

**232/5 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**Date of decision:19.09.2018**

**(i)CRR-2791-2017 (O&M)**

|                                      |                |
|--------------------------------------|----------------|
| S.K.Yadav                            | ...Petitioner  |
| Versus                               |                |
| Ramphal @ Ramphal Sharma and another | ...Respondents |

**(ii) CRR-2793-2017 (O&M)**

|                                      |                |
|--------------------------------------|----------------|
| S.K.Yadav                            | ...Petitioner  |
| Versus                               |                |
| Ramphal @ Ramphal Sharma and another | ...Respondents |

**(iii) CRR-2795-2017 (O&M)**

|                                      |                |
|--------------------------------------|----------------|
| S.K.Yadav                            | ...Petitioner  |
| Versus                               |                |
| Ramphal @ Ramphal Sharma and another | ...Respondents |

**(iv) CRR-2800-2017 (O&M)**

|                                      |                |
|--------------------------------------|----------------|
| S.K.Yadav                            | ...Petitioner  |
| Versus                               |                |
| Ramphal @ Ramphal Sharma and another | ...Respondents |

**(v) CRR-2807-2017 (O&M)**

|                                      |                |
|--------------------------------------|----------------|
| S.K.Yadav                            | ...Petitioner  |
| Versus                               |                |
| Ramphal @ Ramphal Sharma and another | ...Respondents |

**CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr. Jitender Dhanda, Advocate  
for the petitioner (In all petitions).

Mr. S.K.Bishnoi, Advocate  
for respondent No.1.

Mr. Karan Sharma, AAG, Haryana  
for respondent No.2-State.

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**RAJBIR SEHRAWAT, J. (ORAL)**

This order shall dispose of above said five revision petitions, which have arisen from the judgments dated 10.08.2017 passed by the Additional Sessions Judge, Hisar, whereby, he has upheld the judgments of conviction and orders of sentence passed by the trial Court. The trial Court had convicted the present petitioner in five different cases on 16.12.2014 and had sentenced the petitioner, vide order dated 18.12.2014, for maximum rigorous imprisonment of 15 months in each case. Besides this the compensation equal to the amount of cheque in, respective cases, was also awarded against the present petitioner and in favour of the complainant in those cases. It was further ordered in each case that in case of default of payment of compensation, the petitioner shall further undergo the sentence of three months. A perusal of the order passed by the trial Court shows that the substantive sentence of imprisonment awarded to the petitioner, in all the cases have been ordered to run concurrently. However, the sentence in default of payment of compensation has been ordered to run separately and consecutively.

The order sheet of the present revision petition shows that vide interim order dated 21.08.2017, the conviction of the petitioner, in all the cases, has already been upheld by this Court. However the petitioner was

granted concession of interim bail for four weeks; to arrange the amount of compensation; on his own request. It was further ordered that in case of non-payment of the compensation, the interim bail granted to the petitioner shall stand cancelled automatically and further, that the order of interim bail shall not be extended, at any cost and for whatever reason.

Counsel for the petitioner has submitted that although the revision petitions already stand dismissed qua convictions of the petitioner, however, the aspect of sentence of the petitioner is yet to be considered by the Court. Counsel has further pointed out that, by now, the petitioner has almost completed the substantive sentence of 15 months in all the cases, the same having been ordered to run concurrently. It is further contended that the petitioner has not availed the benefit of interim order passed by this Court. Since the petitioner has been in custody, therefore the petitioner has not been in a position to make the payment of the amount of compensation. Resultantly, he would be compelled to undergo the default sentence as well. Therefore, it is submitted by the counsel that since the non-payment of compensation is due to poor economic condition of the petitioner and is a result of compulsion, therefore, the default sentence, in each case, be also ordered to run concurrently, or in alternatively the default sentence imposed upon the petitioner be reduced.

Learned counsel for the complainant submits that the substantive sentence awarded to the petitioner has already been passed on a lenient view taken by the trial Court. No further leniency deserves to be shown to the petitioner.

Learned counsel for the State submits that the conviction of the petitioner has already been upheld by this Court vide order dated

21.08.2017, therefore, no further orders need to be passed in this case.

Having heard learned counsel for the parties, this Court finds substance in the argument raised by counsel for the petitioner.

The helplessness of the petitioner for non-payment of the compensation at this stage, is not totally unjustified; since he is in custody from the date of dismissal of his appeal. Counsel has also submitted that the petitioner does not have sufficient resources to pay the compensation at present. Therefore, irrespective of any other remedies available to the complainant to recover the amount of compensation from the petitioner, the petitioner, necessarily, shall have to undergo the default sentence as well, which is three months in each case.

However, as per the provisions contained in Sections 63 and 64 of IPC; read with Sections 30, 31, 427 to 429 Cr.P.C., it is not permissible to make the default sentence of imprisonment to run concurrently, like substantive sentence of imprisonment, because the default sentence of imprisonment is more in nature of penalty for non-payment of fine or compensation; and not a substantive punishment for the offences alleged against the convict. But keeping in view the total quantum of substantive sentence of imprisonment and the amount of compensation, for payment of which the petitioner has shown his helplessness, it would be appropriate to reduce the default sentence in each case to an imprisonment for one month, from three months as awarded by the Trial Court.

In view of the above, all these petitions are partly allowed. While maintaining the conviction and substantive sentence of imprisonment of the petitioner, in all the above said petitions, the default sentence is reduced to one month in each case. Therefore, it is ordered that, in case, the

petitioner does not make the payment of amount of compensation, as ordered by the trial Court, then he would serve the default sentence of imprisonment for one month in each case. However, the default punishment of imprisonment for one month; in each case, shall run separately and consecutively.

All the petitions are disposed of with above said modification.

(RAJBIR SEHRAWAT)  
JUDGE

19.09.2018  
Hemlata

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |