
(2005) 140 PLR 327 : (2005) 1 RCR(Criminal) 588
High Court Of Punjab And Haryana At Chandigarh
Case No: Criminal Revision No. 899 of 1988

Bhupinder Singh	Vs	APPELLANT
State of Punjab		RESPONDENT

Date of Decision: Nov. 17, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 357
- Penal Code, 1860 (IPC) - Section 304, 408, 409, 468, 477

Citation: (2005) 140 PLR 327 : (2005) 1 RCR(Criminal) 588

Hon'ble Judges: Jasbir Singh, J

Bench: Single Bench

Advocate: H.S. Dhandi, for the Appellant; S.C. Bhardwaj, D.A.G., for the Respondent

Judgement

Jasbir Singh, J.

Vide judgment and order dated 26.2.1986, petitioner was found guilty and convicted for commission of an offence u/s 409 I.P.C. and was sentenced to undergo R.I. for three years and to pay a fine of Rs.3500/-. In default of payment of fine, he was to further undergo R.I. for a period of 6 months. However, he was acquitted for commission of offences under Sections 468 and 477 I.P.C. Petitioner went in appeal, where conviction was converted u/s 408 I.P.C. instead of u/s 409 I.P.C., however, sentence was upheld and the appeal was dismissed with that modification by the appellate Court below vide judgment dated 4.8.1988. Hence, this revision.

2. It was ease of the prosecution that petitioner Bhupinder Singh was working as Cashier in Bhatnura Ladoya Cooperative Agriculture Service Society Limited and in his capacity as such he had embezzled an amount of Rs. 18294/- which was deposited with him by shareholders of the society. After enquiry, FIR was recorded and on completion of investigation, final report was put in Court for trial. Petitioner was charge sheeted for commission of offences under Sections 409, 468 and 477 I.P.C., to which he pleaded not guilty and claimed trial.

3. Prosecution then led evidence to prove his guilt and on completion of prosecution evidence, statement of the petitioner was recorded u/s 313 Cr.P.C. wherein he refuted all the allegations appearing against him in prosecution evidence and claimed false implication. He also led evidence in defence, whereby he tried to show that he had handed over the amount, in dispute, to secretary of the Society. Trial Court believed his defence version and he was acquitted for commission of offences under Sections 468 and 477 I.P.C., however, he was found guilty and convicted for commission of offence u/s 409 I.P.C. In appeal, conviction was converted u/s 408 I.P.C. instead of u/s 409 I.P.C., however, sentence was upheld and the appeal was dismissed with that modification.

4. It is not necessary to refer to further details of the case, as Mr. Dhandi, appearing for the petitioner, has confined his arguments only regarding quantum of sentence. He has stated that at the time of alleged occurrence, petitioner was only 21 years old, a young man and was not a previous convict. He is the only bread winner for his family, now living happily with his children and if at this stage, he is asked to undergo remaining part of sentence, not only he but his entire family will suffer. Counsel further submitted that after conviction in the present case, petitioner has not committed any other offence of the like nature. He has improved himself and is leading the life of a disciplined citizen. Counsel also stated that the petitioner is even ready to compensate the Society for the loss allegedly caused. Counsel further brought it to the notice of the Court that petitioner had already undergone about two months of imprisonment. By placing reliance on various judgments of Hon"ble Supreme Court and this Court, counsel stated that petitioner be given a chance to reform himself in life and prayed that sentence be reduced to the one already undergone by him or in the alternative, he may be released on probation.

5. Prayer made has vehemently been opposed by Mr. S.C. Bhardwaj, D.A.G. Punjab appearing for the State. He, by referring to the evidence on record has contended that conviction of petitioner was justified and the punishment given was in proportion to the offence committed by him. He further stated that already a very lenient treatment had been given to him by the Courts below and in view of his conduct, he deserves no further concession from this Court and prayed that revision petition, having no substance, be dismissed.

6. Counsel for the parties heard.

7. Purpose of criminal law justice is not only to bring discipline, peace and harmony in the society but is also to give an opportunity to an erring individual to reform oneself.

8. Their lordships of the Supreme Court in [Karamjit Singh Vs. State \(Delhi Admn.\)](#), had observed that in appropriate cases, reformatory approach is required to be adopted towards accused.

