

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

CRL. REVISION No.915 OF 2014
DATE OF DECISION : 10th MAY, 2017

Sandeep @ Babbar

.... Petitioner

Versus

State of Haryana

.... Respondent

CRL. REVISION No.916 OF 2014

Pawan

.... Petitioner

Versus

State of Haryana

.... Respondent

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

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Present : Mr. Rajesh Duhan, Advocate for the petitioner(s).

Mr. Chetan Sharma, AAG, Haryana.

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A. B. CHAUDHARI, J. (ORAL)

Both the above petitions are taken up for final disposal in view of the short controversy involved.

Heard learned counsel for the rival parties.

Petitioners Sandeep @ Babbar and Pawan in both these revision petitions have put to challenge the concurrent judgment and order of their conviction under Section 174-A IPC and sentence of three years with fine of ₹1000/- each and in default of payment of fine the convicts shall further undergo simple imprisonment for one month.

It is not in dispute that the petitioners were accused persons in FIR No.289 dated 30.12.2009 registered under Section 398 & 401 IPC and Section 25 of Arms Act at P.S. Pundri. It is also not in dispute that

both the petitioners were tried by the learned Sessions Judge, Kaithal, who made order of acquittal in Sessions trial on 18.01.2006. In other words, both the petitioners were acquitted in the substantive case, for which they were charged in the Sessions trial.

The petitioners had become proclaimed offenders during the conduct of the said trial and that is why after declaring them proclaimed offenders the offence under Sections 174-A IPC was registered against them which resulted into conviction of both the petitioners at the hands of JMIC, Kaithal, who convicted them for the aforesaid sentence. The said judgment and order of conviction recorded by the JMIC, Kaithal was affirmed by the lower Appellate Court. Hence these two petitions have been filed by them.

Learned counsel for the petitioners in both these petitions submitted that both the impugned judgments are based on no evidence and the findings recorded against the petitioners about the offence under Section 174-A IPC are perverse. According to him the Court below could not have recorded the conviction of the petitioners for the said offence i.e. under Section 174-A IPC. He submitted that there was no satisfactory evidence on record of the trial Court for convicting the petitioners.

Per contra, learned State counsel vehemently opposed the revision petitions and supported the judgment and orders of conviction and sentence recorded by the courts below. He submitted that nothing has been shown as to the alleged perversity committed by the courts

below in recording the finding of conviction and there is no reason to interfere with the conviction recorded against the petitioners.

Learned counsel for the petitioners in both these petitions then contended that in the alternative, the sentence may be reduced to the one that both the petitioners have undergone. The petitioners have undergone sentence as follows:

Name of the convict	Under Section	Year	Month	Days
Sandeep @ Babbar	174-A IPC	01	01	04
Pawan	174-A IPC	01	00	29

This submission of the counsel for the petitioners has been opposed by learned State counsel.

Upon hearing counsel for the rival parties at length and having considered the reasons recorded by the courts below for recording the conviction of the petitioners under Section 174-A IPC, I find that the courts below have been concurrently and rightly convicted the petitioners. The finding of conviction, therefore, will have to be confirmed qua both the petitioners and hence the same is confirmed.

The next question is about the sentence. The courts below have awarded the sentence of three years to both the petitioners plus fine. In my opinion, there is strong and mitigating circumstances in favour of the petitioners namely that in the substantive sessions trial in which they were tried, out of which the present offence arose, both the petitioners have been acquitted. The object was to bring them to face the trial because the trial was delayed by their own conduct by remaining at large instead of facing the trial for a few years. But then balancing the

sentence with the above facts, in my opinion, the sentence which they have already undergone would meet the ends of justice.

In that view of the matter, it is not necessary to ask them to undergo the entire sentence of three years awarded to them by the courts below. I am, therefore, inclined to modify the judgment and order regarding sentence of both the petitioners. In the result I make the following order.

ORDER

- (i) CRL. REVISION No.915 OF 2014 & CRL. REVISION No.916 OF 2014 are partly allowed.
- (ii) The impugned judgments and orders convicting both the petitioners under Section 174-A IPC are confirmed.
- (iii) The judgments and orders recorded by both the courts below regarding sentence are set aside and modified. Both the petitioners shall undergo the sentence which they have already undergone. The sentence of fine however shall stand maintained.
- (iv) The petitioners will have to deposit the fine if not already deposited.

Disposed of accordingly.

10th MAY, 2017
‘raj’

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned : *Yes* *No*

Whether Reportable : *Yes* *No*