

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3431-2014

Date of decision: 01.10.2015

Sukhwinder Singh @ Shinda

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rajiv Joshi, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Addl. AG, 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

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition is directed against the impugned judgment dated 13.10.2014 passed by learned Additional Sessions Judge, Hoshiarpur, whereby appeal of the petitioner was dismissed and his conviction as well as sentence recorded by the learned trial Court, vide impugned judgment of conviction and order of sentence of even date i.e. 19.04.2012, was upheld.

Briefly put, facts necessary for disposal of the present case, as recorded by the learned Additional Sessions Judge, in para 2 of his impugned judgment, are that a complaint was made by Rakesh Kumar, Manager of

Gagan Cold Store, Shamchaurasi against the present petitioner to the effect that Mandeep Singh son of Nirmal Singh resident of Jalandhar was owner of the cold store situated at Shamchaurasi. Farmers of nearby villages of Shamchaurasi stored their potato crop in the cold store. In order to maintain accounts of those farmers, Sukhwinder Singh @ Shinda son of Ajit Singh, the present petitioner was appointed in the month of February, 2006 on salary of Rs.3800/- per month. He used to maintain all the records regarding potato being deposited and taken out from the cold store by the farmers. After doing his duties for about 4 months, Sukhwinder Singh stopped coming on job. Thereafter when the accounts were checked, it was found that slips which were given by Sukhwinder Singh to various farmers were forged slips and he himself had taken out potato from the store and sold it. It came to the knowledge that potato deposited by master Amarjit Singh resident of Dhamian which were in 109 gunny bags, potato belonging to Makhan Singh 10 gunny bags, Kuldip Singh of 20 gunny bags and likewise potato of other farmers total amounting to 230 gunny bags of potato worth more than Rs.1 lac were taken out by the present petitioner and were sold in the market. Thereafter petitioner admitted his mistake in presence of gathering of respectables of the area and he agreed to return 175 bags of potato and written compromise to that effect was made but thereafter, present petitioner did not give potato as agreed. Hence the complaint was made to the police. On that complaint, FIR No.24 under Sections 420, 465, 467, 468, 471 IPC was registered against the present petitioner. Accused-petitioner was arrested and was released on bail. Investigation was conducted. After completion of investigation, challan against the accused was put up before learned Illaqa

Magistrate.

The police report under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' for short) having been presented, copy thereof along with the 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 against the accused and accordingly he was charge-sheeted for the offences punishable under Sections 420, 465, 468, 471 of the Indian Penal Code ('IPC' for short). Accused pleaded not guilty and claimed trial.

In order to substantiate the charges framed against the accused, prosecution examined as many as 09 PWs, besides producing on record other relevant documentary evidence. On conclusion of 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 the accused. Accused denied the allegations, alleged false implication and pleaded complete innocence. Opting to lead his defence evidence, accused produced one witness namely Jatinder Singh as DW1.

After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the prosecution has duly proved its case, bringing home the guilt against the accused. Accordingly, the accused was held guilty under Section 417 IPC and was convicted accordingly vide impugned judgment of conviction dated 19.04.2012. Consequently, the convict was sentenced for the offence punishable under Section 417 IPC for a period of 01 year R.I. and a fine of Rs.1500/-. In default of payment of fine, he was further ordered to undergo R.I. for 15 days, vide impugned order of sentence of even date i.e. 19.04.2012.

However, he was acquitted of other charges.

Feeling aggrieved against the abovesaid impugned judgment of conviction and order of sentence, petitioner-convict filed his appeal, which also came to be dismissed by the learned Additional Sessions Judge, Jalandhar vide his impugned judgment dated 13.10.2014. Hence this criminal revision petition, at the hands of convict-petitioner.

After issuing notice of motion vide order dated 28.10.2014, sentence of the petitioner was suspended vide order dated 01.12.2014.

Learned counsel for the petitioners, at the very outset, fairly states that he does not intend to press this petition on merits and the present petition may be considered only for the limited purpose of reduction of sentence to the period already undergone by the petitioner, while upholding his conviction. Highlighting other mitigating circumstances, he submits that as per the custody certificate dated 30.11.2014, petitioner has undergone total custody period for 05 months and 07 days out of total sentence awarded to him R.I. for 01 year. He would next contend that petitioner has been facing the agony of criminal trial for the last 09 years. He is neither a previous convict nor has been found involved in any other criminal case. Petitioner is the only bread-winner of his family. He prays for allowing this petition in abovesaid terms.

On the other hand, learned counsel for the State submits that since the learned Courts below have already shown sufficient leniency in favour of the petitioner, while awarding him the sentence, petitioner deserves no further leniency, at the hands of this Court. 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 totality of facts and circumstances of the case, noticed hereinabove, present petition deserves to be accepted partly, for the following more than one reasons.

It is a matter of record that petitioner was not a previous convict nor he has been found involved in any other criminal case. It has also gone undisputed on record that petitioner was the only bread-winner of the family. As per the custody certificate dated 30.11.2014, he has undergone the sentence for a period of 05 months and 07 days out of total sentence awarded to him for a period of 01 year R.I. He has been found facing the agony of criminal trial for the last 09 years. Having said that, this Court feels no hesitation to conclude that it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him, while upholding his conviction.

The abovesaid 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.”

Reverting back to the fact situation obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court, in the cases referred to hereinabove, it is unhesitatingly held that petitioner is entitled for the reduction of sentence to the period already undergone by him. No useful purpose will be served by sending the petitioner inside the jail, after this long period of about 09 years.

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 petitioner deserves to be granted the relief as indicated above. Consequently, while upholding conviction of the petitioner, his sentence is ordered to be reduced to the period already undergone by him. Bail bonds of the petitioner shall stand discharged.

Resultantly, with the abovesaid observations made, present criminal revision petition stand disposed of.

[RAMESHWAR SINGH MALIK]
JUDGE

01.10.2015
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