9. In Tarak Nath Singh and Anr. v. State of West Bengal 1998(1) S C C 587, their Lordships of Supreme Court, keeping in view the fact that the occurrence took place 18

years earlier to the decision of appeal and the parties were relatives, reduced the sentence to the period already undergone.

10. Similar is the opinion expressed by a Division Bench of this Court in *State of Punjab v. Gurmail Singh* 2002(1) R.C.R. 600. In that case in an appeal against acquittal, accused were convicted, However, they were sentenced to a term of imprisonment already undergone, keeping in view the fact that incident had occurred in the year, 1981.

11. To the same effect is the opinion of this Court in *Chhota Singh v. State of Punjab* 1998(1) R.C.R. 467.

12. Counsel for the appellant has also placed reliance upon a judgment of Supreme Court in [Mohammad alias Biliya Vs. State of Rajasthan](#) , wherein, in a case u/s 304 Part-II I.P.C., leniency was shown to the accused in that case and they were ordered to be released on probation.

13. To support his contention, counsel for the appellant has also relied upon judgment of the Hon"ble Supreme Court in [Mohinder Pal Jolly Vs. State of Punjab](#) , wherein, after convicting the appellant-accused therein for commission of an offence u/s 304 Part-II I.P.C., their lordships of the Supreme Court observed in Para No. 12 as under:

"12. Even so on the facts and in the circumstances of this case we do not feel persuaded to let off the appellant with an imposition of fine only. We, however, thought that sentence of three years rigorous imprisonment would meet the ends of justice in this case. We were informed at the Bar and an affidavit sworn by the appellant's wife was also filed before us to the effect that the appellant was in jail for about nine months as an under trial prisoner and for about four months after conviction. Thus, he has already undergone imprisonment for a period of about a year and a month. The occurrence took place more than a decade ago. The appellant had to pass this long ordeal all these years both mentally and financially. Considering, therefore, the totality of the circumstances while maintaining the imposition of fine of Rs. 10,000/- and in default two years further imprisonment, we reduce his substantive term of imprisonment to the period already undergone and maintain the conviction of the appellant not under Part-I of Section 304 of the Penal Code but under Part-II."

14. Their Lordships of Supreme Court in *Tarsem Lal v. State of Haryana* AIR 1987 S.C. 806, in a case under provisions of Prevention of Corruption Act, by taking note of a fact that the appeal was being disposed of after 14 years of the incident, reduced sentence of the accused involved therein to the one already undergone by him.

15. In the case in hand, it is apparent from the records that alleged incident of embezzlement of Rs. 18294/- pertains to the year before 1981, FIR was recorded on 26.11.1981, petitioner continued to face agony of trial, which came to an end on

26.2.1986, his appeal was dismissed on 4.8.1988 and since then, this revision is pending. This Court feels that during this long period of more than 24 years, fear might have continued to lurk in the mind of the petitioner that on one day or the other, he might be sent behind the bars. This fear of sending him behind the bars, has its desired effect of reforming him. As per information supplied, petitioner is now leading a very disciplined life, It is also an admitted fact that petitioner was only 21 years of age at the time of alleged occurrence. As per information supplied, he has grown up children and if at this stage, he is sent behind the bars, his entire family will suffer and will also not be conducive towards peace and harmony in the village as it is likely to review old sad memories. Petitioner has already undergone about two months of imprisonment. This Court feels that he deserves an opportunity to reform himself in life.

16. Accordingly, his sentence is reduced to the one already undergone by him. However, keeping in view ratio of judgment in Baldev Singh and Anr. v. State of Punjab AIR 1996(1) S C 372, provisions of Section 357 of Cr.P.C. and the undertaking given by counsel for the petitioner, petitioner is directed to deposit a sum of Rs. 90,000/- with the trial court, over and above the fine already imposed by the court below, within two months from the date of receipt of a copy of the order, which shall be paid to the Society involved by way of compensation. If the petitioner fails to deposit the amount, as ordered above, within the stipulated time, this revision petition shall be deemed to have been dismissed, On deposit being so made, trial Court is directed to issue a notice to the Secretary of the Society and disburse that amount to the Society forthwith.

17. With above mentioned modification, this revision petition stands disposed of.