

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

**CRR No.183 of 1994 (O&M)
Decided on: 18.08.2017**

Jasbir Singh @ Gogi

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. I.P.S. Kohli, Advocate
for the petitioner.

Mr. Randeep S. Khaira, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

The present petitioner – Jasbir Singh @ Gogi faced trial in FIR No.74 dated 23.05.1985 under Section 9 of the Opium Act as well as FIR No.75 dated 23.05.1985 under Section 61(1)(A) of the Punjab Excise Act registered at Police Station Sadar Moga, District Moga.

The prosecution version in nutshell is that on 23.05.1985 one Ranjit Singh, Inspector CIA, Faridkot was present on a barrier put up on a link road, on the basis of a secret information. Meanwhile, one car bearing No.PJT-8009 came from GT Road side and on giving signal, it stopped and Jagjit Singh, Sarpanch of village Daroli Bhai ran away from the car, after stopping the same. He was known to the police officials but he could not be apprehended despite due chase. The petitioner/accused, remain seated on the front seat of the said car and was apprehended. On his search, 20 Kgs of opium was found wrapped in a gunny bag. Accordingly, the FIR No.74 under the Opium Act was registered. On further search of the car, 40 bottles of illicit liquor were

also recovered from its dicky and in this regard, FIR No.75 under Section 61(1)(a) of the Punjab Excise Act was also registered.

The trial Court vide its order dated 10.02.1988 consolidated the trial of both the aforesaid 02 FIRs as the same was related to one incident.

Later on, charges were framed against the petitioner/accused. The petitioner claimed trial and thereafter, in prosecution evidence Mukhtiar Singh, Sub-Inspector was examined as PW1 and Inspector Ranjit Singh was examined as PW2. Besides this, the report of Chemical Examiner was tendered as Exs.PG and PH and the affidavits of formal witnesses were also filed.

PW1 – Mukhtiar Singh is a witness of alleged recovery of contraband and illicit liquor.

PW2 – Inspector Ranjit Singh proved the recovery memo Ex.PA and the information sent to the police as Ex.PC, copy of the FIR as Ex.PC/1 and copy of the second FIR as Ex.PE/1.

After the prosecution evidence was closed, the statement of the petitioner/accused under Section 313 Cr.P.C. was recorded in which the accused pleaded not guilty and claimed that he has been falsely implicated in this case.

In defence, the petitioner examined Sulakhan Singh as DW1 who stated that the petitioner was of good moral character.

The trial Court thereafter, convicted the petitioner holding him guilty under Section 9 of the Opium Act and Section 61(1)(a) of the Punjab Excise Act vide judgment dated 30.10.1990 and sentenced the petitioner to undergo rigorous imprisonment for a period of 02 years

and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 03 months under the Opium Act and to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.1,000/- and in default of payment to fine to further undergo rigorous imprisonment for a period of 03 months under Section 61(1)(a) of the Punjab Excise Act.

Thereafter, the petitioner filed an appeal before the Appellate Court and the Appellate Court also dismissed the appeal vide its judgment dated 03.03.1994. The prayer for reducing the sentence or for releasing the petitioner on probation was also declined by the Appellate Court.

The present revision petition was filed on 10.03.1994 and it was admitted on 18.03.1994 and the sentence of the petitioner was suspended.

Before advertng to the submissions made by counsel for the petitioner, it would be appropriate to refer certain dates of the present revision petition. When this revision petition was listed for regular hearing, it was ordered on 14.02.2008 that the trial Court record be requisitioned. The SHO, P.S. Sadar Moga was also directed to file a report regarding the antecedents of the petitioner as to whether he has committed any other offence of this nature or not. In pursuance to this order, a report was received from the District and Sessions Judge, Faridkot that the trial Court record of this case has been misplaced and disciplinary action is being taken against the erring official. An affidavit of the SHO, P.S. Sadar Moga was also filed in which it was stated that except the present FIR Nos.74 and 75 of 1985 for which the petitioner

was tried and convicted, vide impugned judgments, no other case has been registered against him.

This Court vide order dated 12.03.2008 directed for reconstruction of the records as per rules and thereafter, on number of occasions the case was adjourned to know the status of reconstruction of the records and the matter remained pending for a considerable long time.

