

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR No. 2055 of 2002

Date of decision: 05.08.2015

Usman

-----Petitioner (s)

V/s

State of Haryana

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Tara Chand, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J(Oral).

The petitioner has filed the present revision petition against the judgment dated 18.09.2002, whereby, his appeal against the judgment of conviction dated 29.03.2000 and order of sentence dated 30.03.2000 passed by the learned Sub Divisional Magistrate, Nuh, convicting and sentencing him to undergo rigorous imprisonment for a period of 03 years and to pay a fine of ₹5,000/- and in default payment of fine, he is ordered to undergo simple imprisonment for a period of two months for the commission of an offence punishable under Section 411 IPC.

Briefly stated, the First Information Report was registered on receipt of letter dated 09.05.1998 on the basis

of complaint made by Shri. I.K. Khurana, Asstt. Engineer, Mining Department. As per prosecution case, when Allalpur stone mine was inspected by the complainant in the company of Sh. Virender Singh, Mining Inspector, Shri Balbir Singh, Mining Guard and Shri Shanti Sarup, Mining Guard, while coming back from the Allalpur hill, a truck bearing registration No.HRR-5791 was checked which was fully loaded with stones. Allalpur hill was not given on lease to anyone by the Mining Department and, therefore, the driver of the truck was asked to come to the police station but he misbehaved with the mining guards who were accompanying the complainant and after leaving behind the truck ran away from the spot.

After recording the aforesaid FIR, investigation was conducted and report, as per under Section 173 of Cr.P.C. was submitted.

The accused were supplied the copy of the police report under Section 173 Cr.P.C., as provided under Section 207 Cr.P.C. On the basis of the material available before the trial Court, the charges were framed for the commission of offence punishable under Section 411 IPC.

The learned trial Court, vide judgment dated 29.03.2000, has found that the petitioner guilty for an offence under Section 411 IPC and was convicted and sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of ₹5,000/- and in default payment of fine, the petitioner is ordered to undergo simple imprisonment for a

period of two months for the commission of an offence punishable under Section 411 IPC.

Against the judgment dated 29.03.2000, revision petitioner filed an appeal. The Addl. Sessions Judge, Gurgaon, vide his judgment dated 18.09.2002 dismissed the appeal, however, reduced the sentence of imprisonment and modified the sentence of imprisonment from three years to one year. It is the aforesaid judgment which is the subject matter of challenge by way of present criminal revision petition.

Learned counsel for the petitioner submits that the petitioner is the first time offender and is suffering the agony in the present case for the last about 17 years. Moreover, the alleged recovered material is easily available in the market and there was no specific mark of identification. Hence, there was no intention on the part of the revision petitioner to receive the stolen property.

The argument of learned counsel for the petitioner does not carry any force. PW-1 to PW-3 have identified the recovery of materials i.e. stones, therefore, there is no ambiguity as regards the recovery of material is concerned. The petitioner is the receiver of the stolen property.

Considering the fact that the reversional jurisdiction of this Court is very limited and while acting as a revisionary Court, this Court is not reappraise and reappraise the evidence until and unless, it comes to the conclusion that the findings recorded by the trial Court are perverse, illegal and erroneous on account of misreading of

evidence. The courts below while replying upon the cogent and convincing evidence of prosecution witnesses, were right in coming to the conclusion that the prosecution had proved its case against the accused beyond a reasonable shadow of doubt.

Both the courts below have found the evidence of prosecution not only the convincing but reliable and the offence have been proved by oral as well as by a documentary evidence. However, there does not find any illegality or fault with the judgments of conviction passed by the trial Court and the appellate Court.

However, considering the contention of learned counsel for the petitioner that the revision-petitioner is the first time offender and has been facing the agony of trial since the year 1998 i.e. about 17 years, it has been argued that that the revision-petitioner should be extended the benefit of probation under the Probation of Offenders Act, 1958 (for brevity "the Act"), or the sentence awarded to the revision-petitioner be reduced to the period already undergone by him. It is relevant to mention here that, as against the modified sentence of one year, the petitioner remain in custody for the period of seven months.

I have considered all the facts and circumstances of the case. There is no dispute that the petitioner is facing the agony of trial for the last about 17 years and considering the fact that he is the first time offender and the offence punishable under Section 411 is punishable with

imprisonment, which may extend to three years only, I feel that the benefit of probation under the Act, be extended to him.

In support of his contention learned counsel for the petitioner relied upon the judgment of this Court in the case of **Krishan Singh Vs. State of Punjab**, reported as **2010 (1) R.C.R. (Criminal) 764**, as well as the judgment of Apex Court in the case of **Chandreshwar Sharma Vs. State of Bihar**, reported as **SCC 245(1) 2000(2) JT 36**.

Accordingly, order of sentence passed by the Courts below sentencing the present revision-petitioner to undergo rigorous imprisonment for a period of one year, is set aside. Instead of sentencing the accused to imprisonment, it is, hereby ordered that he be released on probation for a period of one year, subject to his furnishing bail bonds in the sum of ₹10,000/- with one surety in the like amount to the satisfaction of the concerned Chief Judicial Magistrate with undertaking to maintain peace and be of good behaviour during the said period and be called upon to receive sentence in case of breach of any condition of the bond.

Therefore, except modification in the quantum of sentence as aforementioned, the present revision petition is hereby dismissed.

August 05, 2015
Anjal

(HARI PAL VERMA)
JUDGE