

3. Brief facts of the case are that complainant had moved a complaint with the Police Station Chhachhrauli, District Yamuna Nagar reporting therein that he his wife and his father are the members of Tihmo Co-operative Credit & Service Socieity Limited, Tihmo and the accused was posted as Secretary in the said society. It was further reported that the complainant and two other members had availed loan facility from the said society and in that context, the complainant had deposited a total sum of Rs.68,800/- in the society on 30.6.1999 through the accused and two receipts were also issued on the same day. It was further reported that there being election for Managing Committee of the Society, scheduled for 21.10.1999, voter list of the members was prepared wherein the names of the complainant and his father were not incorporated being defaulters i.e. in arrears of society, upon which the complainant made an inquiry and it was revealed that the said amount of Rs. 68,800/- was not accounted for by the accused, rather, he had embezzled the said amount for himself. It was further reported that when the complainant had showed the receipts, duly issued, to the accused, then he refused to honour the same with the remarks that the same were missing from the receipt book. Complainant made complaint to the Societies, Chhachhrauli and Assistant Registrar, Co-operative Societies, Yamuna Nagar on 18.10.1999. Besides that, complainant also approached the police of Police Station Chhachhrauli by moving separate application, but, no action upon his application was taken by the police. It was further reported that the application moved by the complainant before the Sub-Inspector Co-operative Societies was disposed on 25.10.1999 with the observation that the accused had embezzled the said amount and to save himself from criminal liability, he had made forgery in the record. Further, in the inquiry conducted by Assistant Registrar, Co-operative

Societies, Yamuna Nagar, it was observed on 19.11.1999 that the accused has embezzled the amount and has also made forgery in the record with an intent to cause loss to the complainant. On the basis of this complaint, FIR (*supra*) was registered.

4. The petitioner was convicted and sentenced vide judgment and order dated 08/11.03.2013 passed by learned trial Court, which have also been upheld by learned lower Appellate Court vide judgment dated 07.04.2017.

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 07.04.2017 on merits and restricts his prayer to modification of the order on quantum of sentence to that of the sentence already undergone by the petitioner. Petitioner has undergone a total period of 08 months and 15 days, including remission and custody after conviction.

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

7. I have heard learned counsel for the parties and perused the record with their able assistance.

8. 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 of the Hon'ble Supreme Court 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.

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

10. The FIR in the present case was lodged on 16.12.1999 and the petitioner has been suffering the agony of protracted trial for last 25 years. Since his conviction, the petitioner has grown into law-abiding citizen and desire to live a peaceful life. As per his custody certificate, he is not involved in any other case and has undergone total sentence of 08 months and 15 days, including remission out of total sentence of one year, in the instant case.

11. 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.

12. Consequently, the present petition is disposed of in the following terms:-

(i) The judgment dated 07.04.2017 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, affirming the judgment of conviction is upheld, however, the order of sentence dated 11.03.2013 is modified to the extent that the sentence of rigorous imprisonment for two years along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him subject to the fine of an amount of Rs.10,000/- upon the petitioner.

(ii) 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.

29.01.2025

Parveen kumar

(HARPREET SINGH BRAR)
JUDGE

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