

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-732-2015

Date of decision: 15.05.2015

Gurcharan Singh @ Channi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Amandeep Singh Saini, 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 judgment dated 28.01.2015 passed by learned Addl. Sessions Judge, Fazilka, whereby appeal of the petitioner was dismissed and his conviction as well as order of sentence of even date i.e. 01.05.2014, passed by learned Chief Judicial Magistrate, Fazilka were upheld.

Brief facts of the case, as recorded by learned trial Court in para 2 of its impugned judgment, are that on 07.06.2013, letter No.1032 dated 05.06.2012 was received by Police Station City Fazilka, from the Court of Sh. Sumit Ghai, learned Sub Divisional Judicial Magistrate, Fazilka through his Reader Sh. Jasvir Singh. The subject matter of the letter was that in the Court

of Sh. Sumit Ghai, Sub Divisional Judicial Magistrate, a case titled State Vs. Nirvair Singh, arising out of FIR No.30 dated 24.03.2011 under Sections 379, 411 IPC, Police Station City Fazilka, was pending. In the said case, accused Gurcharan Singh @ Channi son of Jeet Singh, Rai Sikh resident of Kamrewala did not come present in the Court till 26.05.2012. A written proclamation, as per the provisions of Section 82, Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) was published. After expiry of mandatory period of 30 days, Gurcharan Singh @ Channi was declared proclaimed offender. The Court took the cognizance as the proclaimed offender has committed an offence punishable under Section 174-A of Indian Penal Code ('IPC' for short) and accordingly, SHO Police Station City Fazilka was directed to initiate action against the accused Gurcharan Singh @ Channi. On receipt of the abovesaid letter dated 07.06.2013, FIR No.110 dated 12.07.2013 under Section 174-A IPC was registered at Police Station Fazilka. Investigation was carried out. Accused was arrested on the basis of abovesaid FIR under Section 174-A IPC. After completion of the investigation, challan was presented against the accused.

The challan having been presented, copy thereof along with documents attached therewith, was supplied to the accused, free of cost, as envisaged under Section 207 Cr.P.C. Finding a prima facie case against the accused under Section 174-A IPC, charge was framed against him. It was read over and explained to him, to which he pleaded not guilty and claimed trial.

With a view to substantiate the charges framed against the accused, prosecution examined as many as four prosecution witnesses, besides producing on record other relevant documents. After closing the prosecution

evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating evidence brought on record was put to the accused. He denied the allegations, alleged false implication and pleaded complete innocence. However, despite having been granted an opportunity, accused did not lead any evidence in his defence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has brought home the guilt against the accused. Accordingly, the accused was held guilty and convicted for the offence punishable under Section 174-A IPC, vide its impugned judgment of conviction dated 01.05.2014. Consequently, vide impugned order of sentence dated 01.05.2014, the learned trial Court awarded the sentence of rigorous imprisonment for one year and fine of Rs.1,000/- to the convict, for the offence punishable under Section 174-A IPC. In default of payment of fine, he was ordered to further undergo simple imprisonment for a period of 20 days.

Dissatisfied, petitioner filed his appeal before the learned Sessions Judge, which came to be dismissed by the learned Addl. Sessions Judge, Fazilka vide his impugned judgment dated 28.01.2015. Hence this criminal revision petition.

Notice of motion was issued by this Court vide order dated 27.02.2015.

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 criminal revision petition be considered only for the purpose of reduction of sentence to the period already undergone by the petitioner. As per

the custody certificate dated 06.04.2015, petitioner has undergone total sentence for 05 months and 09 days, including the period of remission, as on 06.04.2015, out of total sentence awarded to him for one year R.I.

While highlighting the mitigating circumstances in favour of the petitioner, learned counsel for the petitioner submits that petitioner was first offender. He was a rustic villager. In case arising out of FIR No.30 dated 24.03.2011, wherein the petitioner was declared proclaimed offender, he himself appeared before the learned Court and thereafter, he was acquitted in the said case, vide judgment of acquittal dated 03.03.2015. Out of total sentence awarded to the petitioner, for a period of one year, he has already undergone the actual sentence for more than six months and the petitioner deserves reduction of sentence to the period already undergone by him.

On the other hand, learned counsel for the State submits that since the petitioner absented from the Court proceedings. He was declared proclaimed offender by the learned trial Court because of which he was not entitled for reduction of sentence. He prays for dismissal of the revision 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. It is so said because petitioner has already undergone the actual sentence, for a period of more than six months out of total sentence awarded for a period of one year R.I.

So far as the criminal case arising out of FIR No.30 dated 24.03.2011 under Section 379/411 IPC, registered at Police Station City Fazilka, wherein petitioner was declared proclaimed offender, was concerned, petitioner himself appeared before the Court. Thereafter, he had been acquitted in the said case vide judgment of acquittal dated 03.03.2015, as recorded in Para 10 (d) of the abovesaid custody certificate filed by way of affidavit dated 06.04.2015. Further, petitioner has not been found involved in any other FIR of similar nature and he is first offender. Petitioner has been facing the criminal trial for a sufficiently long period. In view of the abovesaid mitigating circumstances, ends 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 Vs. 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 (CrI.) 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, this Court is of the considered view that the petitioner deserves reduction of sentence to the period already undergone by him. Accordingly, conviction of the petitioner is upheld. However, his sentence is ordered to be reduced to the period already undergone by him.

Resultantly, with the abovesaid modification, instant criminal revision petition stands partly allowed. Petitioner be released forthwith, if he is not required in any other case.

Disposed of, accordingly.

[RAMESHWAR SINGH MALIK]
JUDGE

15.05.2015
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