

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No. 4126 of 2014 (O&M)
Date of Decision: 21.5.2015**

Amarjit Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Vikram Satpal Anand, Advocate and
Mr. Manpreet Singh, 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.

Feeling aggrieved against the impugned judgment dated 7.3.2014 passed by the learned Additional Sessions Judge, Sri Muktsar Sahib, whereby appeal of the petitioner was dismissed with modification in the order of sentence, reducing it from two years rigorous imprisonment to a period of six months RI, upholding the judgment of conviction dated 15.3.2012 passed by the learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib, petitioner has approached this Court by way of present criminal revision petition.

AMIT KUMAR
2015.05.29 09:53
I attest to the accuracy and
authenticity of this document

Brief facts of the case, as noticed by the learned Additional Sessions Judge, in para 3 of the impugned judgment, are that on 18.1.2005, one MLR pertaining to Harbans Kaur wife of Darshan Singh resident of Bhagsar was received from the Civil Hospital, Muktsar in the P.S.Sadar, Muktsar. Upon which, ASI Kulwant Chand alongwith other police officials went to Civil Hospital, Muktsar, wherein, he recorded the statement of Harbans Kaur-injured. She stated that she was resident of Bhagsar and her husband went out of village. At about 12 noon, her elder son Amarjit Singh, who was doing work of an agriculturist, armed with Danda and his wife Sukhjiti Kaur, entered her house and started abusing her. Then, Amarjit Singh gave a blow with Danda, on her left thigh and she fell down. His wife Sukhjiti Kaur caught hold her from her arms and Amarjit Singh gave blow with Danda on her back and also pressed her neck, besides giving her kick blows. In the meantime, her husband Darshan Singh came there and raised noise. Then, both the accused ran away from the spot alongwith Danda. Injured was got admitted in the Civil Hospital, Muktsar, by her husband after arranging the vehicle. The whole occurrence took place at the instance of her younger son Satnam Singh and further requested to take action against the accused.

From the perusal of the statement of the complainant/injured and the copy of MLR, a prima face case under Sections 452/323/34 of the Indian Penal Code ('IPC' for short) was made out, but from the statement of the complainant, the dispute between mother, son and daughter-in-law was suspicious, in nature.

Due to this reason, the Rapat under Rule 24(4) PPR was entered. When they visited the spot, they found Sukhjit Kaur and Satnam Singh innocent. Whereas, Amarjit Singh was nominated as accused and Ruqa was sent to the police station through C. Bachittar Singh, on the basis of which, formal FIR was registered and investigation was pressed into motion. Statements of the witnesses were recorded. Site plan of the place of recovery was prepared. Accused was arrested. On completion of investigation and other formalities, the challan was presented against the accused persons in the court.

The learned APP for the State submitted an application under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short), on 10.5.2009 for summoning of accused Sukhjit Kaur wife of Amarjit Singh and Satnam Singh son of Darshan Singh. Vide order dated 16.1.2007, application was dismissed being not pressed by learned APP for the State. However, again, the learned APP for the State submitted an application under Section 319 Cr.P.C., on 30.9.2009, which was partly allowed by the then learned Judicial Magistrate 1st Class, Sri Muktsar Sahib, vide his order dated 3.6.2010 for summoning of accused Sukhjit Kaur, who appeared in the court on receiving summons.

The report under Section 173 Cr.P.C. having been presented, copy thereof alongwith documents attached therewith was supplied to the accused, as required under Section 207 Cr.P.C. A prima facie case was found to be made out against the accused and accordingly, they were charge-sheeted. Accused pleaded not guilty and claimed trial.

With a view to prove its case, prosecution examined as many as 5 PWs, besides placing on record the documentary evidence. After conclusion of the prosecution evidence, statements of the accused under Section 313 Cr.P.C. were recorded. All the incriminating material brought on record against the accused, was put to them. Accused denied the allegations, alleged false implication and pleaded complete innocence. In defence, accused examined DW-1 namely Balkar Singh and thereafter, closed their evidence.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial court came to the conclusion that prosecution has successfully proved its case against Amarjit Singh-present petitioner and his wife-Sukhjot Kaur bringing home the guilt against both the accused. Accordingly, both the accused were convicted for the offences under Sections 452 and 323 IPC, vide impugned judgment of conviction dated 15.3.2012 passed by the learned Additional Chief Judicial Magistrate, Sri Mukhtar Sahib.

Consequently, vide order of sentence of the even date, i.e. 15.3.2012, both the convicts were awarded the sentence, as under:-

(1) Amarjit Singh

Offence	Imprisonment	fine	In default of payment of fine
U/s 452 of IPC	2 years RI	1000/-	15 days RI
U/s 323 of IPC	1 year RI	500/-	10 days RI

(2) Sukhjot Kaur

U/s 452 of IPC	2 years RI	1000/-	15 days RI
U/s 323 of IPC	1 year RI	500/-	10 days RI

Dissatisfied, both the convicts filed their appeal, which was decided by the learned Additional Sessions Judge, Sri Muktsar Sahib, vide impugned judgment dated 7.3.2014, whereby Sukhjit Kaur/co-convict of the petitioner was ordered to be released on probation. Appeal of the petitioner was dismissed, however, his sentence was reduced from 2 years RI to 6 months RI. Hence, this criminal revision petition.

Notice of motion was issued.

Custody certificate by way of affidavit dated 21.5.2015, filed in the Court today, is taken on record.

Learned counsel for the petitioner, at the very outset, submits that he does not intend to press this petition on merits. He further submits that let the present petition be considered only for the purpose of reduction of sentence to the period already undergone by the petitioner. He further submits that as per custody certificate dated 21.5.2015, petitioner has already undergone the substantive sentence for 4 months and 18 days as on 18.5.2015, out of total sentence of 6 months RI.

Highlighting the mitigating circumstances in favour of the petitioner, learned counsel for the petitioner submits that incident took place at the spur of moment and that too, between mother, son and her daughter-in-law. He refers to para 14 of the impugned judgment by the learned Additional Sessions Judge, to contend that parties have entered into compromise. Harbans Kaur-complainant had suffered a statement in this regard, before the court on 1.2.2013 in which she stated that, at the instance of her younger son Satnam

Singh, who was serving as an Inspector in the Punjab Police, she got the present case registered due to some misunderstanding, which has now been cleared. She further stated that now she is living with her daughter-in-law, namely Sukhjit Kaur-wife of the present petitioner. He next contended that taking this material aspect of the matter, learned appellate court released Sukhjit Kaur-wife and co-convict of the petitioner, on probation. He concluded by submitting that since the petitioner has already undergone the substantive part of the sentence, i.e. 4 months and 18 days out of total sentence of 6 months RI, he deserves reduction in sentence to the period already undergone by him.

On the other hand, learned counsel for the State submits that due to serious misconduct of the petitioner, he was not entitled for reduction of sentence. She 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 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. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that complainant-Harbans Kaur is mother of the petitioner. During the pendency of the appeal of the petitioner and his wife-Sukhjit Kaur, parties entered into a compromise. It has been so recorded in para 14 of the impugned

judgment dated 7.3.2014 passed by the learned Additional Sessions Judge, Sri Muktsar Sahib. As a consequence, complainant suffered a statement before the learned Additional Chief Judicial Magistrate on 1.2.2013, as per directions issued by this Court. She stated that she got the present case registered at the instance of her younger son- Satnam Singh, who was serving as an Inspector in the Punjab Police, due to some misunderstanding, which has now been cleared. She also stated that now she is living with her daughter-in-law namely Sukhjit Kaur-wife of the petitioner. On this statement suffered by the complainant, co-convict of the petitioner namely Sukhjit Kaur was released on probation.

Further, petitioner has already undergone the substantive part of the sentence. As per the custody certificate dated 21.5.2015, petitioner has undergone the substantive sentence for a period of 4 months and 18 days out of total sentence of 6 months RI. Thus, only about 42 days are left to be undergone by the petitioner. Petitioner has been facing the mental agony of criminal trial for the last more than 10 long years. Once the complainant, who was none else but mother of the petitioner, has herself made a statement that she got the present case registered at the instance of the her younger son, due to some misunderstanding, present petitioner deserves the reduction of sentence to the period already undergone, for this reason also. In view of the abovesaid mitigating circumstances, interest of justice would be adequately met if the sentence of the petitioner is ordered to be reduced to the period already undergone by him.

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 fell for consideration 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 into 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 extraordinary 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, it is unhesitatingly held that ends of justice would be adequately met, if the conviction of the petitioner is upheld, reducing his sentence to the period already undergone by 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 present petition deserves to be partly allowed.

Consequently, while upholding the conviction of the petitioner, his sentence is ordered to be reduced to the period

already undergone by him. However, sentence of fine, as awarded by the learned trial Court shall remain intact. Let the petitioner be released forthwith, if he is not required in any other case.

Resultantly, with the abovesaid modification in the impugned order of sentence, instant criminal revision petition stands partly allowed and disposed of, accordingly.

(RAMESHWAR SINGH MALIK)
JUDGE

21.5.2015
Ak Sharma