

**CRR-1932-2011****2**

Court convicted the petitioner under Section 409 IPC and sentenced him to

undergo RI for a period of 2 years. The petitioner thereafter filed an appeal against his judgment of conviction and order of sentence but the same was dismissed by the appellate Court vide order dated 05.08.2011.

3. Learned counsel for the petitioner contends that the petitioner is not assailing the impugned judgment dated 05.08.2011 upholding the judgment of conviction and order of sentence passed by the trial Court on merits and restricts his prayer qua modification of the order on quantum of sentence, to the period as already undergone by the petitioner, as he has already undergone imprisonment for a period of 2 months and 3 days out of total sentence of 2 years. It is also stated in the judgment that the amount of Rs.62,343/- so embezzled was deposited with the Panchayat. He further prays that since the FIR in question pertains to the year 1999, a lenient view may be taken while passing an order/ judgment by this Court.

4. On the other hand, learned State counsel opposes the prayer of the petitioner by way of filing of custody certificate dated 16.05.2025 and submits that the learned Courts below have passed well-reasoned judgments based on correct appreciation of evidence available on record.

5. I have heard learned counsel for the parties and have gone through the material placed on record.

6. The petitioner has been convicted for embezzlement of an amount of Rs.62,343/- belonging to the Panchayat Fund, for which no minimum punishment has been prescribed. Moreover, the FIR in the present case pertains to the year 1999 and the petitioner has already faced the rigors of the trial for more than 25 years.

7. Hon'ble the Supreme Court in "*Deo Narain Mandal Vs. State*



of UP”, (2004) 7 SCC 257, has held 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, the 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.

8. Further, a two-Judges Bench of the Hon'ble Supreme Court in *Ravada Sasikala Vs. State of AP, AIR 2017 SC 1166*, has held that the imposition of sentence also serves a social purpose, as it acts as a deterrent by making the accused realize 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 conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

9. A perusal of the judgment of conviction passed by the learned trial Court and learned appellate Court indicates no perversity in their findings and the same is based on correct appreciation of evidence available on record. However, learned counsel for the petitioner has not assailed the judgment of conviction on merits, rather restricted the prayer only qua modification of quantum of sentence to that of the sentence already

**CRR-1932-2011****4**

undergone by the petitioner.

10. Since there is no minimum punishment prescribed under Section 409 IPC and keeping in view the fact the FIR pertains to the year 1999 and the petitioner has faced the rigors of trial for a period of more than 25 years, therefore, while taking a lenient view, 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.

11. In view of above, both the revision petitions are **disposed of** by upholding the judgment dated 05.08.2011 passed by the learned Appellate Court, however, the order of sentence are modified to the extent that the sentence of rigorous imprisonment for a period of 2 months imposed upon the petitioner is reduced to the period of sentence already undergone by him.

(H.S. GREWAL)
JUDGE

19.05.2024***anil***

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