

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3990-2012

Date of Decision: 08.02.2024

Subhash Kataria Petitioner
Versus
State (Union Territory of Chandigarh) Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ish Karan Singh Chhabra, Advocate
for Mr. A.D.S. Sukhija, Advocate
for the petitioner.

Mr. Rajiv Vij, Additional P.P., U.T. Chandigarh.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 07.12.2012 passed by learned Sessions Judge, Chandigarh vide which judgment of conviction dated 02.03.2009 passed by Judicial Magistrate Ist Class, Chandigarh in FIR No. 169 dated 03.07.2000 under Section 11 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971(hereinafter ‘the Act’) registered at Police Station South Chandigarh was upheld and the order of quantum of sentence was modified. The petitioner was sentenced as under:-

Offence	Sentence
Section 11 of the Act	Simple imprisonment of 3 months and a fine of Rs. 1000/-, in default of which simple imprisonment of 1 year

CRR-3990-2012

FACTUAL BACKGROUND

2. The facts, in brief, are that the petitioner was leased plot no. 471, Sector 32, Chandigarh in an open auction held on 20.12.1995. He paid 25% of the premium and an allotment letter was issued to him on 20.01.1976. However, the petitioner failed to pay any installments thereafter. Consequently, the lease was cancelled on 03.07.1978 under Rule 20 of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973. The matter was referred to the Estate Officer for initiating eviction and a notice under Section 4 of the Act was issued to the petitioner. On 14.05.1981, eviction order under Section 5(i) of the Act was issued and eviction was effected. Thereafter, on 16.03.1982, Naib Tehsildar P.L. Pathak sealed the house of the petitioner. The petitioner broke the seal and illegally entered the premises. The appeal preferred by the petitioner before Chief Administrator, Chandigarh was dismissed as was the revision petition he preferred before the Advisor to the Administrator.

3. The instant FIR was lodged on the complaint moved before SSP, U.T. Chandigarh by Ashish Kundra, IAS, Land Acquisition Officer-cum-Sub Divisional Magistrate. The prosecution examined as many as 4 witnesses to prove its case. All incriminating evidence was put to the petitioner-accused in his statement recorded under Section 313 of Cr.P.C. wherein he pleaded false implication and claimed innocence, however, he did not lead any evidence in his defence.

5. On assessing all material available on record, the petitioner was convicted by the learned trial Court vide judgment dated 02.03.2009. Aggrieved by the same, the petitioner preferred an appeal before the lower Appellate Court, which was partly allowed vide judgment dated 07.12.2012 as

the judgment of conviction was upheld but order of sentence was modified to

CRR-3990-2012

simple imprisonment of 3 months for commission of offence under Section 11 of the Act. The sentence of the petitioner was suspended by this Court during the pendency of the present petition vide order dated 19.12.2012.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 02.03.2009 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioner as has already undergone a period of 14 days of custody. No other case is pending against him prior to the registration of the present complaint and he has not been involved in any other criminal case after suspension of his sentence in the present case by this Court vide order dated 19.12.2012.

6. 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. The sentence of the petitioner has already been reduced by the learned lower Appellate Court and as such, he does not deserve any leniency.

OBSERVATIONS AND ANALYSIS

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

8. 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

CRR-3990-2012

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 of the Hon’ble Supreme Court 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.

9. 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	-	-
2.	Custody after conviction	07.12.2012 to 20.12.2012	14 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	07.12.2012 to 20.12.2012	14 days
5.	Actual undergone period	07.12.2012 to 20.12.2012	14 days

6.	Earned remission	-	-
7.	Total sentence including remission	07.12.2012 to 20.12.2012	14 days

10. A perusal of the judgment of conviction passed by the learned trial Court and the learned lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Learned 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

11. The FIR in the present case was lodged on 03.07.2000 and since his conviction, the petitioner has grown into a law-abiding citizen and desires to live a peaceful life. He is not involved in any other criminal activity after his conviction in the present case and during the pendency of the present revision. As per his custody certificate, there are no other criminal cases pending against him. Out of the total sentence of 3 months, he has undergone actual sentence of 14 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of simple imprisonment of 3 months awarded to the petitioner is reduced to the period already undergone by him.

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

- (i) The judgment dated 07.12.2012 passed by the learned Sessions Judge, Chandigarh confirming the conviction of the petitioner is upheld, however, the order of sentence is modified to the extent that the sentence of simple

imprisonment for 3 months along with default mechanism 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.1000/- imposed upon the petitioner by the trial Court is increased to Rs.10,000/-. The petitioner is directed to deposit the 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.

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

February 08, 2024
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |