

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

CRR No.1550 of 2012 (O&M).

Decided on:-July 17, 2018.

Gurvinder Singh.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana
for the respondent-State.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against judgment dated 03.05.2012 passed by learned Additional Sessions Judge, Fatehabad whereby his appeal against judgment of conviction dated 20.10.2009 and order of sentence dated 21.10.2009 passed by learned Judicial Magistrate 1st Class, Fatehabad was dismissed.

Briefly stated, FIR No.574 dated 21.09.2002 under Section 25 of the Arms Act, 1959 (for short, the Arms Act) was registered against the petitioner-accused at Police Station Sadar Fatehabad with the allegations that on 21.09.2002 at about 10.15 A.M., ASI Ramesh Kumar along with other police officials was present at the bus stop of village Hanspur for crime checking. One Pargat Singh son of Nihal Singh met him and when the ASI was talking to him, a person was seen coming on feet from village Sardulpur

side. Noticing the police party, the said person sat on the roadside on the pretext of urination. However, on the basis of suspicion, ASI Ramesh Kumar apprehended him and asked his name and address. His personal search was conducted and a country-made pistol .315 bore along with one live cartridge of the same bore was recovered from his conscious possession. The accused could not produce any licence for keeping the case property in his possession. The pistol and the cartridge were taken in possession vide separate recovery memo. Investigation was conducted. Report under Section 173 Cr.P.C. was prepared and presented in the Court.

Copy of the Challan was supplied to the accused free of cost as envisaged under Section 207 Cr.P.C. On finding a prima-facie case against the petitioner, charge under Section 25 of the Arms Act was framed against him to which he did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 20.10.2009 held the petitioner guilty under Section 25 of the Arms Act and convicted him accordingly. Vide separate order dated 21.10.2009, the petitioner was sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.500/- for commission of offence under Section 25 of the Arms Act. In default of payment of fine, the petitioner-accused was further sentenced to undergo simple imprisonment for a period of 15 days.

Aggrieved against the said judgment and order, the petitioner-accused filed an appeal before the Court of Session, but vide judgment dated

03.05.2012, the said appeal was dismissed by learned Additional Sessions Judge, Fatehabad.

It is in these circumstances, the petitioner has preferred the present revision petition before this Court.

This Court vide order dated August 07, 2012 suspended the sentence of petitioner during pendency of the petition. The petitioner was ordered to be released on bail to the satisfaction of Chief Judicial Magistrate, Fatehabad.

Learned counsel for the petitioner, during the course of arguments, has not challenged conviction of the petitioner and confined his arguments to the extent that considering the custody of the petitioner, the sentence awarded by the appellate Court be reduced to the period already undergone by the petitioner. Learned counsel has submitted that as against the awarded sentence of 1 year, the petitioner has already undergone 3 months and 10 days till 08.08.2012. He has further submitted that the petitioner is a first time offender and is a poor person. There is no other case pending against him. The FIR in question was registered against him as far back as on 21.09.2002 and since then, he has been suffering the agony of criminal proceedings.

On the other hand, learned State counsel has not disputed the custody of the petitioner, but opposed the plea of taking liberal view, as raised by learned counsel for the petitioner.

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 petitioner guilty for commission of offence under Section 25 of the Arms Act. The appellate Court has also rightly dismissed the appeal with modification in the order of sentence. There is no infirmity, illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court. Even otherwise, during the course of arguments, learned counsel for the petitioner has not assailed the judgments of conviction and restricted his arguments qua the quantum of sentence only. The conviction of the petitioner is, thus, affirmed.

However, as regards plea of the petitioner that he is a first time offender; no other case is pending against him; has been suffering the agony of criminal proceedings since 21.09.2002, the date when the FIR in question was registered against him, and as against the awarded sentence of 1 year by learned trial Court and affirmed by learned appellate Court, he has already undergone 3 months and 10 days, this Court finds that prayer made by learned counsel for the petitioner for reduction of sentence of the petitioner to the period already undergone by him, carries weight.

Hon'ble Supreme Court in *Harjit Singh Versus State of Haryana, (2002) 10 SCC 695* had reduced the sentence of 7 years under Section 25 of the Act to the period already undergone (more than 5 years) by the accused. Similarly, in the case of *Kirpal Singh Versus State of Punjab 2009(1) AICLR 243*, this Court, taking into consideration the fact that petitioner has three children; there is no one to look after his family and has

already undergone sentence of more than 5 months out of total sentence of one year, had reduced the sentence of petitioner to the period already undergone by him. Moreover, in the cases of *Shiv Kailash Versus The State of Punjab 2016(5) RCR (Criminal) 438*; *Jagdeep Singh @ Neetu Versus State of Punjab, 2013(2) Law Herald 1849* and *Sukhdev Singh Versus State of Punjab 2005(4) RCR (Criminal) 694*, similar view has been adopted by this Court.

Therefore, taking into consideration the pleas of petitioner and also the judgments referred hereinabove, the sentence imposed upon the petitioner under Section 25 of the Arms Act is reduced to the period already undergone by him subject to payment of fine of Rs.5,000/- instead of Rs.500/- as imposed by learned trial Court and affirmed by learned appellate Court.

Perusal of the impugned judgment dated 21.10.2009 passed by learned trial Court reveals that the fine of Rs.500/- imposed by the trial Court has already been deposited by the petitioner. Therefore, the petitioner is directed to deposit the enhanced amount of fine of Rs.4,500/- with the Court of Chief Judicial Magistrate, Fatehabad within a period of one month from today, failing which the present revision petition shall be deemed to be dismissed in toto.

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

(HARI PAL VERMA)
JUDGE

July 17, 2018
Yag Dutt

Whether speaking/reasoned:	Yes
Whether Reportable:	No