

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

CRR No.1375 of 2017 (O&M).
Decided on:-01.09.2017.

Sandeep.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Sandeep Thakan, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J. (ORAL)

The petitioner has filed the present revision petition against the judgment dated 09.03.2017 passed by learned Additional Sessions Judge, Jhajjar whereby his appeal against the judgment of conviction dated 23.01.2015 and order of sentence dated 27.01.2015 passed by learned Additional Chief Judicial Magistrate, Jhajjar, was dismissed.

Briefly stated, FIR No.63 dated 27.03.2009 under Sections 279, 337, 338 and 304-A IPC was registered against the petitioner-accused at Police Station Beri on the allegations that on 27.03.2009, complainant Sunil @ Kalu was driving his three-wheeler bearing registration No.HR-46-1478 from Dighal to Sampla. About 6-7 passengers including Nirmala wife of

Suresh Kumar, Ravinder and Anil were also travelling in his three-wheeler. When he reached near Kaushik Nagar, Dighal, a canter bearing registration No.HR-46B-0766 came from Dighal side and hit the three wheeler by coming on the wrong side. The complainant and other passengers sustained injuries in the accident. They were taken to CHC Dighal and then were referred to PGIMS, Rohtak. However, injured Nirmala had died due to the injuries suffered in the accident on the way.

The investigation was conducted by the police. The vehicles were taken in police possession. The petitioner-accused was arrested and produced in the Court. Statements of witnesses were recorded and after completion of investigation, Challan was filed in the Court.

The copy of Challan as envisaged under Section 207 Cr.PC was supplied to the petitioner-accused. On finding a prima facie case against the petitioner, he was charge-sheeted under Sections 279, 337, 338 and 304-A IPC, to which he did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 23.01.2015 convicted the petitioner for the commission of offence punishable under Sections 279, 337, 338 and 304-A IPC.

Vide separate order dated 27.01.2015, learned trial Court sentenced the petitioner-accused as under:

<u>Offence</u>	<u>Sentence</u>
Under Section 279 IPC	Rigorous imprisonment for one month and fine of Rs.500/-.

Under Section 337 IPC	Rigorous imprisonment for two months and fine of Rs.500/-.
Under Section 338 IPC	Rigorous imprisonment for six months and fine of Rs.1,000/-.
Under Section 304-A IPC	Rigorous imprisonment for two years and fine of Rs.2,000/-.

It was further ordered that in case of default of payment of fine, the convict shall further undergo imprisonment for thirty days. Besides this, the convict was directed to pay compensation of Rs.50,000/- to be payable to the dependents of deceased, namely, Smt. Nirmala. It was, however, ordered that all the substantive sentences of imprisonment shall run concurrently.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment and order of sentence before the Court of Session. However, vide judgment dated 09.03.2017 passed by learned Additional Sessions Judge, Jhajjar, appeal of the petitioner was dismissed.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

On April 19, 2017, when the present petition came up for hearing before this Court, learned counsel for the petitioner confined the submissions only for a lenient view regarding quantum of sentence. He submitted that the petitioner is not a previous convict and there are reasons for taking a lenient view. Therefore, the notice of motion was issued to the aforesaid extent only.

Learned counsel for the petitioner has contended that as against the awarded sentence of two years, the petitioner has already undergone imprisonment for 7 months and 13 days including remission. He further states

that the petitioner is a first time offender and there is no other criminal case pending against him. He is a poor person and is the sole bread earner of his family. He has been suffering the agony of criminal proceedings since 27.03.2009 i.e. the date when the FIR in question was registered against him. Thus, he has prayed that the sentence of the petitioner may be reduced to the period already undergone by him.

On the other hand, learned State counsel has not disputed the custody of the petitioner, but has opposed the plea of taking liberal view, as pleaded by learned counsel for the petitioner. However, he states that there is no other case against the petitioner. Custody certificate filed by learned State counsel in the Court, is taken on record.

I have heard learned counsel for the parties.

Perusal of the impugned judgments passed by the Courts below shows that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Sections 279, 337, 338 and 304-A IPC. The appellate Court has also rightly dismissed his appeal. There is no illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, learned counsel for the petitioner has not assailed the judgments of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the petitioner is, therefore, affirmed.

