

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 224

Criminal Revision No.3142 of 2015 (O & M)

Date of Decision: *January 19, 2016*

Shiv Kailash

..... PETITIONER

VERSUS

The State of Punjab

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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

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PRESENT: - Mr. Rajbir Singh, Advocate, for the petitioner.

Mr. Jaspreet Singh Sekhon, Assistant Advocate General,
Punjab.

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Jaspal Singh, J

1. The instant revision petition has been preferred by Shiv Kailash against judgment dated August 10, 2015 passed by the Additional Sessions Judge, Sangrur, whereby the judgment of conviction and order of sentence dated June 9, 2014 passed in case FIR No.118 dated June 5, 2010, under Section 25 of the Arms Act, Police Station, City Sunam, District Sangrur, has been upheld. The petitioner was convicted and sentenced by the trial court under Section 25 of the Arms Act, to undergo RI for a period of

one year alongwith fine to the tune of ₹ 1,000/- and in default of payment of fine, to further undergo RI for one month.

2. Briefly stated, accused – petitioner Shiv Kailash was charged with offence under Section 25 of the Arms Act on the allegations that on June 5, 2010 at about 5.30 PM in the area of village Jagatpura Basti, Sunam, he was found in possession of .315 bore country made pistol, without any valid license, with six live cartridges. As per the case of prosecution, at that time, he was a pillion rider on the motor cycle being driven by Inderpal Singh, co-accused.

3. After completion of investigation, challan against the accused was presented in the court of jurisdictional Magistrate. They were supplied the copies of police report and other documents appended therewith as required under Section 207 Cr.P.C., free of costs.

4. Finding a prima facie case against the accused persons, they were charge-sheeted for offences under Section 120-B IPC. Accused-petitioner Shiv Kumar was separately charge-sheeted for the offence punishable under Section 25 of the Arms Act, to which, he pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined as many as seven witnesses.

6. Incriminating circumstances appearing in the prosecution evidence were put to accused in his statement under Section 313 Cr.P.C. who denied the same, pleaded innocence and complained of false implication. Though, accused opted to lead evidence in defence but no defence evidence was led.

7. After hearing learned counsel for the parties and having gone through the material on record, co-accused Inderpal Singh was acquitted of the charge whereas accused – petitioner Shiv Kumar was held guilty under Section 25 of the Arms Act. Accordingly, convicted & sentenced, as detailed above.

8. Appeal preferred by Shiv Kumar also failed before the lower appellate court. In this backdrop of facts, the instant revision petition has been preferred by the accused – petitioner.

9. While issuing notice of motion on August 26, 2015, this Court found the scope to interfere in the quantum of sentence imposed upon the petitioner. Learned counsel for the petitioner did not challenge the petitioner's conviction, however, revision petition was entertained only qua the quantum of sentence. This Court has also scrutinized the impugned judgments as well as the relevant documents/ evidence and is of the considered view that there is no scope for any interference in impugned judgment(s) as far as the conviction of the petitioner under Section 25 of the Arms Act is concerned. As such, the conviction of the petitioner is upheld.

10. As far as quantum of sentence is concerned, learned counsel for the petitioner has submitted that the petitioner is a young person of 33 years. He has asserted himself to be first offender. No other case of similar nature is either pending or disposed of against the petitioner. He is the only bread winner in the family and has to support his old aged parents. He never misused the concession of bail during trial. He has already undergone a period of more than 5 months, out of the substantive sentence of one year.

Accordingly, learned counsel for the petitioner prays that sentence imposed upon the petitioner be reduced to the period already undergone.

11. This Court has given an anxious thought to the submissions made by learned counsel and have gone through the record available on file.

12. As per the custody certificate dated November 14, 2015, by now, the petitioner has already undergone more than 5 months out of total sentence of one year.

13. In similar circumstances, the Hon'ble Apex Court in case Harjit Singh v. State of Haryana, (2002) 10 SCC 695 had reduced the sentence of 7 years under Section 25 of the Arms act as already undergone. To the same effect is the judgment in case Kirpal Singh v. State of Punjab, 2009(1) AICLR 243, whereby this Court had reduced the sentence of petitioner to already undergone, taking into consideration the fact that petitioner has three children – there is no one to look after his family – petitioner has already undergone sentence of more than 5 months out of total sentence of one year. In cases Jagdeep Singh @ Neetu v. State of Punjab, 2013(2) Law Herald 1849; Surjit Singh v. State of Punjab, 2003(2) RCR (Criminal) 429, Sudhir v. State of Haryana, 2001(2) RCR (Criminal) 336; and Chhotu Ram v. State of Haryana, 2013(4) RCR (Criminal) 630, similar view has been adopted.

14. Taking into consideration the totality of facts and circumstances, though, conviction of the appellant is upheld but the sentence imposed upon him under Section 25 of the Arms Act is reduced to the period already undergone by him.

15. With the above modification in the sentence, the revision petition is dismissed.

January 19, 2016
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(Jaspal Singh)
Judge