

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 16.09.2015

1. CRR-2004-2007

Surinder Singh

... Petitioner

Vs.

State of Haryana

... Respondent

2. CRR-2054-2007

Ujjagar Singh and others

... Petitioners

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rakesh Gupta, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner (in CRR-2004-2007).

Mr. R.N. Lohan, Advocate
for the petitioners (in CRR-2054-2007).

Mr. Ashish Yadav, Addl. AG, Haryana.

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.

Feeling aggrieved against the common impugned judgment of conviction and order of sentence, convicts-petitioners have approached this Court, by way of these two identical criminal revision petitions, for setting

aside the impugned judgments of conviction and order of sentence. Since both these identical criminal revision petitions bearing CRR-2004-2007 (Surinder Singh Vs. State of Haryana) and CRR-2054-2007 (Ujjagar Singh and others Vs. State of Haryana) are directed against the same impugned judgment of conviction, both are being decided together. However, for the facility of reference, facts are being culled out from CRR-2054-2007.

Brief facts of the case, as noticed by learned trial Court in paras 2 & 3 of its impugned judgment of conviction, are that on 19.09.1996 on the receipt of a letter No.1350-52 ST dated 19.09.1996 from the Commandant, 4th Bn. HAP Madhuban, present case was registered. It was informed that Prithvi Singh son of Shankar Lal, Surender Singh son of Bharat Singh, Amar Singh son of Ram Kumar and Ujjagar Singh had been recruited as Constables in the Haryana Police on the basis of the Matriculation certificates produced by them and their certificates were sent to the Secretary, Haryana School Education Board, Bhiwani, vide letter No.6402 dated 10.07.1996 for checking of genuineness of the same. The Secretary, Haryana School Education Board, Bhiwani, vide his office memo No.6024/VR/CERT/E dated 12.08.1996 had informed that certificates bearing Sr. Nos.31216, 017116, 006340 and 017019 of the abovementioned persons had been verified and were found bogus. Hence, it had been proved that all of them had obtained the abovesaid bogus certificates by virtue of fabrication, impersonation and cheating and they had also used these certificates as genuine despite the knowledge that these were bogus before the recruiting authority in Police Department and also got themselves recruited as Police Constables.

On the complaint/letter, case was registered. Matter was

enquired. Accused were arrested. The certificates used for the purpose of cheating were taken into police possession. Statements of witnesses recorded. After completing all the formalities of investigation, challan was presented in the Court for trial.

The final report under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' for short) having been presented, copies thereof along with documents attached therewith, were supplied to the accused, as required under Section 207 Cr.P.C. A prima facie case was found to be made out and accordingly the accused were charge-sheeted for the offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code ('IPC' for short). Accused pleaded not guilty and claimed trial.

With a view to prove its case, prosecution examined as many as 8 PWs, besides producing other relevant documentary evidence on record. On conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material available on record was put to the accused. They denied the allegations, alleged false implication and pleaded complete innocence. However, they did not lead any evidence in their defence.

After hearing the learned counsel for both the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has proved its case bringing home the guilt against the accused, however, to the limited extent for the offences under Sections 468, 471 IPC. Accordingly, accused were acquitted of the charges framed against them for the offences punishable under Sections 420, 467 IPC, whereas they were held guilty and convicted for the offences under Sections

468, 471 IPC, vide impugned judgment of conviction dated 07.06.2006. Thereafter, the convicts were sentenced to undergo rigorous imprisonment for two years and a fine of Rs.500/- each for the offence under Section 468 IPC. Convicts were also sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.1000/- each for the offence under Section 471 IPC. In default of payment of fine, they were ordered to undergo further simple imprisonment for a period of two months. Fine was paid by the convicts. Both the sentences were ordered to run concurrently, vide impugned order of sentence dated 09.06.2006, passed by the learned trial Court.

Dissatisfied, two appeals were filed by the convicts. One was filed by Surinder Singh and another was filed by the remaining three convicts. Both the appeals came to be dismissed by the learned Additional Sessions Judge, vide common impugned judgment dated 08.10.2007. Hence these two criminal revision petitions.

CRR-2004-2007 was admitted and sentence of the petitioner was suspended by this Court, vide order dated 18.10.2007. CRR-2054-2007 was admitted vide order dated 30.10.2007 and thereafter, sentences of the petitioners were suspended vide order dated 13.11.2007. Both these criminal revision petitions were ordered to be heard together. That is how this Court is seized of the matter.

Learned counsel for the petitioners, in both the cases, submit that they do not intend to press these criminal revision petitions on merits. They further jointly submit that let conviction of the petitioners be upheld and both these petitions may be considered for the limited purpose of releasing the petitioners on probation, suitably enhancing the amount of fine. Learned

counsel for the petitioners in CRR-2054-2007 also submits that petitioner No.1 namely Ujjagar Singh has since expired on 20.03.2012. Learned counsel for the petitioners also submit that as stated by PW7, all the petitioners have lost their service also. Learned counsel would next contend that none of the petitioners was a previous convict nor any of them has been found involved in any other criminal case. Petitioners were the sole bread-winners of their respective families and they had been facing the agony of criminal trial for the last 19 long years. They pray for allowing both these petitions.

On the other hand, learned counsel for the State submits that in view of the nature of offences committed by the petitioners, they are not entitled for the benefit of Probation of Offenders Act. He prays for dismissal of both these petitions.

Having heard the learned counsel for the petitioners 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 keeping in view the peculiar fact situation obtaining in the present case, it is just and expedient to release the petitioners on probation, while upholding their conviction, for the following more than one reasons.

So far as the factual aspect of the matter is concerned, the same has gone undisputed on record. The mitigating circumstances highlighted by both the learned counsel for the petitioners, in these two cases, could not be controverted by learned counsel for the State and rightly so, it being a matter of record. None of the petitioners has been found to be a previous convict nor was found involved in any other criminal case. They have already lost their jobs long back, as recorded by the learned trial Court in its judgment, at page

31 of the paper book. Petitioners are stated to be the sole bread-winners of their respective families. Further, they had been facing the agony of criminal trial for long 19 years. There is no allegation against the petitioners that any of them has misused the concession of bail granted by this Court, during the pendency of both these revision petitions.

In view of what has been discussed hereinabove, this Court is of the considered view that the ends of justice would be adequately met, if the conviction of the petitioners is upheld and they are released on probation, while suitably increasing the fine. It is also pertinent to note that as per the separate custody certificates filed by way of affidavits of even date i.e. 15.09.2015 in the Court today, petitioners have undergone the actual sentence ranging from one month to more than two months.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***M.C.D. Vs. State of Delhi and another, 2005 (4) SCC 605. (Hon'ble Supreme Court)***
2. ***Ramesh Dass Vs. Raghu Nath and ors., 2008 (2) SCC (CrL) 470. (Hon'ble Supreme Court)***
3. ***State through CBI, Anti Corruption Bureau, Chandigarh Vs. Sanjiv Bhalla and another, 2014 (4) RCR (CrL) 17. (Hon'ble Supreme Court)***
4. ***Sant Lal Vs. State of Haryana, 1999 (2) RCR (CrL) 563. (Pb & HR High Court)***
5. ***Chuni Lal Vs. State of Haryana, 2006 (1) RCR (CrL) 844 (Pb & HR High Court)***
6. ***State of Punjab Vs. Harinder Singh @ Raju, 2008 (2) RCR (CrL) 294. (Pb & HR High Court)***
7. ***Mani Ram Vs. State of Punjab in CRR No.97 of 2002, decided***

on 30.07.2010. (Pb & HR High Court)

8. *Chander Parkash Vs. State of UT Chandigarh in CRR No.1385 of 2012, decided on 15.05.2012. (Pb & HR High Court)*
9. *Pardeep and others Vs. State of Haryana in CRR No.1289 of 2015, decided on 30.04.2015. (Pb & HR High Court)*

The relevant observations made by the Hon'ble Supreme Court in para 27 of its judgment in **Sanjiv Bhalla's** case (supra), which can be gainfully followed in the present case, read as under: -

*“These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift – from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act, what is imperative for the judge is to strike a fine balance between releasing a convict after admonition *[18] or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing mission must not be forgotten.*

**[18] Probation of Offenders Act, 1958 Section 3: Power of court to release certain offenders after admonition.—
When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian*

Penal Code, (45 of 1860), or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or Section 4.”

Coming back to the fact situation obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove, it is unhesitatingly held that keeping in view the peculiar facts and circumstances of the present case, instant one has been found to be a fit case, in which sentence awarded to the petitioners deserves to be set aside and petitioners be extended the concession of release on probation of good conduct.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

view that it is just and expedient to extend the benefit of probation to the petitioners, they being the first offenders. Accordingly, while upholding their conviction, order of sentence of the petitioners is set aside. However, fine is increased to Rs.20,000/- each, over and above what was imposed by the learned trial Court. Petitioners are directed to deposit the amount of fine of Rs.20,000/- each with the Secretary, District Legal Services Authority, Karnal within a period of three months, failing which their revision petitions would be deemed to have been dismissed.

Consequently, petitioners are ordered to be released on probation of good conduct, on furnishing personal bonds by each of them, in the sum of Rs.20,000/- with one surety in the like amount, to the satisfaction of learned Chief Judicial Magistrate, Karnal for a period of one year, to appear and receive sentence as and when called upon, during this period and in the meantime, to maintain peace and be of good behaviour, besides furnishing an undertaking not to commit such an offence, during the period of probation.

Resultantly, with the abovesaid observations made and directions issued, both these criminal revision petitions stand disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

16.09.2015
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