

CRR-534-2010

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240(2) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-534-2010
Date of Decision: January 29, 2024

ROHTASH

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajesh Duhan, Legal Aid Counsel with
Mr. Rohtash, petitioner in person.

Mr. Vikas Bhardwaj, AAG Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 03.02.2010 passed by learned Additional Sessions Judge, Bhiwani vide which judgment of conviction dated 19.12.2006 passed by the learned Sub Divisional Judicial Magistrate, Loharu in FIR No. 89 dated 26.05.1997 under Sections 420, 409 of the IPC registered at Police Station Behal, Bhiwani was upheld. However, the order of quantum of sentence dated 22.12.2006 was modified by the learned Additional Sessions Judge, Bhiwani. The petitioner was sentenced as under: -

Offence	Sentence
Section 409 IPC	Rigorous imprisonment for 3 years and a fine of Rs. 1500/-, in default of which rigorous imprisonment of 1 month.
Section 420 IPC	Rigorous imprisonment for 2.5 years and a fine of Rs. 1000/-, in default of which rigorous imprisonment of 1 month.

FACTUAL BACKGROUND

2. The facts, in brief, are that the FIR was registered on 1.11.1999 on the basis of a written complaint presented by the Manager, Punjab National Bank, Behal, wherein it was alleged that the petitioner while working as a clerk-cum-cashier in the said bank, from June, 1996 to February, 1997, embezzled Rs. 4,93,100/- entrusted to him by the customers for the purpose of crediting the aforesaid amount in their respective accounts. The petitioner used to issue receipts and make entries in the passbooks of the depositors but did not deposit the amount in the bank. Instead, the petitioner misappropriated the said amount for his own use. The offence came to light when the balances of Saving Fund Ledger and Principal Books of the bank were tallied. It was learnt that the petitioner authenticated bogus entries in Saving Fund Account Ledger.

3. On being charged under Section 409 of the IPC, vide order dated 07.04.1998 by the learned Sub Divisional Judicial Magistrate, Loharu, the petitioner pleaded not guilty and claimed trial. Subsequently, the charge was altered to include Section 420 IPC vide order dated 07.08.2003.

4. The prosecution examined as many as 21 witnesses to prove its case. Subsequently, the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded, wherein the petitioner pleaded false implication. In defence, the petitioner examined as many as 2 witnesses to prove his innocence.

5. On the basis of evidence led, the petitioner was convicted by the learned trial Court vide judgment dated 19.12.2006. Aggrieved by the same, the petitioner preferred an appeal before the Lower Appellate Court. While the conviction was upheld, the order of quantum of sentence was modified to the

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effect that the period of detention during the pendency of the case was ordered to be set-off from the sentence passed by the learned trial Court.

CONTENTIONS

6. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 19.12.2006 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 2 years 08 months 22 days in custody. Furthermore, no other case is pending against him.

7. Learned counsel for the petitioner further submits that the petitioner has reformed and intends to live his life as a law-abiding citizen.

8. 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, and as such, he does not deserve any leniency. Moreover, the learned State counsel contends that the petitioner has been convicted in another case.

OBSERVATIONS AND ANALYSIS

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

10. 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.

11. 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	12/11/1997 to 13/06/2000	2 years 07 months 2 days
2.	Custody after conviction	01/04/2010 to 20/05/2010	1 month 20 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	01/04/2010 to 20/05/2010	1 month 20 days

5.	Actual undergone period	12/11/1997 to 13/06/2000 and 01/04/2010 to 20/05/2010	2 years 08 months 22 days
6.	Earned remission	-	-
7.	Total sentence including remission	12/11/1997 to 13/06/2000 and 01/04/2010 to 20/05/2010	2 years 08 months 22 days

12. 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

13. The FIR in the present case was lodged on 26.05.1997 and the case was instituted in the trial Court on 24.01.1998. The petitioner has faced the agony of a protracted trial, which has lasted for approximately 26 years. Since his conviction in the two cases, which arise from the same set of circumstances, the petitioner has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate, there are no other criminal cases pending against him. Out of the total sentence of 3 years under Section 409 IPC, and two and half years under Section 420 IPC, the petitioner has undergone actual sentence of 2 years 8 months and 22 days. Accordingly, this Court is of the opinion that it would be in the interest of justice if the sentence awarded to the petitioner is reduced to the period already undergone by him.

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

- i

The judgment dated 03.02.2010 passed by the learned Additional Sessions Judge, Bhiwani confirming the conviction of the petitioner is upheld, however, the order of sentence dated 22.12.2006 is modified to the extent that the sentence of rigorous imprisonment for 3 years under Section 409 IPC, and two and half years under Section 420 IPC (to run concurrently) 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. 2500/- imposed upon the petitioners by the trial Court is increased to Rs.5,000/-. 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.
15.

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

(HARPREET SINGH BRAR)
JUDGE

29.01.2024
Ajay Goswami

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