

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

**Criminal Revision No.1808 of 2010
Date of Decision:-22.04.2016**

Partap Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Surinder Garg, Advocate
for the petitioner.

Mr. Gurinderjit Singh, Deputy A.G., Punjab.

HARI PAL VERMA J.(Oral)

Through the instant petition, the petitioner has impugned the judgment dated 21.5.2010 passed by learned Additional Sessions Judge, Muktsar, whereby his appeal against the judgment and order dated 8.12.2009 passed by the Sub Divisional Judicial Magistrate, Gidderbaha convicting him for offence under Section 61(1)(C) of the Punjab Excise Act, 1914 and sentencing him to one year rigorous imprisonment and to pay fine of Rs.5,000/-, was dismissed.

Briefly stated that on 4.9.2003, HC Rachhpal Singh along with other police officials were going on a private jeep in connection with patrolling duty. When they were present at the outskirts of village Kakhanwali, then HC Rachhpal Singh received a secret information that the petitioner is habitual of distilling the illicit liquor by means of working still and if a raid be conducted, then he can be apprehended while distilling illicit liquor and huge quantity of illicit liquor and lahan can be recovered. Believing this information to be true, HC Rachhpal Singh sent ruqa for registration of case and FIR was registered. Thereafter, Sukha singh, Watchman was joined as independent witness. Thereafter, police party headed by HC Rachhpal Singh conducted raid at the house of petitioner where he was found feeding the fire under the still burner and was apprehended. The working still was dismantled and cooled down and the components of still were recovered. In the earthen stove, there were two half burnt wooden pieces. The silver patila consisting of 30 kilograms of lahan fitted with earthen pot used as boiler. There was a small whole in the side of it and a big whole was there under it and a chappni was fitted on the chakla with four sticks and a one plastic pipe was fitted in the side of the chappani and bottle which was used for collecting distilling illicit liquor. The chappani was duly fitted at the silver pot which was being used for cooling. The iron pot was duly fitted with water. One

empty bottle and one bottle containing 750 ml. of illicit liquor was there. One sample of 180 ml. was separated and the remaining illicit liquor was again put into the same bottle. The bottle, sample nip of illicit liquor along with patila lahan was duly sealed by the investigating officer with seal bearing impression 'RS'. All the components of working still along with the case property was taken into police possession vide recovery memo. Site plan was prepared and statements of witnesses under Section 161 Cr.P.C. were recorded. After certain formalities, samples were sent to the office of Chemical Examiner for chemically testing the same. Thereafter, challan was prepared and presented by the SHO, P.S. Lambi.

In compliance of the provision of Section 207 Cr.P.C., copies of challan along with other relevant documents attached thereto was supplied to the petitioner-accused.

The trial court on the basis of evidence so adduced convicted the petitioner vide judgment dated 08.12.2009 and vide separate order the petitioner was ordered to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/-. In default of payment of fine, he was ordered to further undergo simple imprisonment for one month.

Against the judgment of conviction and order of sentence dated 08.12.2009 passed by learned Sub Divisional Judicial Magistrate, Gidderbaha, petitioner preferred an appeal.

The appeal was dismissed by learned Sessions Judge, Muktsar on 21.5.2010 and the petitioner was ordered to be taken into custody. It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

Learned counsel for the petitioner instead of arguing the case on merits, confined his arguments only on the quantum of sentence. He submits that as against the awarded sentence of one year, the petitioner remained in custody for 4 months and 15 days and considering the fact that the petitioner is facing the agony of protracted trial since the year 2003, his sentence be reduced.

Learned State counsel has filed the custody certificate of the petitioner, and as per the custody certificate, against the awarded sentence of one year, the petitioner remained in custody for 4 months and 15 days and there is no other case against him.

Learned counsel for the petitioner submits that the petitioner is not involved in any other case and therefore, the sentence awarded to the petitioner be reduced to the period already undergone. He has referred to the decision rendered by this Court in **Criminal Revision No.2895 of 2015, decided on 23.9.2015, titled 'Gurmail Singh vs. State of Punjab'** to contend that in the similar circumstances this Court has reduced the sentence of the petitioner in that case to the period already

undergone.

I have heard learned counsel for the parties and gone through the record of the case.

While dealing with the case of Gurmail Singh (supra), this court has relied upon ***Sukha Singh @ More vs. State of Punjab, 2010 (4) Law Herald 3218*** wherein in the similar circumstances on the alleged recovery of 60 kgs Lahan, 5-¼ bottle as illicit liquor, petitioner was convicted and thereafter released on probation on completion of one month substantive sentence as against the awarded sentence of one year. Further in the case of ***Amrik Singh vs. State of Punjab, 2011 (2) Law Herald 1648*** where the trial Court has convicted the accused to undergo rigorous imprisonment for one year and the accused was a first time offender, this Court has held that sending a first time offender to jail in the company of hardcore criminals would be unjustified. Accordingly, sentence of the accused in that case was ordered to be undergone despite he being in custody for about two months as against the awarded sentence of one year.

The contention that the petitioner is a first time offender, has not been refuted by learned State counsel. The FIR in question was registered in the year 2003 and since then the petitioner is suffering the protracted trial. He remained in custody for about 4 months and 15 days as against the awarded sentence of one year.

Therefore, while relying upon aforesaid judgments and taking a lenient view in the matter, this Court feels that ends of justice will be met if the substantive sentence of the petitioner is reduced to the period already undergone by him.

Accordingly, while upholding the conviction of the petitioner, the sentence awarded to him is reduced to the period already undergone by him.

With the above modification in the substantive sentence of the petitioner, the revision petition stands dismissed.

Learned counsel for the petitioner submits that the amount of fine has already been paid by the petitioner. It is made clear that in case the amount of fine is not paid, same be paid within a period of one month from today, failing which the instant petition shall be deemed to be dismissed in toto.

April 22, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE