

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

CRR No.431 of 2016 (O&M).
Decided on:-28.04.2016.

Billu and another

.....Petitioners.

Versus

State of Haryana.

.....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. Ram Niwas Kush, Advocate
for the petitioners.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.

The petitioners have filed the instant revision petition challenging judgment dated 11.1.2016 passed by learned Sessions Judge, Narnaul whereby their appeal filed against judgment of conviction dated 3.7.2014 and order of sentence dated 4.7.2014 passed by learned Sub-Divisional Judicial Magistrate, Mohindergarh was dismissed.

Vide judgment dated 3.7.2014, the petitioners were convicted by the trial Court for committing offence punishable under Sections 457 and 380 IPC. Vide separate order dated 4.7.2014, they were sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,000/- each under Section 457 IPC. They were also sentenced to undergo rigorous

imprisonment for one year and to pay fine of Rs.1,000/- each under Section 380 IPC. However, both the substantive sentences were ordered to run concurrently. The fine was paid by both the petitioners before the trial Court.

Briefly stated, the present FIR No.44 dated 14.5.2007 under Sections 457 and 380 IPC was registered against the petitioners-accused, namely, Billu and Shetty @ Kaliya and seven other co-accused, namely, Bangali @ Ram Kumar, Jagdish @ Jagira, Zile Singh, Kirpal Singh son of Gurdayal Singh, Kirpal Singh son of Mam Chand, Madan and Sher Singh at Police Station, Satnali on a complaint presented by Ram Kumar and addressed to SHO Police Station, Satnali. As per the FIR, the complainant is a commission agent. He is running his shop at the Grain Market, Satnali and has opened a godown behind liquor vend on Dadri road. During the intervening night of 12/13.6.2007, some unknown person after breaking open lock of his godown had stolen away 100 bags of foodgrain i.e. "Ganwar". The watchmen of the complainant had tried their best to nab the accused but they succeeded in fleeing away.

Investigation in the case was conducted. Report under Section 173 Cr.PC was prepared and presented in the Court. Copies of the report was supplied to the accused free of costs as envisaged under Section 207 Cr.PC.

On finding a prima-facie case against the petitioners, charge under Sections 457 and 380 IPC was framed against them to which they did not plead guilty and claimed trial.

It would be pertinent to mention here that during the trial, remaining seven accused failed to appear before the trial Court and were consequently declared as proclaimed offenders.

In order to prove its case, the prosecution examined as many as twelve witnesses. Thereafter, statements of accused under Section 313 Cr.PC were recorded wherein entire evidence appearing against them on record was put to them. The accused denied the evidence of the prosecution and pleaded their false implication. However, no evidence in defence was led by the accused.

Learned Magistrate vide judgment dated 3.7.2014 held the petitioners-accused, namely, Billu and Shetty @ Kala guilty and accordingly convicted him for commission of offence punishable under Sections 457 and 380 IPC and vide separate order dated 4.7.2014, sentenced them to undergo imprisonment as mentioned hereinabove.

Aggrieved against the said judgment and order, the petitioners-accused filed an appeal before the Court of Session, but the same was also dismissed by learned Sessions Judge, Narnaul vide judgment dated 11.1.2016. The petitioners-accused were ordered to be taken into custody for undergoing the sentence awarded by the trial Court.

It is in these circumstances, the petitioners have preferred the present revision petition before this Court.

In view of order dated 10.3.2016 passed by this Court whereby

learned counsel for the petitioners did not press the present petition on merits and restricted his arguments qua the quantum of sentence only, learned counsel for the petitioners has stated that he is limiting his prayer only to the extent of reduction in the sentence awarded to the petitioners and has not assailed the judgment of conviction.

Learned counsel for the petitioners has further stated that he is conscious that scope in the revision is very limited as evidence of the witnesses cannot be re-appreciated or re-evaluated.

Learned State counsel, on the other hand, has submitted that in case conviction of the petitioners is maintained, the Court may reduce their sentence as deemed appropriate in the circumstances of the case.

Learned State counsel has also produced two affidavits of Sanjay Singh, Superintendent of Prison, District Prison, Narnaul, according to which both the petitioners have undergone actual custody of 03 months and 21 days each as on 27.04.2016. The affidavits are 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 petitioners guilty of the charge framed against them. The appellate Court has also rightly dismissed the appeal. There is no infirmity, illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court. The

conviction of the petitioners is, thus, affirmed.

Even learned counsel for the petitioners, during the course of arguments, has not assailed the judgment of conviction. He has, however, pleaded for reduction in the quantum of sentence on the ground that petitioner Billu is a poor person having two children who are dependents upon him. Similarly, petitioner Shetty @ Kalia is also a poor person and is sole bread earner of his family. There is no other member to look after his family and he has two children and ill parents.

Keeping in view the facts and circumstances of the case, it is directed that the sentence awarded to the petitioners shall be reduced to six months. However, the fine imposed by the trial court shall remain intact. Ordered accordingly.

Except with modification in the quantum of sentence, as indicated herein above, the revision petition is dismissed.

April 28, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE