

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRM No.8793 of 2015 in/and
Crl. Revision No.971 of 2015(O&M)
Date of Decision : 21.4.2015

Ashwani Kumar

.....Petitioner

Vs.

State of Punjab

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. H.S. Randhawa, Advocate for the petitioner.
Mr. K.D. Sachdeva, Addl. A.G., Punjab.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Crl.Misc.No.8793 of 2015

Applicant seeks condonation of delay of 391 days in filing the revision petition.

Notice of this application was issued.

Learned counsel for the applicant submits that the petitioner is an indigent person. He was unable to arrange sufficient amount for engaging the counsel, with a view to file the revision petition in time. Petitioner approached the High Court Legal Services Authority, seeking legal aid for filing the present petition. He submits that in the process, bonafide delay of 391 days has occurred, because of which the instant application deserves to be allowed.

On the other hand, learned counsel for the State submits that the

delay was long and unexplained. He prays for dismissal of the application.

Having heard learned counsel for the parties and in view of the law laid down by the Hon'ble Supreme Court in **Abdul Ghafoor Vs State of Bihar**, (2011) 14 SCC 465, instant application is allowed for the reasons stated therein and the delay of 391 days in filing the revision petition stands condoned.

Crl.Revision No.971 of 2015

Present revision petition is directed against the impugned judgement dated 20.11.2013 passed by the learned Additional Sessions Judge (FTC), Roop Nagar, whereby appeal of the petitioner was dismissed and the impugned judgement of conviction as well as order of sentence of even date i.e. 11.8.2012 passed by the learned Judicial Magistrate Ist Class, Anandpur Sahib were upheld.

Brief facts of the case are that on 17.4.2008, when ASI Balwant Singh alongwith police party in connection with patrolling was present at bus adda market, Nangal, complainant Bharat Kumar came and got his statement recorded about the occurrence to the effect that on 17.4.2008, at about 9.30 PM when his sister-in-law Neelam Kumari went to the bed room of her mother-in-law, found that a young boy had entered in the room, opened the almirah and was searching for the articles. Neelam Kumari raised alarm. The moment complainant went inside the room, accused pushed his sister-in-law Neelam Kumari and tried to run away from the spot, but he was apprehended by the complainant. The accused disclosed his name as Ashwani kumar. The accused had taken out the atachee and had placed it near the door. After recording the above said statement, ruqa was sent to the police station for registration of FIR. Thereafter investigation was conducted. The investigating officer inspected the place of occurrence and prepared rough site plan. Screw driver and a knife

were recovered from the accused, which were taken into police possession vide recovery memo. Statement of witnesses were recorded. After completion of the investigation, police report under Section 173 Cr.P.C., was presented to the court. Copy of the police report under Section 173 Cr.P.C., was supplied to the accused free of cost, as required under Section 207 of Cr.P.C.

Having found a prima facie case against the petitioner, the learned trial court framed the charges against the petitioner under Sections 457 and 380 of the Indian Penal Code ('IPC' for short). Petitioner pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Neelam Kumari as PW-1, Dinesh Kumar as PW-2, complainant Bharat Kumar as PW-3, Ram Rattan as PW-4, HC Harmesh Kumar as PW-5 and ASI Balwant Singh as PW-6. Thereafter, prosecution closed its evidence.

Statement of the accused was recorded under Section 313 of the Cr.P.C. All the incriminating material appearing against him was put to the accused. He pleaded innocence and alleged false implication. Accused opted to lead evidence in his defence, but he did not examine any witness and closed his evidence.

After hearing learned counsel for the parties and going through the evidence brought on the record, the learned trial court came to the conclusion that the prosecution has proved its case by leading cogent and convincing evidence. Accordingly, accused was held guilty for the offences punishable under Sections 457 and 380 IPC and he was convicted for the said offences, vide impugned judgement of conviction dated 11.8.2012. Thereafter, the learned trial court heard the convict on the quantum of sentence and he was awarded rigorous imprisonment for two years and to pay a fine of ₹ 300/- for

the offence under Section 457 IPC. In default of payment of fine, convict was ordered to further undergo simple imprisonment for 7 days. Similarly, the convict was awarded rigorous imprisonment for one year and to pay fine of ₹ 200/- for the offence under Section 380 IPC. In default of payment of fine, the convict was further ordered to undergo simple imprisonment for 7 days.

Dissatisfied with the above said impugned judgement of conviction and order of sentence, convict filed his appeal before the learned Sessions Judge, Roop Nagar, which came to be dismissed by the learned Additional Sessions Judge (FTC) Roop Nagar, vide impugned judgment dated 20.11.2013.

Feeling aggrieved against the above said impugned judgements and order of sentence, petitioner has approached this court by way of instant criminal revision petition. Learned counsel for the petitioner, at the very outset submitted that he does not intend to press this petition on merits. He further submits that since the petitioner has already undergone actual sentence for 1 year 10 months and 9 days as on 21.4.2015, out of the total sentence 2 years R.I., his sentence may be reduced to the period already undergone by him, while upholding his conviction.

On the other hand, learned counsel for the State submits that keeping in view the nature of offences committed by the petitioner, he was not entitled for benefit of reduction of sentence to the period already undergone by him. Opposing the prayer made by learned counsel for the petitioner, learned counsel for the State prays for dismissal of the 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 hardly any period is left to be undergone by the petitioner. As per the custody certificate dated 21.4.2015, he has already undergone sentence for a period of 1 year 10 months and 9 days, including the period of remission, out of the total sentence for 2 years R.I.

Further, the fine is not being increased because the petitioner is very poor and this fact is reflected from the very fact that the present petition has been filed after availing the free legal aid from the High Court Legal Services Authority.

The above said view taken by this court also finds support from the judgement of the Hon'ble Supreme Court in **Braham Dass Vs. State of H.P.**, 1988 (2) RCR (Crl). The relevant observations made by the Hon'ble 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 judgement 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.”

Reverting back to the facts of the present case, this court is of the considered view that keeping in view the mitigating circumstances noted above, ends of justice would be adequately met if, while upholding the conviction of the petitioner, his sentence is reduced to the period already undergone by him.

No other argument was raised.

Considering the totality of facts and circumstances of the case noted above, coupled with the reasons aforementioned, conviction of the petitioner is upheld. However, his sentence is ordered to be reduced to the period already undergone by him. Petitioner is directed to be released forthwith, if not required in any other case.

Resultantly, with the modification in the sentence noted above, instant criminal revision petition is partly allowed and disposed of accordingly.

21.4.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE