

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Revision No.1434 of 2015
Date of Decision : 18.5.2015

Balbir Kaur

.....Petitioner

Vs.

State of Haryana

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. S.S. Gill, Advocate for the petitioner.
Mr. M.K. Sangwan, DAG, Haryana.

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

RAMESHWAR SINGH MALIK, J

Present criminal revision petition is directed against the impugned judgement dated 1.4.2015, passed by the learned Sessions Judge, Jind, whereby with modification in the order of sentence reducing it from one year to six months, for the offence under Section 356 of the Indian Penal Code ('IPC' for short), appeal of the petitioner was dismissed, upholding her conviction, recorded by the learned trial court, vide its impugned judgement of conviction dated 4.2.2014.

Facts of the case, as recorded by the learned Sessions Judge in para 2 of his impugned judgement, are that on 24.5.2009 EASI Varish Bhan along with EHC Krishan Kumar, Lady Head Constable Prem Kumari and LEHC

Krishna Devi were present at Gurudwara Dhamtan Sahib, on the eve of fair of Amavasya in connection with law and order duty, where Ranjit Singh son of Malkit Singh Kamboj, resident of village Kudni (Punjab) along with his wife Amandeep Kaur came and produced a lady named Biro along with application to the effect that on that day he alongwith his wife had come to pay obeisance at Gurudwara Dhamtan Sahib. At about 12.30 PM, they were waiting for their turn while standing in the que, then an unknown woman snatched the golden chain and khanda measuring 2 tolas from the neck of his wife. Even after due efforts, the chain could not be recovered. Their chain was got recovered from Biro as she handed over the chain to Umro wife of Mahender, resident of village Muradpur in their presence, who concealed herself in the crowd. Legal action may kindly be taken against them.

On the aforesaid application, the present case was registered. The investigation was conducted by ESI Varish Bhan, who interrogated accused Biro and she suffered disclosure statement admitting her guilt and that of Umro. He recorded statements of relevant witnesses and arrested accused Biro. Accused Biro got recovered the chain. On 3.7.2009, accused Umro was arrested in this case. After completion of investigation, report under Section 173 Cr.P.C. was filed against them in the court of learned Illaqa Magistrate.

The challan having been presented before the court, copy thereof alongwith documents attached therewith, was supplied to the accused persons as per the requirement of law under Section 207 of the Code of Criminal Procedure ('Cr. P.C.' for short). A prima facie case was found to be made out and accordingly both the accused were charge sheeted for the offence punishable under Section 356 read with Section 34 IPC. Accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as 8 PWs, besides producing on record the documentary evidence. Since no other PW was coming forward, despite numerous opportunities, including the last opportunity, prosecution evidence was closed by the court order.

After closing the prosecution evidence, statements of the accused under Section 313 Cr.P.C. were recorded. The entire incriminating evidence brought on record against the accused was put to them, to which the accused pleaded innocence. However, the accused did not lead any evidence in their defence.

After hearing learned counsel for the parties and going through the evidence brought on the record, the learned trial court came to the conclusion that there was no sufficient evidence against accused Umrao w/o Mohinder Singh to record her conviction. Accordingly, she was acquitted of the charges framed against her. However, present petitioner namely; Balbir Kaur was convicted, holding that the prosecution has successfully proved its case beyond reasonable shadow of doubt, bringing home the guilt against the accused, for the offence under Section 356 IPC, vide impugned judgement of conviction dated 4.2.2014. The convict was awarded sentence to undergo simple imprisonment for a period of one year for the commission of offence punishable under Section 356 IPC, vide impugned order of sentence dated 5.2.2014. Dissatisfied, petitioner filed her appeal, which came to be dismissed by the learned Sessions Judge, however, with modification in the sentence reducing it from one year to six months, vide impugned judgement dated 1.4.2015. Hence, this criminal revision petition.

Notice of motion was issued.

Learned counsel for the petitioner, at the very outset, submits that

he does not intend to press this petition on merits. He submits that let the conviction of the petitioner be upheld and the present revision petition may be considered only for reduction of sentence of the petitioner to the period already undergone by her. While highlighting the mitigating circumstances in favour of the petitioner, learned counsel for the petitioner submits that petitioner is a women and she is facing the mental agony of criminal trial for the last about six years. As per the custody certificate dated 17.5.2015, petitioner has already undergone the actual sentence for a period of 2 months and 27 days, out of total sentence of six months simple imprisonment.

On the other hand, learned counsel for the State submits that the petitioner was not entitled for any reduction in the sentence because of the peculiar circumstances of the case. He prays for dismissal of the present 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 contentions raised, this court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed herein above, it is just and expedient to reduce the sentence of the petitioner to the period already undergone by her, while upholding her conviction, for the following more than one reasons.

Petitioner has already undergone about half of the sentence awarded to her. Learned counsel for the petitioner has been found justified to say that the petitioner has been facing the mental agony of criminal trial for a sufficient long period. Petitioner is a women and a first offender. She has not been found involved in any other case. Having said that, this court feels no hesitation to conclude that the present one is a fit case, wherein petitioner

deserves reduction of sentence to the period already undergone by her.

The above-said view taken by this Court also finds support from the judgment of Hon'ble the Supreme Court in **Braham Dass Vs. 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 facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as by this court, in the cases referred to hereinabove, it is unhesitatingly held that since the petitioner has already undergone about half of the sentence awarded to her, ends of justice would be adequately met, if the sentence of the petitioner is reduced to the period already undergone by her. Ordered accordingly.

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 considered view that present petition deserves to be partly allowed. Accordingly, while

upholding the conviction of the petitioner, her sentence is ordered to be reduced to the period already undergone by her, as she has already undergone about half of the sentence i.e. about three months out of total sentence of six months simple imprisonment. Let the petitioner be released forthwith, if she is not required in any other case.

With the above said observations made, present criminal revision petition stands disposed of.

18.5.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE