

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

CRA-S No. 3704/SB of 2015 (O&M)

Date of decision : 29.7.2016

Ashok

.. Appellant

versus

State of Haryana

.. Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Manjeet Singh, Advocate, for the appellant.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Rajesh Bindal, J.

The appellant filed the present appeal against his conviction and sentence by the learned Court below in FIR No. 203 dated 24.8.2011 under Section 5 of the Explosives Substances Act, 1908 (for short, 'the Act'). He was directed to undergo imprisonment for a period of five years and to pay a fine of ₹ 10,000/-.

After arguing the case for some time, learned counsel for the appellant submitted that as the appellant had already undergone actual sentence of more than 4 years and 6 months and with remissions more than 4 years and 8 months, he does not press the present appeal on merits and be heard on quantum of sentence. He further submitted that even as per the Act, the maximum punishment provided is 5 years. Learned counsel for the appellant submitted that ever since the FIR was registered against him on 24.8.2011, he is in custody. He even never applied for parole in this case,

hence, his sentence may be reduced to the already undergone, which is close to the maximum sentence which could be awarded for the offence for which the appellant is convicted.

Learned counsel for the State furnished affidavit of Dinesh Yadav, Deputy Superintendent, District Jail, Faridabad, dated 29.7.2016, in Court, which is taken on record, showing that the appellant has undergone actual sentence of 4 years, 6 months and 13 days as on 28.7.2016, after adding remissions to which the appellant is entitled to, the total sentence with remissions undergone by the appellant comes to 4 years, 8 months and 10 days as on 28.7.2016. He further submitted that the amount of fine has also not been deposited by the appellant. Seeing his past record, the appellant should not be granted concession in the punishment granted by the learned Court below.

Heard learned counsel for the parties.

The appellant is not questioning his conviction under Section 5 of the Act. He is in custody ever since the FIR was registered on 24.8.2011. The maximum sentence provided for under Section 5 of the Act is 5 years imprisonment and fine. At the time of admission of appeal, the recovery of the fine was stayed. As the appellant has already undergone actual imprisonment of 4 years, 6 months and 13 days as on 28.7.2011 and adding the remissions earned by the appellant, the total sentence undergone by him as on 28.7.2011 is 4 years, 8 months and 10 days, in my opinion, the sentence awarded to the appellant deserves to be reduced to the period already undergone by him. Ordered accordingly.

However, the fine already imposed by the learned Court below be deposited within a period of one month. The impugned judgment/ order of sentence is modified accordingly. The appellant is directed to be released forthwith, if not required, in any other case.

The appeal stands disposed of.

29.7.2016
vs

(Rajesh Bindal)
Judge

Whether speaking/ reasoned
Whether Reportable

Yes/No
Yes/No