

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

Criminal Revision No. 341 of 2006

Date of decision: 14.10.2015

Subhash Chander

-----Petitioner (s)

V/s

State of Punjab

-----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. Pravej Chugh, Advocate for the petitioner(s).

Mr. Sultan Singh Gill, Deputy Advocate General, Punjab.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition against the judgment dated 04.02.2006 passed by Addl. Session Judge, (Adhoc), Fast Track Court, Sri Muktsar Sahib, whereby his appeal against the judgment and order of sentence dated 09.11.2004 passed by Sub Divisional Judicial Magistrate, Malout, was dismissed.

Vide judgment dated 09.11.2004, the learned Magistrate held the petitioner guilty of offence punishable under Section 13-A of the Public Gambling Act, 1867 (herein after referred as "the Act") and convicted and sentenced him to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.500/- In default of payment of fine to further undergo rigorous imprisonment for one month.

Briefly stated the facts of the case are that when a police party was present near Edward Ganj Guest House, Malout Chowk Road

in the area of City Malout, ASI Harnek Singh received a secret information that the petitioner is gambling by means of *Darra Satta* at Jandiwala Chowk i.e. a public place and was proclaiming loudly whosoever stake Rs.10/- with him, he would give him Rs.70/- and if the number does not come, the staked money would be forfeited. ASI Harnek Singh sent ruqa to the police station, on the basis of which FIR was recorded. LC Swaran Singh was handed over a five rupees note bearing *No.44R614080* and was directed to stake the same at Serial No. 36 and to obtain *Parchi Darra Satta*. He was further asked to signal to shadow witness ASI Harbans Singh. Both of them acted accordingly. ASI Harnek Singh apprehended the accused-petitioner red handed with the help of his companions. On his personal search, piece of *Gatta*, refill ball pen, *Parcha Darra Satta*, currency notes amounting to Rs.427/- including the numbered note and some blank *parchies*, were recovered, which were taken into custody, vide separate recovery memos.

The police conducted investigation. After completion of investigation, challan was presented against the accused-petitioner. He was supplied with the copies of the documents relied upon by the prosecution, free of costs, as required under Section 207 Cr.P.C.

The petitioner was charged for offence punishable under Section 13-A of the Act. Prosecution examined ASI Harnek Singh as PW-1, who supported the prosecution version and proved on record ruqa Ex.PA, FIR Ex.PA/1, memo. Hawalgi numbered currency note Ex.PB, memo. recovery piece of *Gatta*, refill ball pen, *Parcha Darra Satta*, currency notes and some blank *parchies* Ex.PC. Memo. recovery *Parchi Darra Satta* Ex.P2, envelope containing currency notes and refill ball pen Ex.P3, site plan Ex.PF.

Prosecution examined other witnesses, namely, ASI Harbans Singh as PW-2 and LC Swaran Singh PW-2, who also supported the prosecution version and proved on record memos of recovery Ex.PC and Ex.PD.

The trial Court, vide judgment dated 09.11.2004, convicted the petitioner for offence under Section 13-A of the Public Gambling Act, 1867 and sentenced him for rigorous imprisonment for six months and fine of Rs.500/-

Against the judgment dated 09.11.2004 passed by learned Magistrate, the petitioner preferred an appeal. However, vide judgment dated 04.02.2006, the learned Addl. Sessions Judge, Adhoc, Fast Track Court, Sri Muktsar Sahib, dismissed the appeal maintaining the sentence.

Learned counsel for the petitioner submits that no independent witness was joined by the police party at the time when the alleged recovery was made from the thickly populated area, therefore, the impugned judgment and order of sentence of the Courts below are liable to be set aside. He also submits that there is enough contradiction in the statements of the witnesses, which were sufficient to establish the innocence of the petitioner.

However, after arguing for some time, learned counsel for the petitioner has confined his arguments only on the quantum of sentence and submits that the petitioner is facing the agony of trial since the year 2001, when the FIR-in-question was registered on 21.02.2001 and after his conviction, he has not committed any such offence. He also submits that the petitioner has already undergone about 18 days of imprisonment, as against the awarded sentence of 06 months.

Furthermore, the occurrence is old one and, therefore, prays that some lenient view may be taken by on the issue of quantum of sentence.

Learned State counsel has not disputed the aforesaid contention regarding the period of custody of the petitioner, and the petitioner has not committed such offences after his conviction.

I have heard learned counsel for the parties and gone through the records.

Reference has been made to the judgment passed by this Court in CRR No. 3487 of 2013 titled as **“Karnail Singh @ Hero Vs. State of Punjab”**, decided on 16.12.2003, wherein this Court by taking a lenient view has maintained the conviction of the petitioner, however, sentence has been reduced to the period already undergone.

Hon’ble Supreme Court in **“R. Soundarajan V. Seed Inspector, Coimbatore and another”** 2006(4) R.C.R. (Criminal) 645, observed as under:-

“26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during the pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment”.

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.

3. The appeal is disposed of accordingly”

Having examined the impugned judgments of the courts below, I find no irregularity much less illegality resulting into miscarriage of justice. The evidence appears to have been appreciated in the right perspective. Both the Courts below have given concurrent findings regarding the guilt of the petitioner/accused. As such, the impugned order of conviction is maintained. However, as regards the quantum of sentence, it may be observed that the occurrence had taken place way back in the year 2001 and the petitioner has already suffered a

lot due to protracted trial, since the FIR-in-question was registered on 21.02.2001. He has already undergone 18 days of imprisonment, as against the awarded sentence of 06 months. Therefore, I am of the considered opinion that ends of justice would be met if the sentenced awarded to the petitioner is reduced to the period already undergone by him.

Accordingly, the conviction of the petitioner is maintained, however, the order of sentence is partly modified to the extent that the sentence of the petitioner is reduced to the period already undergone by him. However, the amount of fine is enhanced to Rs.10,000/- to be paid within a period of three months from the date of receipt of a certified copy of this order, failing which the present petition shall stand dismissed in toto and the petitioner shall be liable to undergo imprisonment as awarded by the trial Court.

With the aforesaid modification, the present revision petition is disposed of.

October 14, 2015Anjal**(HARI PAL VERMA)
JUDGE**