

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1383-2007

Date of decision: 13.05.2015

Pritam Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. C.M. Munjal, Advocate
for the petitioner.

Mr. Daljit Singh Virk, AAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition is directed against the impugned judgment dated 07.08.2007 passed by learned Sessions Judge, Ferozepur, whereby appeal of the petitioner was dismissed, upholding the impugned judgment of his conviction and order of sentence of even date i.e. 05.07.2006, passed by Sub Divisional Judicial Magistrate, Jallalabad.

Briefly put, facts of the prosecution case are that a letter No.190 was written by the District Magistrate, Ferozepur, to the Senior Superintendent of Police, Ferozepur for registration of a case against the accused-petitioner/Pritam Singh, alleging therein that the Government declared a policy for allotment of the land to the persons in possession

thereof. Accused-petitioner also submitted an application for allotment of land bearing Khasra No.21 Killa No.4 (8-0) situated at Village Bodal Peer Ke on 09.05.1997. The application was supported by an affidavit and photocopy of ration card of the accused, wherein he declared himself to be the head of the family. This claim was lodged by the accused in the office of Tehsildar, Jallalabad, who sent the proposal for transfer of the aforesaid land to Sales Commissioner, Jallalabad. However, Sales Commissioner had some doubt regarding genuineness of ration card and he gave the direction to verify the ration card from the Food & Supply Department, Guru Har Sahai. During investigation, it was found that no ration card was issued in the name of accused. As such, the accused had submitted a forged and fabricated ration card and also a false affidavit, to get the land belonging to the Central Government, allotted in his name. Accordingly, the case was registered against the accused. He was arrested and later on, was released on bail. After completion of the investigation, challan was presented against the accused.

The challan having been presented, copy thereof along with documents attached therewith, was supplied to the accused, as required under Section 207 of the Code of Criminal Procedure ('Cr.P.C.' for short). Accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as seven prosecution witnesses, besides producing the relevant documentary evidence. After closing the prosecution evidence, statement of accused was recorded under Section 313 of CR.P.C. All the incriminating material brought on record against him, was put to the accused. The accused denied the allegations and claimed innocence. However, despite granting opportunity, accused did

not lead any evidence in his defence.

After hearing learned counsel for both the parties and going through the record of the case, the learned trial Court came to the conclusion that the prosecution has brought home the guilt against the accused. Accordingly, the accused was convicted vide impugned judgment of conviction dated 05.07.2006. Consequently, vide impugned order of sentence of even date i.e. 05.06.2006, the learned trial Court awarded sentence of two years R.I. and a fine of Rs.1,000/- and in default of payment of fine, accused was to further undergo R.I. for 15 days for the offence punishable under Section 420 IPC. He was awarded sentence of one year R.I. and a fine of Rs.500/- and in default of payment of fine, accused was to further undergo R.I. for seven days for the offence under Section 465 IPC. He was awarded the sentence of two years R.I. and a fine of Rs.1,000/- and in default of payment of fine, accused was directed to undergo further imprisonment of 15 days R.I. for the offence under Section 468 IPC. Similarly, petitioner was awarded the sentence for two years R.I. and a fine of Rs.1,000/- and in default of payment of fine, he was to further undergo R.I. for 15 days for the offence under Section 471 IPC. Fine was paid by the convict. The learned trial Court ordered that all the sentences shall run concurrently.

Dissatisfied, convict filed his appeal before the learned Sessions Judge, Ferozepur which came to be dismissed by the learned Sessions Judge vide impugned judgment dated 07.08.2007. Hence this criminal revision petition.

This criminal revision petition was admitted for regular hearing vide order dated 20.08.2007. Sentence of the petitioner was suspended, during

pendency of the revision petition, vide order dated 11.10.2007. That is how, this Court is seized of the matter.

Learned counsel for the petitioner, at the very outset, submits that he does not intend to press this petition on merits. He further submits that let the conviction of the petitioner be upheld and the criminal revision petition may be considered only for the purpose of reduction of sentence.

Custody certificate by way of affidavit dated 12.05.2015 filed in the Court today, is taken on record.

Learned counsel for the petitioner submits that in terms of the custody certificate, petitioner has already undergone a period of three months as on 12.05.2015, out of total sentence of two years R.I. While highlighting the mitigating circumstances in favour of the petitioner, he submits that FIR was registered as far back as on 07.04.2002. Petitioner has been facing the mental agony of criminal trial for the last more than 13 years. The land was not allotted to the petitioner. He did not draw any benefit in this regard. Petitioner has not been found involved in any other case nor he was a previous convict. He prays for reduction of the sentence to the period already undergone by the petitioner.

On the other hand, learned counsel for the State, while opposing the prayer made on behalf of the petitioner, submits that since the custody period is just three months out of total sentence of two years R.I., petitioner is not entitled for the reduction of sentence to the period already undergone by him. He prays for dismissal of the revision petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful

consideration to the rival contentions raised, this Court is of the considered opinion that it is just and expedient to reduce the sentence of the petitioner to the period of six months R.I., while upholding his conviction. It is so said because petitioner has been found to be first offender. He has not been found involved in any other case. The land, as a matter of fact, was not allotted to the petitioner nor he could get any benefit in this regard. It is also a matter of record that the petitioner has been facing the mental agony of criminal trial for the last more than 13 long years.

In view of the abovesaid mitigating circumstances, interest of justice would be adequately met if the sentence of the petitioner is ordered to be reduced from two years to six months R.I.

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 (CrI.) 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, this Court is of the considered view that petitioner deserves reduction in the sentence as indicated above.

Accordingly, conviction of the petitioner is upheld. However, his sentence is ordered to be reduced from two years R.I. to six months R.I. Sentence of fine, as awarded by the learned trial Court shall also remain intact. Consequently, he is directed to surrender himself within a period of four weeks from today, failing which the present criminal revision petition shall be deemed to have been dismissed and the order of sentence passed by the learned trial Court shall stand revived automatically.

Resultant, with the abovesaid modification in the impugned order of sentence, instant criminal revision petition stands partly allowed.

Disposed of, accordingly.

[RAMESHWAR SINGH MALIK]
JUDGE

13.05.2015
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