

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

CRR No.476 of 2016 (O&M).
Decided on:-08.02.2016.

Faqir Chand alias Prem.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

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

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Prateek Pandit, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Petitioner Faqir Chand alias Prem son of Gabbu Ram, resident of House No.83/3, Bhargo Camp, Jalandhar has filed the present revision petition challenging judgment dated 6.1.2016 passed by learned Additional Sessions Judge, Jalandhar, whereby his appeal against the judgment of conviction and order of sentence dated 2.7.2015 passed by learned Judicial Magistrate 1st Class, Jalandhar, was dismissed.

Learned Magistrate vide judgment dated 2.7.2015 had convicted the petitioner for offence punishable under Sections 279 and

304-A IPC in case FIR No.150 dated 2.8.2011 registered at Police Station Bhargo Camp, Jalandhar and vide separate order of even date sentenced him as under:

<u>Under Section</u>	<u>Sentence</u>
279 IPC	Rigorous imprisonment for a period of six months and to pay fine of Rs.1000/-. In default of payment of fine, to further undergo simple imprisonment for ten days.
304-A IPC	Rigorous imprisonment for a period of two years and to pay fine of Rs.1000/-. In default of payment of fine, to further undergo rigorous simple imprisonment for ten days.

However, both the sentences were ordered to run concurrently.

Learned counsel for the petitioner contends that after dismissal of the appeal before learned Additional Sessions Judge, Jalandhar, a compromise dated 20.1.2016 (Annexure P-1) has been arrived at between the wife of the petitioner and the legal heirs of deceased Kunti Devi.

Notice of motion.

At the asking of this Court, Mr. Gurinderjit Singh, DAG, Punjab accepts notice on behalf of respondent-State.

Let requisite number of complete copies of the paper book be supplied to learned State counsel during course of the day.

At this stage, Mr. Amit Kohar, Advocate has put in appearance and accepts notice on behalf of respondents No.2 and 3. Power of attorney

filed on behalf of respondents No.2 and 3 in Court today, is taken on record.

Respondent No.2 Ashok Kumar, who is son of deceased Kunti Devi, is present in person and is duly identified by his counsel Mr. Amit Kohar, Advocate. He states that the matter has been compromised between the parties and the legal heirs of Kunti Devi have duly been compensated by the petitioner. He further states that his mother Kunti Devi was aged about 70 years and had the difficulty to hear and, therefore, she could not perceived the accident.

Learned counsel for the petitioner has argued that the petitioner is first time offender and is suffering the agony of trial since 2.8.2011 i.e. the date when the FIR was lodged. Instead of arguing the matter on merits, he has confined his arguments to the extent that the sentence awarded to the petitioner be reduced to the period already undergone by him particularly when the petitioner has duly compensated the legal heirs of the deceased. In support of his contention, he has relied upon **2013(1) RCR (Criminal) 826 (Supreme Court)** titled as **Ismail Versus Police Sub Inspector, Hospet.** Reliance has also been placed upon **Puttaswamy Versus State of Karnataka and another 2009(1) RCR (Criminal) 501 (Supreme Court)** and a recent judgment of this Court passed in **Criminal Revision No.1384 of 2014** decided on 19.1.2016 titled as **Balwinder Singh Versus State of Punjab.**

On the other hand, learned State counsel has argued that the offence under Section 304-A IPC is not a private offence and is an offence

against the society and, therefore, the sentence awarded by the learned trial Court does not want any interference. He has further submitted that as against the awarded sentence of two years, the petitioner has undergone only about one month.

I have heard learned counsel for the parties.

The petitioner is stated to be first time offender and admittedly facing the agony of trial since 2.8.2011. This Court cannot ignore the fact that the parties have compromised the matter and legal heirs of deceased Kunti Devi have duly been compensated in addition to the claim, if any, received by them under the Motor Vehicles Act, 1988.

In *Ismail's case (supra)*, the accused was convicted under Section 304-A IPC and was sentenced to undergo rigorous imprisonment for one year, however, the Apex Court reduced his sentence to the period of 15 days which he had already undergone. The relevant para No.3 of the said judgment reads as under:

“3. We have perused the relevant record and heard arguments of the learned Counsel for appellant. Apart from the material considered by the Courts below, learned Counsel for the appellant has brought to our notice that the appellant is aged about more than 74 years as on date and by placing a medical certificate dated 26.2.2010 it is stated that he is not in a position to do any activity. We have also perused the medical certificate which is available in the form of Annexure P-6. In addition to the same, it is also brought to our notice that he had

suffered 15 days of sentence. Taking all these aspects into consideration particularly his health condition and age, we feel that the ends of justice would be met by reducing the sentence to the period which he had already undergone. To this extent, we modify the impugned order of the High Court.”

Similarly, in ***Puttaswamy's case (supra)***, the Apex Court has observed in para Nos.9 and 10 as under:

“9. What emerges from all these decisions is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction. In the present case, the appellant has been convicted under Sections 279 and 304-A of the Indian Penal Code and has been sentenced to undergo simple imprisonment for a period of 6 months and to pay a fine of Rs.2,000/-. The sentence as far as conviction under Section 279 I.P.C. is concerned has been set aside by the High Court. What remains after the judgment of the High Court is the conviction under Sections 279 and 304-A I.P.C. wherein the appellant was sentenced to undergo six months simple imprisonment along with a fine of Rs.2,000/-. In our view, this is one of those cases where instead of confining the appellant in prison, the interest of justice will be better served if he is made to compensate the family of the deceased on account of the loss suffered by them.

10. Accordingly, while maintaining the appellant's conviction under Sections 279 and 304-A I.P.C., notwithstanding the

agreement arrived at between the parties, we increase the amount of fine from Rs.2,000/- to Rs.20,000/- to be paid by the appellant to the parents of the deceased and reduce the sentence to the period already undergone, subject to payment of the fine. The aforesaid amount is to be deposited by the appellant in the Trial Court within three weeks from date, and on such deposit, the said amount shall be made over to the parents of the deceased and the appellant shall be released forthwith. In default of such deposit, this order shall remain in abeyance for a period of four weeks and if still no deposit is made within the said period the appeal will stand dismissed.”

Further in the case of ***Sube Singh and another Versus State of Haryana and another 2013(4) RCR (Criminal) 102***, this Court, while invoking the powers as envisaged under Section 482 Cr.PC, has held that the High Court is vested unparallel power to quash criminal proceedings at any stage to secure ends of justice and allowed the compounding of offence which was otherwise non-compoundable.

Considering the fact that learned counsel for the petitioner has restricted his arguments qua the quantum of sentence and coupled with the fact that the petitioner is suffering the agony of trial since 2.8.2011 when the FIR in question was registered and further as against the total sentence of two years, he has suffered incarceration for a period of about one month, as also in the light of the aforementioned judgments, this Court feels that the ends of justice would be met in case the conviction of the petitioner-accused

is upheld but the sentence awarded to him is reduced to the period already undergone by him.

Accordingly, the conviction of the petitioner-accused is upheld but the sentence is reduced to the period already undergone by him.

Perusal of the records reveals that the fine, as imposed by learned trial Court, has already been paid by the petitioner. As such, he is ordered to be released forthwith, if not required in any other case.

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

February 08, 2015
Yag Dutt

(HARI PAL VERMA)
JUDGE