

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

CRR No.4339 of 2015 (O&M).
Decided on:-31.05.2016.

Krishan Kumar.

.....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. Mukesh Yadav, Advocate
for the petitioner.

Mr. Sultan Singh Gill, DAG, Punjab
for the respondent-State.

HARI PAL VERMA, J.

By way of instant petition, the petitioner has challenged the judgment dated 31.10.2015 passed by learned Sessions Judge, Pathankot, vide which the criminal appeal preferred by him against the judgment of conviction and order of sentence dated 30.4.2015 passed by learned Judicial Magistrate 1st Class, Pathankot, was dismissed.

Learned Magistrate vide judgment dated 30.4.2015 convicted the petitioner for offence punishable under Sections 279, 338 and 427 IPC

and vide separate order of even date, sentenced him as under:

<u>Under Section</u>	<u>Sentence</u>
279 IPC	Rigorous imprisonment for six months.
338 IPC	Rigorous imprisonment for one year with fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for fifteen days.
427 IPC	Rigorous imprisonment for six months with fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for fifteen days.

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

Briefly stated, prosecution version is that on 16.05.2010, ASI Shiv Kumar was present at Police Station Division No.1. He received information that Ashwani Kumar was admitted in injured condition at Ravi Hospital, Pathankot. On receipt of said information, he along with other police officials in their private vehicle reached said hospital. However, the concerned doctor opined that the injured was unfit to give statement. When ASI Shiv Kumar along with other police officials was going to Gobind Sagar at Sarna by-pass, complainant Darshan Kumar met and got recorded his statement. He stated that he as well as injured Ashok Kumar and Subhash Chander used to work at M/s Sagar Indian Company, situated in front of Electricity Colony, Bharoli. He further stated that he was going to said firm

by riding a bicycle on which Subhash Chander was sitting as a pillion rider. Ashwani Kumar was going ahead and riding a separate bicycle. At about 6.45 a.m. when they reached the turning point at Rajparura, a Qualis vehicle of red colour bearing registration No.HR-26-U-5560 being driven by its driver rashly and negligently came and hit the bicycle of Ashwani Kumar due to which he fell down and received serious injuries on his head and other parts of the body. His bicycle was also broken. The driver of Qualis vehicle tried to flee away, but they caught him. He disclosed his name as Krishan Kumar. Thereafter, he left the vehicle on the spot and fled away. The complainant and Subash Chander managed the vehicle and Ashwani Kumar was got admitted to Ravi Hospital. He further stated that he went to home for giving information and now after returning from there, he was going to the Police Station. He further stated that the accident took place due to rash and negligent driving of the driver of Qualis vehicle and requested for taking action against him.

On the basis of the statement of complainant Darshan Kumar, FIR No.69 dated 16.5.2010 under Sections 279, 337, 338 and 427 IPC was registered against the petitioner-accused at Police Station, Sadar Pathankot. Statements of witnesses were recorded and site plan of the place of occurrence was prepared. 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, 338 and 427 IPC to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 7 witnesses including complainant Darshan Kumar as PW1 and eye witness Subhash Chander as PW2. Thereafter, the statement of accused under Section 313 Cr.PC was recorded wherein he denied the allegations levelled against him. However, no evidence in defence was led by the petitioner-accused.

Considering the evidence so adduced, the trial Court vide its judgment and order dated 30.4.2015 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 learned Sessions Judge, Pathankot. However, the appellate Court vide judgment dated 31.10.2015 dismissed his appeal.

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

In view of order dated November 16, 2015 passed by this Court, whereby notice of motion was issued only to the limited extent of quantum of sentence, learned counsel for the petitioner has confined his arguments qua the quantum of sentence only. He has contended that as against the

awarded sentence of one year, the petitioner is in custody since 31.10.2015 i.e. for a period of seven months. There is no other criminal case pending against him. He has further contended that the petitioner is a first time offender and the only bread-earner of his family. He has prayed that sentence of the petitioner may be reduced to the period already undergone by him as this criminal trial is hanging on his head for the last more than six years, because the FIR in question was registered on 16.5.2010, and it should be a sufficient mitigating circumstance to treat him leniently.

On the other hand, learned State counsel has produced on record custody certificate of the petitioner, which is taken on record. Though learned State counsel has not disputed the custody of petitioner Krishan Kumar, but opposed the plea of taking liberal view, as raised by learned counsel for the petitioner.

I have heard learned counsel for the parties.

Since the present revision petition has not been contested by the petitioner on merits and learned counsel for the petitioner has restricted his arguments qua the quantum of sentence only, the impugned judgments dated 30.4.2015 and 31.10.2015 passed by the trial Court and the appellate Court respectively, are upheld.

However, taking into account the protracted trial, antecedents of the petitioner-accused and the fact that as against the total sentence of one year, he has suffered incarceration for a period of seven months, this Court

feels that the ends of justice would be met in case the sentence awarded to him is reduced to the period already undergone by him. Ordered accordingly.

Perusal of the order of sentence dated 30.4.2015 passed by the trial Court shows that the petitioner-accused has paid the fine. Therefore, he be released from custody forthwith, if not required in any other case.

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

May 31, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE