

**SUPREME COURT OF INDIA**

Jan Mohamad

Vs.

State of Haryana

CrI.A.No.1626 of 2018

(Abhay Manohar Sapre and Indu Malhotra,JJ.,)

14.12.2018

**JUDGMENT**

**Abhay Manohar Sapre,J.,**

SLP(CrI.)No.9837 of 2018

1. Leave granted.
2. This appeal is filed against the final judgment and order dated 25.10.2017 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Revision No.667 of 2009 whereby the High Court dismissed the revision petition filed by the appellant herein.
3. Few facts need mention hereinbelow for the disposal of this appeal.
4. The appellant was prosecuted and eventually convicted for the offence punishable under Section 409 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and was sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 15,000/- and in default thereof, to further undergo rigorous imprisonment for 3 months.
5. Aggrieved by the said judgment, the appellant filed appeal before the Additional Sessions Judge, Gurgaon but it was dismissed. The appellant then filed revision petition in the High Court, which was also dismissed by the impugned order which gives rise to filing of the present appeal by way of special leave by the accused (convict) in this Court.
6. In short, the case of the prosecution was that the Haryana Roadways had employed the appellant in its services. He was working as a driver and was posted, at the relevant time, in its Sub-Depot, Ferozpur Jhirka.
7. In the year 1999, there was a charge against the appellant of embezzling 85 liters of diesel, which was actually meant for being filled in the passenger bus but was not so filled in the bus by the appellant.

8. This embezzlement was detected by the officials, which led to filing of the charge sheet against the appellant in the Criminal Court for commission of offences punishable under Sections 420, 409 and 120-B IPC. As mentioned above, the appellant was convicted and was awarded sentence accordingly.

9. During the pendency of trial and thereafter conviction by the Trial Court and the High Court, the appellant was in Jail from 24.11.1999 to 12.01.2000, from 24.02.2009 to 21.12.2009 and then again from 16.07.2018 till date (see certificate page 57 of SLP paper book).

10. It is not in dispute that the appellant is now in his late sixties and no longer in service. He is also ailing. It is also not in dispute that he was not involved in any other criminal activity during his entire service tenure except the case at hand which relates to the year 1999 and now we are in 2018.

11. Keeping the aforementioned facts in mind though we are inclined to uphold the appellant's conviction finding no case to interfere in the same being concurrent in nature but feel inclined to interfere in the quantum of sentence awarded to the appellant.

12. We accordingly consider it just and proper and in the interest of justice to reduce the appellant's jail sentence to "what the appellant has undergone till date and enhance the fine amount from Rs. 15,000/- to Rs. 25,000/-".

13. In other words, the appellant is now awarded jail sentence of what he has undergone till date and enhance fine amount from Rs.15,000/- to Rs. 25,000/-.

14. In case, the appellant deposits an amount of Rs.25,000/- after adjusting the fine amount he has already paid then he is not required to undergo any jail sentence.

15. Failure to deposit the fine amount of Rs.25,000/- will result in appellant undergoing further jail sentence of 3 months.

16. With this modification in the sentence and the award of fine amount, the appeal is allowed in part and the impugned order is modified to the extent indicated above.