

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

CRR No.1933 of 2016 (O&M)
Decided on:-July 14, 2016.

Baldev Krishan.

.....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? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Jaswinder Singh Grewal, Advocate
for the petitioner.

Mr. Arshdeep S. Kler, DAG, Punjab
for the respondent-State.

HARI PAL VERMA, J.

The petitioner has filed instant revision petition against the judgment dated 11.4.2016 passed by learned Additional Sessions Judge, Fazilka, whereby his appeal filed against the judgment of conviction and order of sentence dated 22.3.2014 passed by learned Sub Divisional Judicial Magistrate, Abohar, was dismissed.

Vide judgment dated 22.3.2014, learned Magistrate held the petitioner guilty for committing offence under Section 381 IPC and vide

separate order of even date, sentenced him to undergo rigorous imprisonment for a period of one year along with fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for a period of two months.

Briefly stated, case of the prosecution is that on 22.11.2009 complainant Smt. Bindu Rani got recorded her statement before ASI Jagdev Singh to the effect that she is posted as Principal, Government Girls Senior Secondary School, Abohar since 03.07.2007. The papers of 10th standard are being received every year in their school for marking. She had got marked the papers for the year 2008-2009 from different teachers of her school and after getting the paper checked, she had sent the result to Punjab School Education Board, Mohali. Thereafter, the papers were kept in bundles in the store of the school.

On 20.10.2009, the complainant reached the school and she along with Pawan Kumar, SLA and Vinod Kumar, SLA checked the store of the school. During checking, five bundles of papers of 10th standard for March, 2009 and 35 bundles of 10th standard for March, 2008 could not be traced from the store. She along with staff had been tracing the said papers at her own level but in vain.

On the basis of said statement of the complainant, FIR No.355 dated 22.11.2009 under Section 381 IPC was registered against the petitioner-accused at Police Station City-I, Abohar. Investigation was

conducted. The case property was taken into police possession vide separate recovery memo. Site plan of the place of occurrence was prepared and statements of the witnesses were recorded. The petitioner-accused was arrested and after completion of investigation, Challan against the accused was presented in the Court.

On appearance of the accused in the Court, copies of Challan were supplied to him free of costs as envisaged under Section 207 of Cr.P.C. On finding a prima-facie case against the accused, he was charge-sheeted under Section 381 IPC to which he did not plead guilty and claimed trial.

The prosecution, in support of its case, has examined Pawan Kumar as PW1, Complainant Bindu Rani as PW2, ASI Davinder Singh as PW3, ASI Surjit Singh as PW4 and then closed its evidence.

After the closure of prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded in which the incriminating material appearing against him was put to him. He denied the allegations levelled against him and pleaded his false implication. In his defence, the accused has examined Buta Singh as DW1 and thereafter, closed his defence evidence.

Considering the evidence so adduced, the trial Court vide its judgment and order dated 22.3.2014 had convicted and sentenced the petitioner in the manner as mentioned above.

The petitioner-accused preferred an appeal against the said

judgment of conviction and order of sentence before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Fazilka vide judgment dated 11.4.2016.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

Vide order dated 23.5.2016, this Court has issued notice regarding quantum of sentence only. Thus, learned counsel for the petitioner has not challenged the present revision petition on merits and restricted his arguments qua the quantum of sentence only. He has further contended that the sentence imposed upon the petitioner is excessive and harsh. The petitioner is a poor person having no past criminal record.

Learned counsel for the petitioner has further contended that the accused is facing the criminal proceeding since the year 2009. As against the awarded sentence of 1 year, the petitioner is in custody for the last more than 3 months. During trial, he remained in custody for 4 days and then, he is in custody from 11.4.2016 i.e. the date when his appeal was dismissed. He has prayed that the punishment of petitioner may be converted into the one already undergone by him.

On the other hand, learned State counsel, though has not disputed the custody, but stated that considering the gravity of offence committed by the petitioner, there is no reason for reduction of sentence. He has urged for dismissal of the revision petition. The custody certificate of the

petitioner-accused filed by learned State counsel in the Court today, is taken on record.

I have heard learned counsel for the parties.

In order to determine the question of quantum of sentence, the Courts of law ought to weigh the degree of the culpability of the accused, its effect on others and the impact on the society. It is also of utmost importance that unnecessary leniency may not be shown while sentencing an accused as it might have a cascading effect on the society as a whole. While sentencing, both sides of the fulcrum have to be maintained at straight line and a balance has to be struck between the interest of the individual and the well being of the society.

No doubt, a harsh punishment may serve as a deterrent, but at the same time, it would not benefit the convict in reforming himself, and thereby divesting the society of one of its constituents. The accused can learn more in society than in the company of criminals who are convicts.

In the present case, the petitioner-accused is stated to be a poor person and a first time offender. The custody certificate received from the jail reveals that he has undergone actual custody for 3 months and 6 days. He has been suffering the agony of criminal proceedings since 22.11.2009, the date when the FIR in question was registered.

Therefore, in view of the totality of facts and circumstances of the present case, it would be appropriate if the conviction of petitioner

Baldev Krishan is upheld and the sentence served upon him is reduced from rigorous imprisonment for one year to a period of rigorous imprisonment for six months, however, with no change in the sentence of fine. Ordered accordingly.

With the aforesaid modification in order of sentence, the present revision petition stands dismissed.

July 14, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE