

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-239-2011
Date of Decision: January 31, 2024

Raj Kumar
.....Petitioner

Versus

Veerbhan and another
.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Kumar, Advocate for
Mr. T.C. Dhanwal, Advocate
for the petitioner

Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 28.10.2010 passed by learned Additional Sessions Judge, Bhiwani vide which judgment of conviction and order of quantum of sentence dated 01.03.2008 and 03.03.2008 respectively passed by the Judicial Magistrate 1 st Class, Bhiwani in Criminal Complaint No. 190 of 1998 filed under Sections 420, 34 of the IPC was upheld. The petitioner was sentenced as under: -

Offence	Sentence
Section 420 IPC	Rigorous imprisonment for 3 years and a fine of Rs. 2000/-, in default of which simple imprisonment of 30 days.

FACTUAL BACKGROUND

2. The facts, in brief, are that the respondent No. 1- complainant filed a criminal complaint under Sections 420, 34 IPC with the allegations that the

petitioner-accused on the basis of 'jamabandi' (land revenue records) for the year 1995-96 had defrauded respondent No. 1 by representing himself as the owner of the land, measuring 8 kanals (khewat No. 127 min Khatoni No. 220 Killa No. 62/13), on the basis of which he obtained Rs. 50,000/- from respondent No. 1. Resultantly, a mortgage deed was executed. When respondent No. 1 approached the Revenue Authority for mutation, he discovered that the petitioner was not the owner of the agricultural land as mentioned in the land revenue records. In fact, the land in question was owned by the government.

3. After recording preliminary evidence, learned trial Court concluded that a prima facie case is made out against the petitioner and the co-accused (who was later acquitted) and both were summoned to answer to the allegations under Section 420 read with Section 34 of the IPC. Charge-sheet under Section 420 read with Section 34 IPC was framed against the petitioner and the co-accused to which they pleaded not guilty and claimed trial.

4. Respondent No. 1 examined as many as 3 witnesses to prove his case. Thereafter, the statement of the petitioner under Section 313 of the Code of Criminal Procedure was recorded, wherein the petitioner pleaded false implication and claimed innocence. The petitioner-accused examined one witness in his defence.

5. On the basis of all the material available on record, the petitioner was convicted by the learned trial Court vide judgment dated 01.03.2008. Aggrieved by the same, the petitioner preferred an appeal before the Lower Appellate Court, which was dismissed vide judgment dated 28.10.2010.

CONTENTIONS

6. Learned counsel for the petitioner contends that he is not assailing

the impugned judgment of conviction dated 01.03.2008 on merits and restricts his prayer to modification of the order of quantum of sentence dated 03.03.2008 to that of the sentence already undergone by the petitioner as he has already undergone a period of 6 months and 7 days in custody.

7. Learned counsel for the petitioner further submits that the petitioner has reformed and intends to live his life as a law-abiding citizen.

8. Per contra, learned State counsel opposes the prayer of the petitioner as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned lower Appellate Court, and as such, he does not deserve any leniency. Moreover, the learned State counsel contends that the petitioner is undergoing trial in 4 other cases.

OBSERVATIONS AND ANALYSIS

9. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

10. In *Deo Narain Mandal v. State of UP (2004) 7 SCC 257*, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is

neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in *Ravada Sasikala v. State of AP AIR 2017 SC 1166*, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused. In order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

11. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner are tabulated as under: -

Sr No.	Particulars	Period	Duration
1.	Custody under trial	16/10/2007 to 13/11/2007	19 days
2.	Custody after conviction	28/10/2010 to 15/04/2011	5 months 18 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	28/10/2010 to 15/04/2011	5 months 18 days
5.	Actual undergone period	16/10/2007 to 13/11/2007 and 28/10/2010 to 15/04/2011	6 months 07 days
6.	Earned remission	-	-
7.	Total sentence including remission	16/10/2007 to 13/11/2007 and 28/10/2010 to 15/04/2011	6 months 07 days

12. A perusal of the judgment of conviction passed by the trial Court and the Lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Counsel for the petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

13. The criminal complaint in the present case was filed in the year 1998. The petitioner is facing agony of a protracted trial, which has lasted for approximately 25 years. Out of the total sentence of 3 years under Section 420 IPC, the petitioner has undergone actual sentence of 6 months and 7 days. Accordingly, this Court is of the opinion that it would be in the interest of justice if the sentence awarded to the petitioner is reduced to the period already undergone by him.

14. Consequently, the present revision is disposed of in the following terms: -

(i) The judgment dated 28.10.2010 passed by the learned Additional Sessions Judge, Bhiwani confirming the conviction of the petitioner is upheld, however, the order of sentence dated 03.03.2008 is modified to the extent that the sentence of rigorous imprisonment for 3 years under Section 420 IPC awarded to the petitioner is reduced to the period of sentence already undergone by him.

(ii) The sentence of fine of an amount of Rs. 2000/- imposed upon the petitioner by the trial Court is increased to Rs.10,000/-. The petitioner is directed to deposit the said increased amount of fine in

the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioner shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

17. Pending miscellaneous application(s), if any, shall also stand disposed of.

January 31, 2024

reena

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No