
Versus
State of Punjab & another
... Respondents

4. CRA No.238-SB of 1997

S.K. Jain
... Appellant
Versus
State of Punjab & another
... Respondents

5. CRA No.240-SB of 1997

M/s P.S. Jain Co. Ltd.
... Appellant
Versus
State of Punjab & another
... Respondents

6. CRA No.252-SB of 1997

Avinash Chand
... Appellant
Versus
State of Punjab & another
... Respondents



CRA Nos.235-SB, 236-SB, 237-SB, 238-SB, 240-SB,
252-SB, 255-SB & 256-SB of 1997

7. CRA No.255-SB of 1997

A.S. Pahwa
... Appellant
Versus
State of Punjab
... Respondent

8. CRA No.256-SB of 1997

Malvinder Singh
... Appellant
Versus
State of Punjab
... Respondent

Date of decision: 23rd July, 2024

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt & Mr. Karan Pathak, Advocates
for the appellant in CRA-255 & 256-SB-1997.

Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Mr. Deepanshu Mehta
& Ms. Malini Singh, Advocates
for the appellant in CRA-236-SB-1997.

Mr. A.S. Gill, Advocate
for the appellant in CRA-238 & 252-SB-1997.

Mr. Gaurav Vir S. Behl, Advocate
Amicus Curiae for the appellant in CRA-235-SB-1997.

Ms. Preeti Singh, Advocate
Amicus Curiae for the appellant in CRA-237-SB-1997.

Ms. Monika Beriwal, Advocate
Amicus Curiae for the appellant in CRA-240-SB-1997.

Mr. Navdeep Singh, Dy. Advocate General, Punjab
for the respondent/State.

Mr. Deepak Sabherwal, Spl. Public Prosecutor for CBI.



**CRA Nos.235-SB, 236-SB, 237-SB, 238-SB, 240-SB,
252-SB, 255-SB & 256-SB of 1997**

MANJARI NEHRU KAUL, J.

1. The appellants in all the appeals detailed hereinabove have challenged the judgment of conviction and order of sentence dated 04.03.1997 passed by the Court of learned Special Judge, CBI Punjab, Patiala vide which they were convicted and sentenced as under:-

<u>Accused</u> M.S. Sandhu, P.C. Jain, Raj Kumar Jain, A.S. Pahwa, Malvinder Singh, Nem Chand, S.K. Jain s/o A.P. Jain, S.K. Jain s/o P.P. Jain, Avinash Chand, Padam Sain	Each of the accused/convicts sentenced to undergo RI for 6 months and to pay ₹1000/- as fine and in default of payment of fine to further undergo RI for 1 month u/s 120-B IPC.
<u>Firm</u> M/s P.S. Jain Co. Ltd. through its Managing Director R.C. Jain s/o P.S. Jain.	Sentenced to pay ₹1000/- as fine and in default of payment of fine to undergo RI for 1 month u/s 120-B IPC.
<u>Accused</u> M.S. Sandhu, P.C. Jain, Raj Kumar Jain, A.S. Pahwa, Malvinder Singh, Nem Chand, S.K. Jain s/o A.P. Jain, S.K. Jain s/o P.P. Jain, Avinash Chand, Padam Sain	Each of the accused/convicts sentenced to undergo RI for 2 years and to pay fine of ₹2000/- and in default of payment of fine to further undergo RI for 4 months under Section 420 IPC.
<u>Firm</u> M/s P.S. Jain Co. Ltd. through its Managing Director R.C. Jain s/o P.S. Jain.	Sentenced to pay fine of ₹2000/- and in default of payment of fine to undergo RI for 1 month u/s 420 IPC.
<u>Accused</u> Nem Chand Jain, P.C. Jain, S.K. Jain s/o A.P. Jain, S.K. Jain s/o P.P. Jain, Avinash Chand	Each of the accused/convict is sentenced to undergo RI for 6 months and to pay ₹1000/- as fine and in default of payment of fine to further undergo RI for 1 month under Section 465 IPC.



CRA Nos.235-SB, 236-SB, 237-SB, 238-SB, 240-SB, 252-SB, 255-SB & 256-SB of 1997

<u>Accused</u> Nem Chand Jain, P.C. Jain, S.K. Jain s/o A.P. Jain, S.K. Jain s/o P.P. Jain, Avinash Chand	Each of the accused/convict is sentenced to undergo RI for 2 years and to pay fine of ₹2000/- and in default of payment of fine to further undergo RI for 4 months under Section 468 IPC.
<u>Accused</u> Nem Chand Jain, P.C. Jain, S.K. Jain s/o A.P. Jain, S.K. Jain s/o P.P. Jain, Avinash Chand	Each of the accused/convict is sentenced to undergo RI for 2 years and to pay fine of ₹2000/- and in default of payment of fine to further undergo RI for 4 months under Section 471 IPC.
<u>Accused</u> M.S. Sandhu, A.S. Pahwa and Malvinder Singh	Each of the accused/convict is sentenced to undergo RI for 2 years and to pay fine of ₹2000/- and in default of payment of fine to further undergo RI for 4 months under Section 5(i)(d) read with 5(2) of the Prevention of Corruption Act, 1947.

2. All the sentenced were ordered to run concurrently.
3. Since all these appeals have arisen out of the same judgment/order, they are being taken up together for disposal by way of this common order.
4. The case of the prosecution is based on the allegations that the appellants, M.S. Sandhu (Branch Manager, Punjab & Sind Bank, Jalandhar), A.S. Pahwa (Officer-loans, Punjab & Sind Bank, Jalandhar) and Malvinder Singh Gujral (Clerk-loans, Punjab & Sind Bank, Jalandhar), all public servants entered into a criminal conspiracy with M/s P.S. Jain Motors, the primary beneficiary firm, and other co-accused. These individuals grossly abused their official positions by



**CRA Nos.235-SB, 236-SB, 237-SB, 238-SB, 240-SB,
252-SB, 255-SB & 256-SB of 1997**

5

disbursing truck loans totalling ₹14,40,000/- on 31.08.1981, in the names of ten fictitious persons, without proper authorization. All loan and security deposits were allegedly signed by employees of M/s P.S. Jain Motors, which are also in the names of these fictitious truck loan applicants. M/s P.S. Jain Motors submitted proforma invoices and false driving licenses of these fictitious individuals to the Bank and paid an insurance premium of ₹2,125/- for chassis in their names. None of these fictitious loan applicants ever appeared at the bank, and the addresses provided in the documents were also incomplete. These fictitious loan applicants were introduced to the Bank, by the accused, Nem Chand Jain, Manager of M/s P.S. Jain Motors. Allegedly, all the accused/appellants, acting with dishonest intent, conspired to defraud and cheat the bank of a total amount of ₹19,20,000/-, using forged documents and misusing their official positions. Charges were framed against all the accused/ appellants for offence under Sections 120-B IPC and Section 420 IPC. Specific charges were also framed against the accused/appellants, including Nem Chand Jain (Manger of M/s P.S. Jain Motors), P.C. Jain (Partner, M/s P.S. Jain Motors), S.K. Jain (First Cashier), S.K. Jain (Cashier) and Avinash Chand (Sales Assistant, M/s P.S. Jain Motors) under Sections 468, 465, 471 IPC. Additionally, charges were framed against M.S. Sandhu (Branch Manager, Punjab & Sind Bank, Jalandhar), A.S. Pahwa (Officer-loans, Punjab & Sind



**CRA Nos.235-SB, 236-SB, 237-SB, 238-SB, 240-SB,
252-SB, 255-SB & 256-SB of 1997**

6

Bank, Jalandhar) and Malvinder Singh Gujral (Clerk-loans, Punjab & Sind Bank, Jalandhar) and Padam Sain Jain (Inspector, Oriental Insurance Co.) under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as, 'the 1947 Act'). All the accused pleaded not guilty and claimed trial.

5. The prosecution, in support of its case, examined a total of 48 witnesses, including PW-1 H.S. Sachar, PW-2 Walati Lal Sabarwal (Senior Assistant, Oriental Insurance Co.), PW-3 Amar Singh Soni (Senior Manager), PW-19 Vijay Singh (Regional Transport Inspector) and PW-30 S.K. Chanda (Senior Divisional Manager, Oriental Insurance Co.). These witnesses testified and proved various documents related to the case. All the incriminating evidence was put to the accused/appellants under Section 313 Cr.P.C. to which they pleaded false implication. Based on the evidence and other material on record, the learned CBI Court convicted the accused/appellants.

6. Mr. Gaurav Vir Singh Behl, Ms. Preeti Singh and Ms.Monika Beriwal, Advocates present in the Court, have been appointed as Amicus Curiae on behalf of the appellants Nem Chand Jain, Raj Kumar Jain and M/s P.S. Jain Co. Ltd., respectively. They submit that the accused/appellants have been falsely implicated in this case, as evidenced by the lack of documentary proof showing any agreement among the appellants to commit the alleged offence. It has



**CRA Nos.235-SB, 236-SB, 237-SB, 238-SB, 240-SB,
252-SB, 255-SB & 256-SB of 1997**

7

been argued that the prosecution failed to unequivocally prove that there was any common intention to defraud the bank, using false and forged documents. Furthermore, the learned Amicus Curiae have highlighted that these appellants are elderly and in the final stages of their lives. Given their advanced age and the fact that most of them are suffering from serious health issues, a lenient view be taken against the appellants.

7. However, at the outset, learned counsel for the appellants P.C. Jain, S.K. Jain, Avinash Chand, A.S. Pahwa and Malvinder Singh have jointly submitted that, in light of the findings recorded by the learned CBI Court, they will not press the instant appeals on their merits. They seek a lenient and compassionate view due to the significant time lapse, since the registration of the FIR in the year 1981. It has been urged that the appellants, convicted on 04.03.1997 by the learned CBI Court, have endured the distress of a protracted trial spanning over 42 years.

8. Learned counsel for the appellants assert that almost all the appellants are now in the evening of their life, with some aged between 70-80 years, and several suffering from serious medical ailments, including age related conditions. Some appellants are even bed ridden. Therefore, it has been urged that no useful purpose would be served by sending them behind bars at this stage.



CRA Nos.235-SB, 236-SB, 237-SB, 238-SB, 240-SB,
252-SB, 255-SB & 256-SB of 1997

8

9. Furthermore, it has been contended that the provisions of the 1947 Act apply in this case. Section 5 of the 1947 Act provides for the minimum sentence of imprisonment of 1 year, but the proviso to Section 5(2) grants the Court discretion to reduce the sentence. In support of this, learned counsel have directed the attention of this Court to the relevant provisions of the Act and have placed reliance upon the ratio of law laid down by Hon'ble the Supreme Court in '**Suman Kumar vs. State of Himachal Pradesh**' (CRA No.1382 of 2009, d/d 03.09.2015).

10. Per contra, learned Spl. Public Prosecutor for the CBI does not dispute that the appellants are indeed elderly, with some suffering from serious medical issues and being bedridden. However, he opposes the prayer for reducing the sentence to already undergone, citing the convictions under various offences of the Indian Penal Code and the Prevention of Corruption Act. Additionally, he has pointed out that some of the appellants have not served a single day of their sentence, as evidenced by their custody certificates.

11. I have heard learned counsel for the parties and perused the relevant material on record.

12. It is undisputed that the offences in question were committed in the year 1981, over 43 years ago, resulting in the appellants' enduring a prolonged trial. Although they were on bail



**CRA Nos.235-SB, 236-SB, 237-SB, 238-SB, 240-SB,
252-SB, 255-SB & 256-SB of 1997**

9

during this period, the conviction loomed large over them. Furthermore, the appellants are now elderly, with almost all suffering from serious medical and age related issues, as acknowledged by the learned Spl. Public Prosecutor for the CBI.

13. The case pertains to an incident from the year 1981 when the 1947 Act was in force, and Section 5(2) of the Act grants the Court discretion to reduce the sentence below the minimum prescribed. Considering their advanced age and the prolonged trial they have endured, it would not be appropriate to incarcerate at this stage of their lives to serve the remainder of their sentences. This Court, thus, feels that ends of justice would be met if while maintaining their conviction, the substantive sentence of each of the accused/appellant is reduced to the period of sentence already undergone in the present case, subject to enhancement of their fine and imposing certain additional conditions by way of a sentence.

14. Each appellant is ordered to plant 6 indigenous fruit bearing trees and 6 shady trees with tree guards. The specific area for the aforesaid purpose will be identified by the District Legal Service Authority (DLSA) concerned in consultation with the District Administration, which will also ensure their proper maintenance and upkeep. Additionally, all the appellants are ordered to deposit an enhanced amount of fine in the sum of ₹25,000/- each with the Poor



CRA Nos.235-SB, 236-SB, 237-SB, 238-SB, 240-SB,
252-SB, 255-SB & 256-SB of 1997

Patient Welfare Fund at PGIMER Chandigarh, which would be a condition precedent.

15. This order is passed considering the peculiar facts and circumstances of the present case and should not be treated as a precedent for any other case.

16. In case the appellants fail to comply with the aforementioned conditions imposed by this Court, this order shall be of no avail to them and they shall have to undergo the remaining part of their sentences.

17. The instant appeals are disposed off accordingly.

(MANJARI NEHRU KAUL)
JUDGE

July 23, 2024
rps

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