

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

CRR No.3483 of 2012 (O&M)
Decided on:-03.10.2016.

Rakesh Kumar alias Sonu.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Jitender Dhanda, Advocate
for the petitioner.

Mr. Arun Kumar, AAG, Haryana.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against judgment dated 6.10.2012 passed by learned Sessions Judge, Fatehabad whereby his appeal against judgment of conviction and order of sentence dated 13.9.2010 passed by learned Chief Judicial Magistrate, Fatehabad was dismissed.

Briefly stated, FIR No.626 dated 4.12.2005 under Section 25 of the Arms Act, 1959 (for short, the Act) was registered against the petitioner-accused at Police Station City Fatehabad with the allegations that on 4.12.2005, ASI Ramesh Kumar along with other police officials was present at Bhattu Road near bridge of Canal. When ASI Ramesh Kumar was talking with one Joginder Singh, the petitioner-accused was seen coming from the side of village Bhodia Khra. On seeing the police party, he sat along side of

the road pretending to discharge urine. However, on suspicion, he was apprehended and on his personal search, a country made pistol .315 bore was recovered from his conscious possession. The pistol was taken in possession vide separate recovery memo.

Investigation was conducted. Report under Section 173 Cr.PC was prepared and presented in the Court. Copy of the report was supplied to the accused free of costs as envisaged under Section 207 Cr.PC. On finding a prima-facie case against the petitioner, charge under Section 25 of the Act was framed against him to which he did not pleaded guilty and claimed trial.

In order to prove its case, the prosecution examined as many as five witnesses. Thereafter, statement of accused under Section 313 Cr.PC was recorded wherein entire evidence appearing against him on record was put to him. He denied the evidence of the prosecution and pleaded his false implication. However, no evidence in defence has been led by him.

Learned Magistrate vide judgment dated 13.9.2010 held the petitioner-accused guilty and accordingly convicted him for commission of offence punishable under Section 25 of the Act. Vide separate order of even date, learned Magistrate had sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-. In default of payment of fine, the petitioner-accused was further sentenced to undergo simple imprisonment for 15 days.

Aggrieved against the said judgment and order, the petitioner-

accused filed an appeal before the Court of Session, but the same was also dismissed by learned Sessions Judge, Fatehabad vide judgment dated 6.10.2012. The petitioner-accused was ordered to be taken into custody for undergoing the sentence awarded by the trial Court.

It is in these circumstances, the petitioner has preferred the present revision petition before this Court.

This Court vide order dated November 09, 2012 admitted the present revision petition and suspended the sentence of petitioner during pendency of the petition. The petitioner was ordered to be released on bail to the satisfaction of Chief Judicial Magistrate, Fatehabad.

Learned counsel for the petitioner, during the course of arguments, has not challenged conviction of the petitioner and confined his arguments to the extent that considering the custody of the petitioner, the sentence awarded by the trial Court and affirmed by the appellate Court be reduced to the period already undergone by the petitioner. Learned counsel has submitted that as against the awarded sentence of 1 year, the petitioner has already undergone 2 months and 20 days. He has further submitted that the petitioner is a first time offender and is a poor person. There is no other case pending against him. The FIR in question was registered against him as far back as on 4.12.2005 and since then, he has been suffering the agony of criminal proceedings.

On the other hand, learned State counsel has not disputed the

custody of the petitioner, but opposed the plea of taking liberal view, as raised by learned counsel for the petitioner.

I have heard learned counsel for the parties.

On perusal of the judgments of both the Courts below, this Court is of the considered view that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Section 25 of the Act. The appellate Court has also rightly dismissed the appeal. There is no infirmity, illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court. Even otherwise, during the course of arguments, learned counsel for the petitioner has not assailed the judgments of conviction and restricted his arguments qua the quantum of sentence only. The conviction of the petitioner is, thus, affirmed.

However, as regards plea of the petitioner that he is a first time offender; no other case is pending against him; has been suffering the agony of criminal proceedings since 4.12.2005, the date when the FIR in question was registered against him, and as against the awarded sentence of one year, he has already undergone 2 months and 20 days, this Court finds that prayer made by learned counsel for the petitioner for reduction of sentence of the petitioner to the period already undergone by him, carries weight.

Hon'ble Supreme Court in *Harjit Singh Versus State of Haryana, (2002) 10 SCC 695* had reduced the sentence of 7 years under

Section 25 of the Act to the period already undergone (more than 5 years) by the accused. Similarly, in the case of ***Kirpal Singh Versus State of Punjab 2009(1) AICLR 243***, this Court, taking into consideration the fact that petitioner has three children; there is no one to look after his family and has already undergone sentence of more than 5 months out of total sentence of one year, had reduced the sentence of petitioner to the period already undergone by him. Moreover, in the cases of ***Jagdeep Singh @ Neetu v. State of Punjab, 2013(2) Law Herald 1849*** and ***Sukhdev Singh Versus State of Punjab 2005(4) RCR (Criminal) 694***, similar view has been adopted by this Court.

Therefore, taking into consideration the pleas of petitioner and also the judgments referred hereinabove, the sentence imposed upon the petitioner under Section 25 of the Act is reduced to the period already undergone by him, however, with no change in the sentence of fine, which has already been paid by him as mentioned in the order of sentence dated 13.9.2010 passed by the trial Court.

With the aforesaid modification in the sentence, the present revision petition is dismissed.

October 03, 2016

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned:

Yes / No

Whether Reportable:

Yes / No