

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

CRR No.2955 of 2016.
Decided on:-26.10.2016.

Sukhdev Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Amaninder Preet, Advocate
for the petitioner.

Mr. P.S. Madahar, AAG, Punjab
for the respondent-State.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against judgment dated 5.8.2016 passed by learned Additional Sessions Judge, Moga whereby his appeal against judgment of conviction and order of sentence dated 6.6.2012 passed by learned Judicial Magistrate 1st Class, Moga was dismissed with modification in the order of sentence.

Briefly stated, FIR No.136 dated 19.10.2009 under Section 25 of the Arms Act, 1959 (for short, the Act) was registered against the petitioner-accused at Police Station Mehna with the allegations that on 19.10.2009 at about 4.25 p.m., ASI Darshan Singh along with other police officials was going from village Mehna to village Bughipura in connection

with investigation of some other case. When the police party reached ½ KM ahead village Mehna, the petitioner-accused was seen coming from the front side of the road. On seeing the police party, he turned to his left, but was apprehended on the basis of suspicion. On his personal search, a 3x3 country made pistol along with two live cartridges and one empty cartridge was recovered from his conscious possession. The accused could not produce any licence for keeping the case property in his possession. The pistol and the cartridges were taken in possession vide separate recovery memo.

Investigation was conducted. Report under Section 173 Cr.P.C. was prepared and presented in the Court. Copy of the report was supplied to the accused free of cost as envisaged under Section 207 Cr.P.C. 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 plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as four witnesses, namely, Darshan Singh as PW1, Satnam Singh, Ahlmad in the office of District Magistrate, Moga as PW2, HC Iqbal Hussain as PW3 and Surjit Singh as PW4. 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. In defence evidence, the petitioner-accused examined Wakil Singh as DW1 and Pritam Singh as DW2.

Learned Magistrate vide judgment dated 6.6.2012 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 three years and to pay a fine of Rs.5,000/-. In default of payment of fine, the petitioner-accused was further sentenced to undergo simple imprisonment for one month.

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 Additional Sessions Judge, Moga vide judgment dated 5.8.2016 with modification in the order of sentence to the effect that the sentence awarded to him was reduced to a period of 1½ years.

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

This Court vide order dated 16.9.2016 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/Duty Magistrate, Moga.

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 appellate Court be reduced to the period already undergone by the petitioner. Learned counsel has submitted that as against

the awarded sentence of 1½ years, the petitioner has already undergone 1 year, 1 month and 23 days till 15.9.2016. 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 19.10.2009 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 with modification in the order of sentence. 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 19.10.2009, the date when the FIR in question was registered against him, and as against the awarded sentence of 1½ years by learned appellate Court, he has already undergone 1 year, 1 month and 23 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 6.6.2012 passed by the trial Court.

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

October 26, 2016

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No