

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRR-1989-2015 (O&M)  
Date of decision: 20.08.2015

Nirbhai Singh

... Petitioner

Vs.

State of Punjab

... Respondent

**CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK**

Present: Mr. Gaurav Singla, Advocate  
for the petitioner.

Ms. Anmol Grewal, 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

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**RAMESHWAR SINGH MALIK, J.**

Present criminal revision petition is directed against the impugned judgment dated 28.04.2015 passed by learned Additional Sessions Judge, Sangrur, dismissing the appeal of the petitioner against the impugned judgment of conviction and order of sentence dated 10.03.2014, passed by learned Judicial Magistrate 1<sup>st</sup> Class, Sunam, whereby petitioner was convicted for the offence punishable under Section 61 (1) (a) of the Punjab Excise Act and was sentenced to undergo rigorous imprisonment for a period of six months.

Brief facts of the case, as noticed by the learned trial Court in para 2 of its judgment, are that on 17.03.2011, HC Gurmeet Singh along with

other police officials, was present at bridge of minor canal in the area of village Ratta Khera in connection with patrolling, where HC Gurmeet Singh received a secret information that Nirbhai Singh son of Subeg Singh is in the habit of distilling and selling illicit liquor at his house. If a raid was conducted, he could be apprehended. Finding the information to be reliable, a ruqa was sent to the police station on the basis of which formal FIR was recorded. Thereafter, a raid was conducted on the house of Nirbhai Singh. The accused was found present in his house and he was removing hands in the drum of lahan. On measurement, the lahan came to be 120 kg. The case property was sealed with seal bearing impression GS and was taken into possession vide recovery memo prepared on the spot. Accused was formally arrested. Site plan of the place of recovery was prepared. Statements of the witnesses were recorded. The lahan was tested by the Excise Inspector, who found it fit for distillation of illicit liquor. After completion of investigation, challan was presented in the Court.

The police report under Section 173 (2) of the Code of Criminal Procedure ('Cr.P.C.' for short) having been filed, copy of the same along with documents attached therewith, was supplied to the accused, as envisaged under Section 207 Cr.P.C.. A prima facie case was found to be made out and the accused were accordingly charge-sheeted. He pleaded not guilty and claimed trial. With a view to prove the charges framed against the accused, prosecution examined as many as five PWs, besides producing on record other 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, was put to him. He denied the allegations, pleaded false implication and claimed complete innocence. In his defence evidence, accused examined two witnesses, besides producing on record other relevant documentary evidence.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the prosecution has proved its case, bringing home the guilt against the accused. Accordingly, the accused was held guilty and was convicted for the offence punishable under Section 60 (1) (a) of the Punjab Excise Act, vide impugned judgment of conviction dated 10.03.2014. Consequently, vide impugned order of sentence of even date i.e. 10.03.2014, the learned trial Court awarded the sentence to the convict-petitioner to undergo R.I. for six months and to pay a fine of Rs.1000/-. In default of payment of fine, he was further ordered to undergo R.I. for 07 days.

Feeling aggrieved, convict filed his appeal, which also came to be dismissed by the learned Additional Sessions Judge, Sangrur vide his impugned judgment dated 28.04.2015. Hence this criminal revision petition, at the instance of the convict-petitioner.

When the case came up for motion hearing on 09.07.2015, learned counsel for the petitioner submitted that he does not intend to press this petition on merits. He further submitted that let the conviction of the petitioner be upheld and the instant criminal revision petition may be considered only for the limited purpose of reduction of sentence of the petitioner, he being the first offender. Accordingly, notice of motion was issued and pursuant thereto, custody certificate by way of affidavit dated

17.08.2015 filed in the Court today, is taken on record.

Learned counsel for the petitioner submits that let the conviction of the petitioner be upheld and his sentence may be reduced to the period already undergone him. While highlighting the mitigating circumstances in favour of the petitioner, he submits that petitioner is first offender. He is the only bread-winner for the family. Petitioner has been facing the agony of criminal trial for a long period. He has not been found involved in any other case of similar nature. Out of total sentence awarded to the petitioner for a period of six months, he has already undergone for a period of five months and seven days, including the period of remission. He concluded by submitting that in view of the above, hardly any time is left to be undergone by the petitioner and he deserves reduction of the sentence to the period already undergone by him. He prays for partly allowing the present criminal revision petition.

On the other hand, learned counsel for the State submits that in view of the nature of offence committed by him, he is not entitled for any kind of relief, including the reduction of sentence. She further submits that the sentence has already been awarded to the petitioner on lower side and further reduction of sentence is not warranted in the present case. She prays for dismissal of the present criminal 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 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 already undergone by him, while upholding his conviction, for the

following more than one reasons.

It is a matter of record that petitioner is first offender. He has not been found involved in any other case of similar nature. He is stated to be the only bread-winner for the family, which has also not been denied by learned counsel for the State. Further, in terms of the custody certificate dated 17.08.2015, out of total sentence awarded to the petitioner for a period of six months R.I., he has already undergone total sentence for a period of five months and seven days as on 15.08.2015, including the period of remission. Thus, learned counsel for the petitioner was found justified in contending that hardly any time is left to be undergone by the petitioner. Having said that, this Court feels no hesitation to conclude that present one is a fit case, wherein the petitioner deserves reduction of sentence to the period already undergone by him.

The view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in the case of **2006(4) R.C.R. (Criminal) 645** titled as **“R. Soundarajan v. Seed Inspector, Coimbatore and another”** and **“Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723.**

The relevant observations made by the Hon'ble Supreme Court in the case of **R. Soundarajan v. Seed Inspector, Coimbatore and another** (supra) are 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 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 “**Umrao Singh v. State of Haryana** (supra), 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.”*

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 instant criminal revision petition deserves to be partly allowed. While upholding the conviction of the petitioner, his sentence is ordered to be reduced to the period already undergone by him. He is directed to be released, if not required in any other case.

Resultantly, with the abovesaid modification in the sentence, instant criminal revision petition is partly allowed, however, with no order as to costs.

**[ RAMESHWAR SINGH MALIK ]**  
**JUDGE**

20.08.2015  
*vishnu*