On 20.01.2016, again it was directed to take suitable steps for taking an appropriate steps for punishing the concerned police official for destroying the records i.e. police file before final decision of the case and it was also noticed that the District and Sessions Judge, Faridkot has not taken desired steps in locating the file or reconstructing the same. Again, similar orders were passed on 03.03.2016 and 02.08.2016. Thereafter, the case was de-listed and now it has been again listed for final hearing.

From the last report dated 03.08.2017, submitted by the District and Sessions Judge, Moga, it has been reported that the delinquent official i.e. Jangir Singh Jossan has gone to Canada and as per the statements made by the learned counsels who had conducted the case of the petitioners in the trial Court, they have shown their inability to provide the records for reconstruction and thus, the District and Sessions Judge, Moga has submitted that reconstruction of the lost records is not at all possible.

In view of the report submitted by the District and Sessions Judge, Moga, the arguments in the main case was heard as the counsel for the petitioner has restricted his argument only *qua* the

sentence part as he has not contested the findings recorded *qua* the conviction of the petitioner.

It is submitted on behalf of the petitioner that in the present case, FIR was registered on 23.05.1985 and as per the version given in the FIR, when the police party stopped the car, the co-accused – Jagjit Singh, Sarpanch (since deceased) (as informed by counsel for the petitioner) who was the owner and driver of the car ran away from the spot and the police party chased him but could not catch him. Counsel for the petitioner with reference to the impugned judgment has submitted that when the police party came back, the present petitioner was found sitting in the car along with the contraband recovered from him. It is submitted that it is most unnatural version that the petitioner had not run away from the spot and remained sitting in the car waiting the police party to come back. It is also submitted on behalf of the petitioner that the petitioner is facing the agony of protracted trial for the last 32 years and was just about 17 years of age when he was arrested in the case and since, 1985 and he is not involved in any other case as is clear from the affidavit filed by the SHO P.S. Sadar Moga in this case as noticed above. It is also submitted that the petitioner has already suffered sentence for a period of 36 days out of total sentence awarded by the trial Court and is not a previous convict. It is further submitted that the petitioner is now married and has his own family to support and take care of. During the intervening period i.e. since 1985 till date when he was on bail, he has never misused the concession of bail i.e. when the matter was pending before the Courts below as well as before this Court.

Since, counsel for the petitioner has contested the conviction of the petitioner and has restricted his arguments limited to the extent of sentence part only, I am of the opinion that despite the fact that the records of the Courts below cannot be reconstructed, in view of the report dated 03.08.2017 submitted by the District and Sessions Judge, Moga, this revision petition can still be decided with regard to sentence of the petitioner.

Counsel for the petitioner has submitted that the petitioner was convicted under the Opium Act prior to coming into force the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') as admittedly, the NDPS Act came into force on 16.09.1985 whereas the present FIRs were registered on 23.05.1985 and, therefore, it is submitted on behalf of the petitioner that the sentence of the petitioner may be reduced to the period already undergone by him. In support of his contentions, he has referred to the order passed by this Court in **CRR No.421 of 1992** titled as '*Swaran Singh vs State of Punjab*', decided on 07.02.2007 wherein this Court has reduced the sentence of a convict to the period already undergone by him.

Since the petitioner has already faced the agony of long protracted trial for a period of about 32 years and he was approximately 17 years of age at the time of commission of offence; the petitioner is not involved in any other subsequent FIR during the intervening period and never misused the concession of bail, the sentence imposed upon the petitioner is reduced to the period already undergone by him.

However, the sentence of fine and sentence awarded for default of payment of fine stands affirmed. The amount of fine shall be

deposited by the petitioner, if not already paid, before the trial Court within a period of one month from the date of receipt of certified copy of this order, failing which, the petitioner shall have to undergo the sentence as awarded in the default clause in respect of payment of fine.

Accordingly, the present revision petition is partly allowed and the order of sentence dated 30.10.1990, is modified to the extent discussed hereinabove.

(ARVIND SINGH SANGWAN)
JUDGE

18.08.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No