So far as the issue on quantum of sentence is concerned, the Hon'ble Supreme Court in a recent judgment in ***State of M.P. Versus Mehtaab 2015(1) RCR (Criminal) 1008*** has held that when the accused was found guilty of causing death by negligence, the High Court was not justified in reducing sentence of imprisonment to the period of 10 days without awarding any compensation to the legal heirs of the deceased. As such, the Apex Court while modifying the order passed by the High Court had held that the order of the High Court can be upheld only with the modification that the accused will pay compensation to the heirs of the deceased. This judgment was also followed by this Court in ***Criminal Revision No.1761 of 2015 decided on December 07, 2015*** titled as ***Kashmir Singh Versus State of Punjab***.

Similarly, the Hon'ble Supreme Court in ***State of Himachal Pradesh Versus Ram Pal 2015(2) RCR (Criminal) 127*** has observed in para Nos.13 and 14 of the judgment as below:

“13. It is evident from the facts and circumstances of the case that the respondent has not called in question his conviction. We have before us only challenge to the inadequacy of the sentence in the present appeal filed by the State. Moreover, in an appeal under Article 136 of the Constitution, this Court does not re-appreciate the evidence, in absence of perversity or patent legal error, merely because a different view was also possible. We are thus, not inclined to reopen the correctness of conviction of the respondent and proceed to consider the question of adequacy of the sentence. In our view, the sentence of mere fine of Rs.40,000/- imposed by the High

*Court is not adequate and proportionate to the offence. We have been informed that a sum of Rs.3,60,000/- has been awarded as compensation by the insurance company to the heirs of the deceased. We are also of the view that where the accused is unable to pay adequate compensation to the victim or his heir, the Court ought to have awarded compensation under Section 357A against the State from the funds available under the Victim Compensation Scheme framed under the said section. This Court has dealt with the issue in **Suresh vs. State of Haryana, 2015 (1) RCR (Criminal) 148, Manohar Singh vs. State of Rajasthan & Ors. 2015 (1) RCR (Criminal) 747 and State of M.P. vs. Mehtaab 2015 (1) RCR (Criminal) 1008**. Having regard to totality of circumstances of the present case, we feel that ends of justice will be served if the accused is required to pay total compensation of Rs.1 lakh and the State to pay a sum of Rs.3 lakhs.*

14. *Accordingly, we modify the impugned order passed by the High Court and enhance the compensation to be paid by the respondent accused to Rs.1 lakh to be paid within four months failing which the sentence awarded by the Court of Session shall stand revived. In addition, we direct the State of Himachal Pradesh to pay interim compensation of Rs.3 lakhs. In case the respondent fails to pay any part of the compensation, that part of compensation will also be paid by the State so that the heirs of the victim get total sum of Rs. 4 lakhs towards compensation. The amount already paid may be adjusted.”*

In the present case, as against the awarded sentence of two years, the petitioner has already undergone imprisonment for 7 months and 13 days including remission. He is a first time offender and there is no other case pending against him. He has been facing the agony of criminal proceedings

since 27.03.2009 i.e. the date when the FIR in question was registered against him. Therefore, taking into account the protracted trial, antecedents of the petitioner coupled with the fact that he has already suffered incarceration for a period of more than one year, as well as in the light of the judgments of Hon'ble Supreme Court in *Mehtaab's case (supra)* and *Ram Pal's case (supra)*, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioner is reduced to the period already undergone by him subject to payment of compensation to the legal heirs of the deceased, as envisaged under Section 357 Cr.P.C.

Therefore, the sentence of petitioner Sandeep is reduced to the period already undergone by him subject to deposit of Rs.10,000/-, with the trial Court, which shall be paid by the trial Court to the legal heirs of the deceased, namely, Nirmala. This amount of compensation shall be over and above the compensation amount of Rs.50,000/-, as already ordered by learned trial Court.

It is made clear that the petitioner be released only on deposit of the compensation amount and his sentence shall stand reduced upto his actual release. In case the amount of compensation is not deposited by the petitioner, he shall be liable to undergo the remaining part of his sentence.

However, there will be no change in the sentence of fine. Perusal of the order of sentence dated 27.01.2015 passed by learned trial Court shows that the amount of fine has already been paid by the petitioner. Therefore, he be released forthwith, if not required in any other case, upon deposit of the

amount of compensation and his sentence shall be treated reduced upto his actual release, as aforesaid.

With aforesaid modification in the order of sentence, the present revision petition stands dismissed.

September 01, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No