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

CRR No.4068 of 2016 (O&M)

Date of decision: December 21, 2016

Sanjiv Kumar

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. J.S. Chatrath, Advocate for the petitioner.

Ms. Rajni Gupta, Addl. AG Punjab.

A.B. CHAUDHARI, J (Oral)

CRM No.34631 of 2016

Heard.

Application is allowed for the reasons stated therein. Delay of 755 days in filing the revision petition, is condoned.

CRR No.4068 of 2016 (O&M)

Custody certificate filed by the learned State counsel, today in Court, is taken on record.

This is a revision petition directed against the judgment and order dated 11.02.2014 passed by the Additional Chief Judicial Magistrate, Rupnagar in police challan No.248/05.12.2011 by which the petitioner-accused was found guilty of the offence punishable under Sections 363, 506 of the Indian Penal Code, 1860 (for short 'IPC') and was sentenced to undergo Rigorous Imprisonment for 5 years and in default to

pay fine of ₹5,000/- and further sentenced to undergo Rigorous Imprisonment for 1 year and in default to pay fine of ₹1,000/- and confirmed in appeal by the lower Appellate Court vide order dated 01.07.2014.

Learned counsel for the petitioner-accused as well as learned State counsel are *ad idem* that out of the total sentence of 5 years, the petitioner-accused has already undergone the sentence of 4 years, 7 months and 25 days as on date.

Learned counsel for the petitioner-accused further submits that the impugned judgment and order are illegal and not based on evidence. In the alternative, he submits that since the petitioner has already undergone major part of the sentence but for the remaining 4 months, the sentence should be reduced to one already undergone and the sentence of fine should also be set aside.

I have heard learned counsel for the rival parties and perused the impugned judgment and order by both the Courts below.

In so far as the conviction of the petitioner for offence punishable under Sections 363, 506 ICP is concerned, I find that the finding of conviction by both the Courts below is legal and therefore, the order of conviction will have to be maintained and is maintained accordingly.

The next question is about the sentence awarded to the petitioner. The petitioner was awarded sentence of 5 years and one year, both to be run concurrently. The petitioner has already undergone the

sentence of 4 years, 7 months and 25 days as on date. I think, the petitioner has sufficiently been punished as for 4 months, he has almost completed the sentence. In the interest of justice, I think the petitioner should be set at liberty on the sentence which has already undergone. In so far as the fine is concerned, looking to the facts of the case, I think the sentence of fine will also have to be set aside looking to the fact that the alleged kidnapped child was immediately found.

In that view of the matter, following order will have to be passed:-

ORDER

- (i) CRR No.4068 of 2016 is partly allowed;
- (ii) The judgment and order of conviction of the petitioner under Sections 363, 506 IPC is confirmed;
- (iii) The judgment and order of sentence recorded by both the Courts below is set aside and modified and the sentence is reduced to the one which he has already undergone;
- (iv) The order awarding sentence of fine under Sections 363, 506 IPC is also set aside;
- (v) The petitioner be set at liberty forthwith, if not required in any other case.

(A.B. CHAUDHARI)
JUDGE

December 21, 2016

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No