



CRL.RP No. 856 of 2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRL.R.P. No. 856 OF 2014

BETWEEN:

SRI HANUMANTHRAO

...PETITIONER

(BY SRI M.B. CHANDRACHOODA, ADV.)

AND:

THE STATE OF KARNATAKA
KRISHNARAJ PET POLICE STATION
KRISHNARAJ PET, MANDYA DISTRICT
REP. BY PUBLIC PROSECUTOR.

...RESPONDENT

(BY SMT. RASHMI JADHAV, HCGP)

THIS CRL.R.P. IS FILED U/S.401 CR.P.C PRAYING TO SET ASIDE THE ORDER DATED:10.9.14 PASSED IN CRL.A.NO.52/09 ON THE FILE OF THE II ADDL. S.J., MANDYA AND ORDER DATED:8.4.2009 PASSED IN C.C.NO.178/1998 ON THE FILE OF THE A.C.J. (JR.DN.) AND JMFC, KRISHNARAJPET.

THIS PETITION, COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This criminal revision petition under Section 397 read with Section 401 Cr.PC. is filed by the sole accused challenging the judgment and order of conviction and sentence dated



08.04.2009 passed by the Addl. Civil Judge & JMFC, K.R.Pet, in C.C.No.178/1998 and the judgment and order dated 10.09.2014 passed by the II Addl. Sessions Judge, Mandya, in CrI.A.No.52/2009.

2. Heard the learned Counsel for the petitioner and the learned HCGP for the respondent-State.

3. Facts leading to filing of this revision petition narrated briefly are, on the complaint of CW-1 - C.S.Muthanna, the then District Treasury Officer, Mandya, a case in Crime No.41/1987 was registered by the jurisdictional police against the petitioner herein for the offences punishable under Sections 409 & 477A of IPC. It is alleged in the said case that the petitioner who was working as an officer in the State Treasury, K.R.Pet, during the course of his duty for the period from 21.11.1981 to 05.01.1987 had misappropriated a sum of Rs.54,200/- payable towards widow pension. This misappropriation done by the petitioner was found out during audit inspection and immediately thereafter, notice was issued to the petitioner calling upon him to repay the misappropriated amount on or before 31.01.1987. Thereafter, the said amount was recovered from the petitioner's salary and a criminal complaint was also



lodged against the petitioner, which had resulted in registration of Crime No.41/1987. The police after investigation in the said case had filed charge sheet against the petitioner for the aforesaid offences.

4. In the said proceedings, the petitioner had appeared before the Trial Court and pleaded not guilty. Therefore, the prosecution to prove its case had examined 24 witnesses as PWs-1 to 24 and got marked 138 documents as Exs.P-1 to P-138. The petitioner had denied the incriminating circumstances available against him on record during the course of his statement under Section 313 Cr.PC and in support of his defence, he had examined one witness as DW-1 and also had got marked three documents as Exs.D-1 to D-3. The Trial Court, thereafter, vide its judgment and order dated 08.04.2009 convicted the petitioner for the offences which he was charged and sentenced him to undergo simple imprisonment for a period of one year and pay fine of Rs.3,000/- for the offence punishable under Section 409 IPC and in default of payment of fine amount, he had to undergo further simple imprisonment for a period of six months, and for the offence under Section 477A IPC, the petitioner was



sentenced to under go simple imprisonment for a period of one year. The appeal filed by the petitioner against the said judgment and order of conviction and sentence in Crl.A.No.52/2009 was dismissed by the Appellate Court on 10.09.2014. It is under this factual background, the petitioner is before this Court in this revision petition.

5. Learned Counsel for the petitioner fairly submits that the petitioner does not challenge the order of conviction passed by the courts below seriously. He submits that the petitioner is aged about 80 years and he is suffering from various ailments. He also submits that the misappropriated amount of Rs.54,200/- has been recovered in the year 1987 itself. He submits that the petitioner is a retired Government servant and a first offender, and therefore, leniency may be shown by reducing the sentence imposed on him by the courts below. In support of his arguments, he has placed reliance on the judgment in the case of **STATE OF H.P. VS KARANVIR - AIR 2006 SC 2211.**

6. Per contra, learned HCGP for the respondent has argued in support of the impugned judgment and order of conviction and sentence and submits that the petitioner who is



a Government servant has misappropriated public funds, and therefore, he is not entitled for any leniency, and accordingly, she prays to dismiss the petition.

7. I have carefully considered the arguments addressed on both sides and also perused the material available on record.

8. The only prayer made by the petitioner is to consider his case for reducing the sentence imposed by the courts below for the offences for which he has been convicted on the ground that he is aged about 80 years now and the amount misappropriated by him has been already recovered in the year 1987 itself. It is also his case that he is a first offender and there are no criminal antecedents.

9. In Karanvir's case supra, wherein the accused who was a Postmaster was convicted for the offence punishable under Section 409 IPC, and the allegation against him was that he had misappropriated the public money, the Hon'ble Supreme Court considering the fact that the accused was aged about 60 years and the offences were committed about 15 years back, had reduced the sentence imposed by the courts below and had



imposed fine on the accused without substantial punishment. In paragraphs 16 & 17 of the said judgment, the Hon'ble Supreme Court has observed as under:

"16. The question, however, would now arise as to whether in the facts and circumstances of this case, the respondent should be sent back to jail. The respondent is aged about 60 years. The offence is said to have been committed 15 years back. He was arrested by the police. He might have been in custody for some time.

17. Having regard to the peculiar facts and circumstances of this case and keeping in view the fact that the respondent had deposited the entire amount before the First Information Report was lodged, we are of the opinion that the interest of justice would be subserved if any substantial punishment is not awarded. Accordingly, we impose a fine of Rs.4,000/- upon the respondent, which will be apart from the amount of fine of Rs. 1,000/- imposed by the learned Trial Judge. It is directed that in default of the payment of the said amount, the respondent shall undergo simple imprisonment for three months. The appeal is thus allowed."

10. In the present case, the petitioner is aged about 80 years and the alleged crime was committed in the year 1987. Therefore, the alleged offence is said to have been committed by the petitioner 36 years back. It is not in dispute that the



petitioner is a first offender and there are no criminal antecedents against him. He is a retired Government servant. Taking all these aspects into consideration and also in the background of the judgment of the Hon'ble Supreme Court in Karanvir's case supra, I am of the view that this is a fit case wherein this Court is required to take a lenient view while sentencing the petitioner, more so having regard to the peculiar facts and circumstances of the case. Accordingly, the following order:

11. The criminal revision petition is allowed in part. The judgment and order of conviction passed by the courts below convicting the petitioner for the offences under Sections 409 & 477A of IPC is upheld. The order of sentence passed by the courts below against the petitioner for the said offences is modified and the petitioner is sentenced to undergo simple imprisonment till the rising of the court and to pay fine of Rs.10,000/- for the offence under Section 409 IPC and in default to undergo simple imprisonment for a period of three months. For the offence under Section 477A of IPC, the petitioner is sentenced to pay fine of Rs.10,000/- and in default to undergo simple imprisonment for a period of three months.



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The fine amount shall be deposited by the petitioner before the Trial Court within four weeks from the date of receipt of the certified copy of this order.

**Sd/-
JUDGE**

KK

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