(1999) 08 P&H CK 0127

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 41 of 1988

Amar Chand APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 23-08-1999

Acts Referred:

Citation : (2000) 4 AICLR 103 : (2000) 1 RCR(Criminal) 188

Hon'ble Judges : Bakhshish Kaur, J

Advocate : Somesh Ojha, I. P. S. Sidhu, Advocates for appearing Parties

Judgement

Bakhshish Kaur, J.

1. Amar Chand, petitioner, Cashier of Income Tax Department was convicted and sentenced under Sections 409, 468 and 471 Indian Penal Code by the trial Court. His conviction was upheld, but the sentence was reduced by the learned Additional Sessions Judge, Ludhiana. Aggrieved by that, the petitioner has preferred this criminal revision.

2. It is alleged that Shri L. P. Dhir, Inspecting Assistant Commissioner of Income Tax (Central) RangeI, Ludhiana, vide his Letter Exhibit PW7/E dated April 10, 1981 complained against Amar Chand, accusedpetitioner, that while he was posted as Cashier from April 1, 1980 to January 31, 1981, he had committed irregularities and illegalities, which amounted to forgery, falsification of accounts and misappropriation of Rs. 9,200/, as detailed by Amar Chand, accusedpetitioner, in his statement dated April 4, 1981 and reply to show cause notice dated April 9, 1981. The first information report, Exhibit P2 was registered against the accusedpetitioner and he was challaned to face the trial.

3. A prima facie case under sections 409, 468 and 471, Indian Penal Code was made out against the petitioner. He claimed to be tried after not pleading guilty to the charge.

4. The Courts below came to the concurrent findings that the petitioner had

committed offence punishable under sections 409, 468 and 471, Indian Penal Code and convicted him on different counts, but on appeal, his sentence was reduced by the learned Additional Sessions Judge, i.e only under section 409, Indian Code, it was reduced to one year and to pay fine of Rs. 2000/. The sentence awarded under sections 468 and 471, Indian Penal Code, was, however, maintained.

5. I have heard Mr. Somesh Ojha, counsel appearing for the petitioner and Mr. I.P.S. Sidhu, representing the State of Punjab.

6. The prosecution mainly relied on the statement made by Amar Chand, wherein he had admitted his guilt before the senior Officer. Vide Exhibit PW7/A dated April 4, 1981, he had allegedly misappropriated Rs. 9200/. Exhibit PW7/B is a Showcause Notice served upon the petitioner and reply/explanation to the same is Exhibit PW/C. This piece of evidence was found to be conclusive evidence for the purpose of recording conviction against the petitioner, but I am of the considered view that these documents are not enough to put the person behind the bars or to curtail his liberty particularly when the evidence brought on the record is otherwise and this fact is reflected from the observations made by the learned Additional Sessions Judge in his judgment under Para 11 and the same is reproduced as under :

"....... ....

It is true that no direct and independent evidence to connect the appellant with the offence was collected by the Investigator except for the confessional statement and explanation of the appellant so that relevant questions as to what value could be attached to Ex. PW7/A and PW7/C in the absence of any independent evidence of corroboration of this admission of the appellant. ...."

7. Again under para 1 it was observed by the learned Additional Sessions Judge as under :

"Shri Vinod Kumar Gupta then pointed out that balance cash in hand on 22.12.1980 in CashBook Ex. P.4 was Rs. 7902/25 and there was no cash transaction on 2324/12/1980, but in statement Ext. DA at page 57, Shri Dhir had confirmed the cash balance of Rs. 7888/. Further, Shri Dhir admitted that each and every cash entry used to be signed by the superior officer or Head Clerk deputed by him as he himself was a busy officer. Since cash book entries of Ext. P.4 were not initialled by supervisor or the Head Clerk and only totals have been verified at the close of the cash entries, Shri Gupta submitted that this circumstance, together with variance in entries of P4 and D.A. regarding cash in hand on 2324/12/1980 prove that Ex. P.4 was got prepared by Shri Dhir from the appellant within two days."

8. With this background, it can be easily concluded that other officers were equally responsible for the lapses. Therefore, extreme penalty could not be

imposed upon the petitioner. The statement made by the petitioner himself Exhibit PW7/A and Exhibit PW7/C having been made voluntarily without any undue influence or pressure, do stand in his way and he could not be absolved of his liability and he is not innocent as he is portraying himself. Thus, the conviction recorded by the Courts below, is however, maintained.

9. On the question of sentence, it is a fit case where sentence should be reduced. The petitioner is facing the agony of trial. The present case was registered against him in the year 1982. He remained in Jail for nearly two months. Thus, the sentence awarded to the petitioner on different counts is reduced to the one already undergone, With this modification in the sentence, the Criminal Revision stands disposed of.