

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRA-S-4371-SB-2013
Date of decision:21.7.2015**

Dharminder Kumar and another

...Appellants

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Sunil Chadha, Sr. Advocate with
Mr.Rahul Bhargav, Advocate for the appellant No.1.

Mr. K.D.Sachdeva, Addl. A.G., Punjab.

Mr.Vaibhav Narang, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

The instant appeal is directed against the impugned judgment of conviction and order of sentence of even date, i.e. 26.11.2013 passed by the learned Additional Sessions Judge, Jalandhar, whereby appellants were convicted for the offences under Sections 306/34 of the Indian Penal Code and were sentenced accordingly, to undergo for a period of 5 years' RI, besides payment of fine of Rs.5,000/-.

The appeal was admitted vide order dated 13.12.2013 and notice regarding suspension of sentence was issued for 20.1.2014. Thereafter, vide order dated 20.1.2014, sentence of the appellants was suspended.

During the pendency of the appeal, parties arrived at an amicable settlement vide compromise dated 1.4.2014, which was sought to

be placed on record as Annexure A-1 by way of CRM-25771-2014 and for disposal of the appeal, in view of the said compromise. The complainant was also impleaded as party-respondent No.2 vide order dated 24.9.2014 passed by this Court and appeal was taken up on board for disposal.

Notice was issued to the complainant-respondent No.2 as well as to the State. On service of respondent No.2-complainant, learned counsel on his behalf appeared and sought time for filing reply, which was filed by way of CRM-34973-2014. Thereafter, vide order dated 9.3.2015 passed by this Court, parties were directed to appear before the learned Chief Judicial Magistrate, Jalandhar, for getting their statements recorded, in view of the compromise arrived at between the parties. In this regard, report dated 7.4.2015 has been received and the learned Chief Judicial Magistrate, Jalandhar has recorded his satisfaction, about the genuineness of the compromise.

During the pendency of appeal, appellant No.2-Manoj Kumar passed away and the present appeal survives only qua appellant No.1-Dharminder Kumar.

Learned senior counsel for appellant No. 1 submits that in view of the compromise arrived at between the parties, which has been found to be a genuine one, instant appeal deserves to be allowed. He further submits that he does not intend to press this appeal on merits and let the conviction of the appellant be upheld, reducing his sentence to the period already undergone by him. In support of his contention, learned senior counsel for the appellant places reliance on the judgments in **Ramesh Kumar v. State of Chhattisgarh, 2001 (9) SCC 618**, **S.S.Chheena v. Vijay Kumar Mahajan & another, 2010 (12) SCC 190**, **Narinder Singh and others v.**

State of Punjab and another, 2014 (2) RCR (Crl.) 482 (SC), Sudo Mandal @ Diwarak Mandal v. State of Punjab, 2011 (2) RCR (Crl.) 453, Sucha Singh and others v. State of Punjab and another 2011 (7) RCR (Crl.) 2546, Sham Lal and another v. State of Punjab and another, 2012 (8) RCR (Crl.) 432, Sube Singh and another v. State of Haryana and another, 2013 (4) RCR (Crl.) 102, CRR-1407-2002 (Naresh v. State of Haryana), decided on 3.9.2002 and CRM-M-37594-2014 (Davinder Singh v. State of Punjab and another), decided on 27.1.2015. Highlighting the mitigating circumstances in favour of the appellant, learned senior counsel for the appellant submits that appellant No.1 has been facing the agony of criminal trial for a long period. He also submits that out of the total sentence awarded to the appellant for a period of 5 years' RI, he has already undergone for a period of 7 months and 8 days. Further, since the matter has been amicably settled between the parties, sentence of appellant No.1 deserves to be reduced to the period already undergone by him. He prays for allowing the present appeal, to the limited extent indicated above.

Learned counsel for respondent No.2 supports the contentions raised by the learned senior counsel for appellant No.1 and submits that respondent No.2-complainant has got no objection in case the present appeal is allowed. However, learned counsel for the State opposes the prayer made by the learned senior counsel for appellant No.1 and prays for dismissal of the instant appeal.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered

opinion that it is just and expedient to reduce the sentence of appellant No.1 to the period already undergone by him, while upholding his conviction. It is so said, because out of the total sentence awarded to appellant No.1 for 5 years' RI, he has already undergone for a period of 7 months and 8 days. Further, since the matter has been amicably settled between the parties, sentence of appellant No.1 deserves to be reduced to the period already undergone by him.

The above-said view taken by this Court also finds support from the judgment of Hon'ble the Supreme Court in **Braham Dass v/s State of Himachal Pradesh 1988 (2) RCR (Criminal)**. The relevant observations made by Hon'ble the Supreme Court in **Braham Dass's case** (supra), which can be gainfully followed in the instant case, read as under:-

“6. Coming to the question of sentence, we find that the appellant had been acquitted by the trial court and the High Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the court should take strict view of such matter.”

In another case titled as “**Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723**,” the Hon'ble Supreme Court observed as under:-

“After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16 (1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High

Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents.

2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.”

An identical question fell for consideration before this Court in **Des Raj v/s State of Haryana 1996(1) RCR (Crl.) 689**. The relevant observations made in para 9 of the judgment, aptly apply here and the same read as under:-

“9. Now, it is well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights are not a teasing illusion to be mocked at. These are meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that the speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. This is how the Courts shall understand this right, and have gone to the extent of quashing the prosecution after such inordinate delay in concluding the trial

of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 8 years or more without any case at all cannot be with the spirit of the procedure established by law. It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extra-ordinary jurisdiction.”

Reverting back to the fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the judgments, referred to hereinabove, coupled with the reasons aforementioned, conviction of appellant No.1 is upheld. However, his sentence is ordered to be reduced to the period already undergone by him.

Resultantly with the above-said modification in the impugned judgment, the instant criminal appeal stands partly allowed, to the extent indicated above.

Disposed of, accordingly.

21.7.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE