

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

CRR-2098-2015
Date of decision:30.11.2015

Naresh Nath Tivari

...Petitioner

Versus

State of Haryana and another

...Respondents

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.I.S.Pabla, Advocate for the petitioner.
Mr.Surender Singh, AAG, Haryana.
Mr.Namit Khurana, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Present criminal revision petition, at the instance of accused, is directed against the impugned judgment dated 18.3.2015 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, whereby appeal of the petitioner against the impugned judgment of conviction dated 2.8.2014 and order of sentence dated 4.8.2014 passed by the learned learned Judicial Magistrate 1st Class, Yamuna Nagar, 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 its impugned judgment, are that complainant-Shanker Parshad (respondent No.2 herein) filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short) against the accused-petitioner, alleging therein that in discharge of his existing part liability, the accused-petitioner had issued and delivered a cheque bearing No.657609 dated 18.6.2012 in sum of Rs.2,50,000/- drawn on Indian Overseas Bank,

Branch Yamuna Nagar. On its presentation, the said cheque was returned unpaid for the reasons "Account Closed" vide bank memo dated 29.6.2012. The accused did not make any payment even after serving of legal notice dated 23.7.2012 upon him. Thereupon, the complaint was filed before learned Judicial Magistrate 1st Class, Jagadhri on 22.8.2012.

Finding a prima facie case, accused was summoned to face trial. On his appearance, notice of accusation under Section 138 of the NI Act was served upon him, to which he did not plead guilty and claimed trial. The complainant, with a view to prove his case, stepped into witness box as CW-1, 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. However, the accused did not lead any evidence in his defence.

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 complainant has successfully proved his case, bringing home the guilt against the accused. Accordingly, the accused was convicted and sentenced to undergo rigorous imprisonment for a period of one year and further to pay compensation to the tune of Rs.3 lacs, in terms of Section 357 (3) Cr.P.C. to the complainant within two months. In default of payment of compensation, convict was ordered to further undergo RI for three months.

Feeling aggrieved, convict filed his appeal against the above-said impugned judgment of conviction and order of sentence, but his appeal

also came to be dismissed by the learned Additional Sessions Judge, Yamuna Nagar, vide impugned judgment dated 18.3.2015. Hence this criminal revision petition.

Notice of motion was issued only qua quantum of sentence.

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 5.11.2015, petitioner has undergone the actual sentence for a period of 9 months and 14 days, out of the total sentence awarded to him for a period of one year's rigorous imprisonment, as on 5.11.2015.

Highlighting the other mitigating circumstances in favour of the petitioner, learned counsel submits that the petitioner has been facing the mental agony of criminal trial for the last more than three 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. He 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 5.11.2015, petitioner has undergone the actual sentence for a period of 9 months and 11 days, out of the total sentence awarded to him for a period of one year's RI and by now, he has undergone more than 10 months of his sentence.

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.”

Similarly, in 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 order of sentence, 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.

30.11.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE