

Ram Kishan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-10-1990

Reported in : 1992CriLJ951

Judge : I.S. Israni, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 408

Appeal No. : Criminal Revn. Petn. No. 95 of 1990

Appellant : Ram Kishan

Respondent : State of Rajasthan

Advocate for Def. : Sumitra Goyal, Public Prosecutor

Advocate for Pet/Ap. : S.K. Jain, Adv.

Judgement :

ORDER

I.S. Israni, J.

1. This S.B. Criminal Revision has been filed against the judgment dt. June 23, 1990, passed by learned Additional Sessions Judge, Bundi, in Criminal Appeal No. 24/1990, viz. Ram Kishan v. State, by which the appeal was allowed partly and the sentence was reduced to three months R.I. and a fine of Rs. 250/-, in default of

payment of which the petitioner had to further undergo 15 days R.I. This arose out of the judgment of learned Chief Judicial Magistrate, Bundi, which was delivered on 18-1- 1986, in Criminal Case No. 313/1976, State v. Ram Kishan.

2. The petitioner was working as Salesman in Upbhokta Whole Sale Bhandar Ltd., Bundi when he was alleged to have committed an offence of embezzlement of Rs. 13,868.16 p. on account of shortage of stock on different counts. This was pointed out in audit report. He was charged under Section 408, I.P.C. The learned Chief Judicial Magistrate, Bundi, disbelieved the major part of the prosecution story but found the accused petitioner guilty to have committed embezzlement of an amount of Rs. 401.50 p. only. The appeal was heard by learned Additional District and Sessions Judge, Bundi, who partly allowed the appeal and while maintaining the conviction, reduced the sentence as indicated above.

3. Keeping in view the scope of the revision, learned counsel gives out that he does not want to press the revision on merits but pointed out that the incident took place as early as in 1976 and the petitioner has undergone protracted trial for all these years. He is found guilty of having committed embezzlement of petty amount of Rupees 401.50 p. for which he has lost his job and has also undergone the turbulations of the litigation for such a long time. The learned counsel has placed reliance on Brij Mohan v. State of Rajasthan, (1985) 2 WLN 47, which was also a matter under Section 408, I.P.C. In this matter, the petitioner was convicted and sentenced to imprisonment for two years and his appeal was dismissed. In revision, while considering the whole matter, it was held by this Court that the offence relates to year 1965-66 and the fact that the petitioner is having a large family and his daughter is to be married in the next month, if he is sent back to jail to undergo the sentence of imprisonment awarded to him it would be harsh and most unreasonable. In the circumstances, the sentence was reduced to already undergone, which was 24 days.

4. There is no doubt that the amount said to have embezzled by the petitioner is very small and the incident arose in the year 1976. Fourteen long years have been passed and he has been facing several courts and trials. Before filing this revision petition he has surrendered and is in jail since 23rd June, 1990. It is also pointed

by the learned counsel even earlier before the bail was granted to the petitioner, he had also remained in custody for few days.

5. I have heard learned Public Prosecutor on the point of sentence. Keeping in view all the facts and circumstances as stated above, I am of the opinion that the ends of justice would be met if the sentence is reduced to the period already undergone.

6. It is, therefore, directed that the sentence of the petitioner is reduced from three months to the sentence already undergone. The fine of Rs. 250/- is maintained and the petitioner shall deposit the same within a period of thirty days. If he does not deposit the fine within a period of thirty days the petitioner shall undergo the remaining part of the sentence as awarded by the appellate court.

7. The petition is disposed of.