

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

CRR No.2981 of 2016 (O&M)
Decided on:-30.09.2016.

Puran.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Ferry Sofat, Advocate for
Mr. Saleem Ahmed, Advocate for the petitioner.

Mr. Sulinder Kumar, AAG, Haryana
for the respondent-State.

HARI PAL VERMA, J.

The petitioner has filed present revision petition challenging the judgment dated 12.8.2016 passed by learned Additional Sessions Judge, Gurgaon, whereby his appeal filed against the judgment of conviction dated 4.1.2016 and order of sentence dated 5.1.2016 passed by learned Judicial Magistrate 1st Class, Gurgaon, was dismissed with modification in order of sentence.

Learned Magistrate vide judgment dated 4.1.2016 convicted the petitioner for offence punishable under Sections 279, 337 and 338 IPC and vide separate order of even date, sentenced him as under:

Under Section

Sentence

279 IPC

Rigorous imprisonment for a period of three months with fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for fifteen days.

337 IPC	Rigorous imprisonment for a period of three months with fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for fifteen days.
338 IPC	Rigorous imprisonment for a period of six months with fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for fifteen days.

However, all the substantive sentences were ordered to run concurrently.

Briefly stated, a case bearing FIR No.30 dated 18.1.2013 under Sections 279, 337 and 338 IPC was registered at Police Station Susant Lok, Gurgaon on the basis of a written complaint made by complainant Sandeep Arora. In his complaint, the complainant had alleged that on 17.1.2013 at about 11.00-11.15 a.m., he and his brother-in-law Vishal Dhawan were going towards Sector-56, Gurgaon for some personal work via separate bikes. When they reached near Honda showroom, the driver of dumper bearing registration No.RJ-05GA-8468, who was driving the vehicle in a rash and negligent manner, hit the bike of Vishal Dhawan from its back. Due to impact, said Vishal Dhawan toppled down and got unconscious. The driver of the offending vehicle escaped from the spot by leaving the vehicle there. Thereafter, the complainant arranged for a vehicle and took Vishal Dhawan to a hospital.

On the basis of statement of the complainant, the aforementioned FIR was registered. Statements of witnesses were recorded

by the police. Site plan was prepared and the petitioner-accused was arrested. After completion of investigation, Challan was presented in the Court. Copy of challan was supplied to the petitioner-accused free of costs as envisaged under Section 207 Cr.PC. Thereafter, the accused was charge-sheeted by the trial Court for the commission of offence under Sections 279, 337 and 338 IPC to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 10 witnesses including injured Vishal Dhawan as PW1 and complainant Sandeep Arora as PW9. Thereafter, the statement of accused under Section 313 Cr.PC was recorded wherein he denied the allegations levelled against him. However, he did not examine any witness in his defence.

Considering the evidence so adduced, the trial Court vide its judgment dated 4.1.2016 and order dated 5.1.2016 had convicted and sentenced the petitioner in the manner as mentioned above.

Feeling aggrieved, the petitioner 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, Gurgaon vide judgment dated 12.8.2016. However, it was ordered that the imprisonment for Sections 279, 337 and 338 IPC would be treated as simple and the punishment for offence under Section 338 IPC would be for a period of three months with the same amount of fine as ordered by the trial Court.

It is in these circumstances that the petitioner has filed the present revision petition challenging the verdicts of the Courts below.

During the course of arguments, learned counsel for the petitioner has not challenged the conviction of petitioner and has confined his arguments qua the quantum of sentence only. He has contended that as against the awarded sentence of three months, as ordered by learned appellate Court, the petitioner has already undergone imprisonment for a period of 1 month and 20 days as actual sentence. There is no other criminal case pending against him. He has further contended that the petitioner is a first time offender. He is married and has three small children to look after. He earns his livelihood by the profession of driving. The FIR in question was registered against him on 18.1.2013 and in this manner, he has been suffering the agony of criminal proceedings for the last more than 3½ years. Thus, he has prayed that sentence of the petitioner may be reduced to the period already undergone by him.

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. The custody certificate produced by learned State counsel in the Court today, is taken on record.

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 Sections 279, 337 and 338 IPC. The appellate Court has also rightly dismissed the appeal. There is no illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court by invoking revisional jurisdiction. 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, therefore, 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 18.1.2013, the date when the FIR in question was registered against him, and as against the awarded sentence of three months by learned appellate Court, he has already undergone 1 month and 20 days, this Court finds justification with the prayer made by learned counsel for the petitioner for reduction of sentence of the petitioner to the period already undergone by him.

Therefore, taking into consideration the submissions raised by learned counsel for the petitioner, this Court feels that the ends of justice would be met in case the sentence awarded to the petitioner is reduced to the period already undergone by him. Ordered accordingly.

However, it is made clear that the sentence qua fine imposed upon the petitioner shall remain intact. In case the petitioner is not required in any other case, he be released from custody forthwith on his depositing the amount of fine imposed upon him, if not paid so far.

With the aforementioned modification in the quantum of sentence, the present revision petition stands dismissed.

September 30, 2016

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned:

Yes / No

Whether Reportable:

Yes / No