

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revn. No. 3276 of 2015

DATE OF DECISION: 24.09.2015

Buta Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)**
2. **To be referred to reporters or not? (Yes/No)**
3. **Whether the judgment should be reported in the Digest? (Yes/No)**

Present:- Mr. Vinod Bhardwaj, Advocate
for the petitioner.

Mr. Baljinder Singh Virk, DAG, Haryana.

DAYA CHAUDHARY, J.

The present revision petition has been filed to challenge the judgment of conviction and order of sentence dated 18/23.7.2013 passed by Sub Divisional Judicial Magistrate, Guhla, whereby, the petitioner has been convicted for offences punishable under Sections 406 and 506 IPC in case FIR No. 13 dated 25.2.2009 registered at Police Station Guhla and sentenced to undergo RI for a period of two years and to pay a fine of ₹ 1000/- for an offence punishable under Section 406 IPC with default clause and to undergo RI for a period of one year and to pay a fine of ₹ 500/- for offence punishable under Section 506 IPC. Both the sentences were ordered to run concurrently.

Aforesaid judgment of conviction and order of sentence was

challenged by way of filing an appeal before Additional Sessions Judge, Kaithal, which was dismissed on 20.8.2015 and judgment of conviction and order of sentence passed by the trial Court was upheld.

After loosing the case before the two Courts below, the petitioner has approached this Court by way of filing the present revision petition.

Learned counsel for the petitioner contends that both the courts below have not appreciated the evidence available on record. The petitioner has been held guilty for offence punishable under Section 406 IPC only on the basis of affidavit Ex. PW-3/A, whereas, the said affidavit was prepared when the petitioner was in custody of the police and as such the same is hit by Section 25 of the Evidence Act. Learned counsel further contends that the best evidence i.e. statement of the accused under Section 164 Cr.P.C has been withheld by the prosecution. A wrong finding has been given that the petitioner himself has admitted his signatures on the affidavit, whereas, entry of the said affidavit was never made in the register of the Notary Public and the person, who identified the petitioner has also not been examined. Learned counsel also contends that several contradictions are there in the statements of the witnesses and the petitioner is entitled to benefit of doubt as the prosecution has failed to prove its case beyond reasonable doubt. There was an unexplained delay in registration of the case, which also creates doubt in the prosecution version. The petitioner is not habitual offender as no other criminal case is pending against him. He was also entitled to be released on probation but the same was not granted by the trial Court. Lastly, learned counsel for the petitioner submits that the petitioner is facing agony of trial since registration of the FIR i.e. 25.2.2009 and he is not a previous convict. He remained on bail during trial and that concession was never misused by

him. The petitioner is in custody for the last three months against total sentence of two years. The petitioner is having large family to support and being the sole bread winner, the sentence be reduced to the period already undergone. Learned counsel also submits that he will not contest the conviction in case the sentence is reduced to the period already undergone by the petitioner.

Custody certificate has been filed in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone two months and twenty nine days of sentence as on 23.9.2015 and no other case is pending against him.

Keeping in view the limited prayer of learned counsel for the petitioner and also the facts that the petitioner is facing agony of trial since lodging of the FIR i.e. 25.2.2009; no other case is pending against him and he is the sole bread winner and is having large family to support, the submission made by learned counsel for the petitioner is accepted. The conviction is upheld and the sentence imposed upon the petitioner is reduced to the period already undergone by him subject to deposit of an amount of ₹ 20,000/- with the trial Court within a period of one month from the date of receipt of copy of the order. In case the petitioner fails to deposit the said amount within the stipulated period, he shall have to undergo remaining part of the sentence awarded by the trial Court.

The present revision petition is disposed of with the aforesaid modification in the sentence.

September 24, 2015
pooja

(DAYA CHAUDHARY)
JUDGE