(2010) 09 P&H CK 0367

High Court Of Punjab And Haryana At Chandigarh

Case No: CRR No. 2214 of 2009 (O and M)

Janak Raj		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: Sept. 1, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 408, 409
- Probation of Offenders Act, 1958 - Section 4

Hon'ble Judges: Nirmaljit Kaur, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Nirmaljit Kaur, J.

CRM No. 42595 of 2007

1. For the reasons recorded therein, the application is allowed and delay of 49 days in re-filing the revision petition is condoned.

Main case

2. The Judicial Magistrate, Ist Class, Tarn Taran, vide judgment and order dated 14.12.2004 convicted and sentenced the petitioner u/s 409 of Indian Penal Code to undergo rigourous imprisonment of 9 months and to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo imprisonment for one month. Aggrieved against the aforesaid judgment and order, the petitioner filed an appeal before the Additional sessions Judge, Tarn Taran, who converted the conviction of the petitioner from Section 409 IPC to Section 408 IPC and released the accused-petitioner on probation by observing as under:

The accused is already dismissed from service and these proceedings are relating to the period of 79/80. So, considering the long period of litigation and the accused

already remained in judicial custody for some time and this Court is of the view that benefit of probation should be extended to the accused and the accused is given opportunity to lead a peaceful and normal life. Hence, the accused is ordered to be released on probation u/s 4(i) of Probation of Offenders Act after furnishing personal bonds of Rs. 50,000/- with one surety of the like amount to the satisfaction of this Court and this probation period shall remain in force for two years from today i.e. 03.01.2009 and accused shall comply with the conditions of probation bonds and he shall suffer imprisonment as awarded by learned trial Court, if he fails to comply with the conditions of probation period of two years. The amount of fine is ordered to be converted into the costs of litigation. With this modification in the sentence, this appeal is dismissed.

3. Still aggrieved, the petitioner has filed the present petition. The only argument raised by the learned Counsel for the petitioner is that the Additional Sessions Judge, Tarn Taran had specifically held that the prosecution has failed to prove the fact that the petitioner was working as a public servant at the relevant time. He was found to be working as a salesman, therefore, the first requirement of Section 409 of IPC is that the petitioner must be working as public servant which fact is lacking in the present case. Thus, the petitioner should be acquitted of the charge even of Section 408 IPC.

4. Section 408 IPC reads as under:

408. Criminal breach of trust by clerk or servant Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

5. As per Section 408 IPC, two ingredients are necessary, which are (i) entrustment of property of which the accused is duty bound to account for; and (ii) committal of criminal breach of trust.

6. From the evidence on record, a finding was duly recorded that petitioner was working as a salesman of the Corporation- PUNSUP and was given entrustment of the property in his capacity as a salesman of the Corporation. Thus, even though the petitioner was not found to be a public servant, being a salesman of the Corporation, he satisfies the ingredients of Section 408 IPC and not Section 409 IPC. Accordingly, there is no merit in the argument raised by the learned Counsel for the petitioner.

7. Moreover, this is a revision petition. The petitioner has been found guilty of embezzlement and as such, no clarification/modification in the order, releasing the petitioner on probation is required.

8. No merit.

9. Dismissed.