

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-33205-2015 in/and
CRR-3803-2015 (O&M)
Date of decision: 30.10.2015

Robin Masih

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Prateek Pandit, 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

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition is directed against the impugned judgment dated 10.07.2015 passed by learned Additional Sessions Judge, Kapurthala, whereby appeal of the petitioner was dismissed, his conviction was upheld and sentence awarded by the learned trial Court, vide impugned judgment of conviction and order of sentence of even date i.e. 07.02.2014, was modified to the extent for a period of one and half years R.I. in place of 02 years R.I., maintaining the fine of Rs.5000/- along with imprisonment, in default of payment of fine.

Briefly put, facts necessary for disposal of the present case, as recorded by the learned trial Court, in para 2 of his impugned judgment, are that on 09.12.2008, complainant Sukhjinder Singh gave a complaint No.209-5A/P to SHO PS NRI, Kapurthala, stating that he was resident of Village Sikri, Tehsil Bholath, He had a deal with Robin Masih son of Abdul Masih and his father Abdul Masih son of Jalal Masih residents of Village Gandhra, PS Nakodar, Jalandhar for sending him to England. The deal was struck in Rs.10,30,000/-. Robin Masih told him that he worked as a Travel Agent and both of them took him in confidence and said that they would send him abroad. On 15.06.2007, Robin Masih and his father Abdul Masih came there and demanded Rs.1,55,000/- which he took from Swaran Singh (who has died now) and gave it to Robin Masih in the presence of his neighbour Gurmukh Singh son of Gurdint Singh. Abdul Masih counted the amount and put in in his pocket and both of them assured him that they would secure the Visa and send him to England. On 19.07.2007, Robin Masih along with his father Abdul Masih came to his home and demanded Rs.5,00,000/- for securing the Visa which was given to him by Swaran Singh from his joint account No.4037 of Punjab National Bank, by preparing a draft No.805444000024000 dated 19.07.2007 and the draft was given to Robin Masih in presence of Gurmukh Singh. Robin Masih stated that he will send him to England very soon. On 11.09.2007, Robin Masih again came to his house and said that his visa of England had been secured and demanded the remaining amount. On this, father of the complainant again prepared a draft in the name of Robin Masih and gave the same to him in the present of Gurmukh Singh. Both the drafts were encashed by Robin Masih and his father Abdul Masih. On

persistent demand of complainant, neither they sent him to England nor returned his money. In this regard, complainant gave one complaint to S.S.P., Kapurthala No.2693 dated 03.09.2008 and inquiry was marked to SHO PS Bholath. Robin Masih also entered into an agreement that he would return back Rs.7,50,000/- to complainant and assured that on 15.10.2008, he would give the first installment of Rs.50,000/- and remaining amount, he would return back on installment basis @ Rs.50,000/- per month. Later on, he refused to do so. On 16.10.2008, another agreement was prepared by which he agreed that he would give Rs.1,50,000/- on monthly basis to complainant but despite that he did not return the money. Investigation was initiated by Inspector Dalbir Singh of PS NRI, Kapurthala and during investigation, it was found that Robin Masih and Abdul Masih have committed an offence punishable under Section 420, 406 of the Indian Penal Code ('IPC' for short) and Section 24 of Indian Immigration Act. Statements of witnesses under Section 161 of the Code of Criminal Procedure ('Cr.P.C.' for short) were recorded. Accused Robin Masih and Abdul Masih were arrested and were later on released on bail. On completion of investigation, challan was filed in the Court against both the accused.

The challan 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 and accordingly the accused were charge-sheeted for the offence punishable under Section 420 IPC. Accused pleaded not guilty and claimed trial. At the time of framing of charge, both accused Robin Masih and Abdul Masih were charge-sheeted, but later on accused Abdul Masih died and proceedings against him

were abated.

In order to substantiate the charge framed against the accused, prosecution examined as many as 08 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. In his defence, accused did not examine any witness.

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 and was convicted vide impugned judgment of conviction dated 07.02.2014. Consequently, the convict was sentenced for the offence punishable under Section 420 IPC for a period of two years R.I. and a fine of Rs.5,000/-. In default of payment of fine, he was further ordered to undergo simple imprisonment for a period of 07 days, vide impugned order of sentence of even date i.e. 07.02.2014.

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, vide impugned judgment dated 10.07.2015. While upholding the conviction of the petitioner, his sentence was reduced from 02 years R.I. to 01 year and 06 months R.I. and the fine to the tune of Rs.5,000/- was maintained. Hence this criminal revision petition, at the hands of convict-petitioner.

When the case came up for hearing on 08.10.2015, learned

counsel for the petitioner, at the very outset, submitted that he does not intend to press this petition on merits. He further submitted that let the present petition be considered only for the limited purpose of reduction in sentence to the period already undergone by the petitioner. Accordingly, notice was issued only qua quantum of sentence.

Highlighting the mitigating circumstances in favour of the petitioner, learned counsel submits that petitioner has been facing the agony of criminal trial for the last 07 years. He is neither a previous convict nor has been found involved in any other criminal case. Petitioner is the only breadwinner of his family and now aged about 58 years. He also submits that as per the custody certificate, petitioner has undergone total custody period for 01 year, 02 months and 11 days as on 29.10.2015, out of total sentence awarded to him R.I. for 01 year and 06 months. He prays for allowing the present petition.

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. She prays for dismissal of the instant 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, he has undergone the sentence for a period of 01 year, 02 months and 11 days, out of total sentence awarded to him for a period of 01 year and 06 months. Petitioner is a poor man and is aged about 58 years as on date. He has been found facing the agony of criminal trial for the last about 07 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. It is so said because petitioner has already undergone substantial part of the sentence awarded to him.

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. Accordingly, while upholding the conviction of the petitioner, his sentence is ordered to be reduced to the period already undergone by him. Petitioner is directed to be released forthwith, if he is not required in any other case.

Resultantly, with the abovesaid observations made and directions issued, present criminal revision petition stands disposed of.

**[RAMESHWAR SINGH MALIK]
JUDGE**

30.10.2015
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