

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-2079-2015
Date of decision:8.10.2015

Manjit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.S.P.S.Sidhu, Advanced for the petitioner.
Ms.Anmol Grewal, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Present criminal revision petition, at the instance of accused, is directed against the impugned judgment dated 18.5.2015 passed by the learned Additional Sessions Judge, Ludhiana, whereby appeal of the petitioner against the impugned judgment of conviction and order of sentence dated 7.8.2014 passed by the learned learned Judicial Magistrate 1st Class, Ludhiana, was dismissed, upholding the conviction and sentence of the petitioner.

Brief facts of the case, as recorded by the learned appellate Court in para 1 of the impugned judgment of conviction, are that on 29.03.2009, Kamaljit Singh s/o Darshan Singh, Darshan Singh, Sarpanch Lakhwinder Singh, Harnek Singh and Surinder Kaur, all residents of Village Dehlon, District Ludhiana went to police station and got registered DDR. Kamaljit Singh got recorded his statement to the effect that on the intervening night of 26/27.03.2009, he was present at Akhand Path, near Bus Stop Village Gujarwal, At about 2.00 AM, he asked the time from

accused Manjit Singh and accused told him the time as 2.00 AM after seeing his mobile. Thereafter accused told him that they were to inform to the next Pathi. He took him on motorcycle towards the tubewell motor of Amarjit Singh @ Bitta. He told him that he wanted to show him something. When they reached at the motor of Amarjit Singh, then accused Manjit Singh asked him to remove his trouser. Initially he did not remove his trouser but later on by force accused removed his trouser and asked him to bend down and he did carnal intercourse with him without his consent. When he started weeping, then accused threatened him. After ejaculating, accused advanced threats to kill him, if he informed to anyone about the incident. Initially he did not inform to anyone due to threat and fear but later on, he narrated the incident to his mother and his mother narrated the incident to his father. He was having severe pain. His father consulted the matter with respectables of village and thereafter the matter was reported to the police. The statement of complainant was read over to him and he signed the same in Punjabi. From the statement of complainant, offence u/s 377 IPC was found to be committed by accused Manjit Singh.

The incident had taken place on intervening night of 26/27.03.09 and the DDR was lodged on 29.03.2009. So, there was a doubt about the story of Kamaljit Singh as both the parties were having party friction in the village. Therefore, the statement of Kamaljit Singh was sent to DSP and after approval of DSP, FIR was registered. Thereafter ASI Rajinderpal Singh took Kamaljit Singh to Civil Hospital, where his medical examination was got conducted by Dr. Gurlal Singh. Dr. Gurlal Singh also prepared three swabs of sample and handed over the same to HC Kabal Singh for depositing with Chemical Examiner Kharar. Special reports were

sent to Judicial Magistrate Ludhiana through HC Satpal. Thereafter SI Swaran Singh took accused Manjit Singh to Civil Hospital Pakhowal for conducting his medical examination and after his medical examination, doctor declared Manjit Singh for sexual intercourse. SI Swaran Singh along with police officials went to place of occurrence and prepared site plan. Accused got anticipatory bail from the court of Ld ASJ Sh. Ashok Kumar. Statements of witnesses were recorded. Medical report of Kamaljit Singh was received and from the report made by doctor, Spermatozoa were detected in the contents of Ex.I which means the report was found positive. On completion of the investigation, the challan against the accused was presented in the court of competent jurisdiction.

Finding a prima facie case, learned trial Court framed the charges against the accused-petitioner, for commission of offence under Section 377 IPC. The accused pleaded not guilty and claimed trial.

The prosecution, with a view to prove its case, produced as many as 13 prosecution witnesses, besides placing on record other documentary evidence. On closing of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. He denied the allegations, alleged false implication and claimed complete innocence. The accused in his defence examined four defence witnesses.

After hearing the 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 successfully proved its case, bringing home the guilt against the accused. Accordingly, the accused was convicted and was sentenced to undergo rigorous imprisonment for a period

of two years along with fine of Rs.2,000/- for the offence punishable under Section 377 IPC.

Feeling aggrieved, convict filed his appeal against the above-said impugned judgment of conviction and order of sentence but the appeal of the present petitioner also came to be dismissed by the learned Additional Sessions Judge, Ludhiana, vide impugned judgment dated 18.5.2015. Hence this criminal revision petition.

Notice of motion was issued.

Learned counsel for the petitioner submits that he does not intend to press this petition on merits. He further submits that let conviction of the petitioner be upheld and the present criminal revision petition may be considered only for the purpose of reduction of sentence to the period already undergone by him. He further submits that in terms of the custody certificate filed by way of affidavit dated 28.9.2015, petitioner has undergone the actual sentence for a period of 10 months, out of the total sentence awarded to him for a period of two years' rigorous imprisonment. Highlighting the other mitigating circumstances in favour of the petitioner, learned counsel submits that the petitioner has been facing the agony of criminal trial for the last about 6 years and he has undergone substantial part of the sentence awarded to him, which entitles the petitioner for reduction of the sentence to the period already undergone by him. He prays for allowing the present petition to the limited extent, as indicated above.

On the other hand, learned counsel for the State opposes the prayer made by the learned counsel for the petitioner, contending that in view of the circumstances of the case, petitioner is not entitled for any further reduction in sentence. She prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of 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 already undergone by him, while upholding his conviction. It is so said, because in terms of the custody certificate filed by way of affidavit dated 28.9.2015, petitioner has undergone the actual sentence for a period of 10 months, out of the total sentence awarded to him for a period of 2 years.

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 had arisen 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 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, conviction of the petitioner is upheld. However, his sentence is ordered to be reduced to the period already undergone by him.

Resultantly with the above-said modification in the impugned judgments, the instant criminal revision petition stands partly allowed. Petitioner is directed to be released forthwith, if he is not required in any other case.

Disposed of, accordingly.

8.10.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE