

S.No.248

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

CRR No.1093 of 2018 (O&M)

Date of Decision:12.10.2018

Subhash @ Channi

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. B.S. Chahar, Advocate
for the petitioner.

Mr. Surender Singh, AAG,
Haryana.

Rajbir Sehrawat, J.(Oral)

This is a petition for challenging the judgment dated 21.02.2018 passed by Additional Sessions Judge, Hisar, vide which the appeal filed by the petitioner was dismissed and the judgment of conviction dated 28.03.2016 and order of sentence dated 30.03.2016, passed by Judicial Magistrate, Ist Class, Hisar, whereby the petitioner was convicted under Section 120-B IPC and was sentenced to undergo two years of rigorous imprisonment along with fine of Rs.10,000/-, was upheld.

Initiation of proceedings in the present case through FIR No.154 dated 07.04.2010, under Sections 419, 420, 467, 468, 471 and 120-B IPC was got lodged by the DPO, Hisar with the allegations that a forged sale deed No.10144 dated 17.03.2010 was got executed and on the basis of that sale deed, a mutation was got sanctioned in the name of the alleged purchaser Kuldeep Singh. It was alleged that the real owner of the land involved in the forged sale deed was belonging to one Amir Chand son

of Gurditta. He had mortgaged this land to Nar Singh Dass. Ultimately, the

possession of this land had come to one Kharati Lal through another mortgaged deed No.5132 dated 24.03.1992. Hence, Kharati Lal was coming as owner in possession of the said land. The said Kharati Lal died about 16 years back. He was survived by his legal heirs and the mutation of the land was entered in the name of legal heirs of Kharati Lal, namely, Ashok Kumar and Ajay Kumar etc. However, on 04.04.2010, co-accused Kuldeep Singh, along with some other persons, armed with weapons, entered into the land and declared that he had purchased that land and that he had come to take possession of the same. On being questioned by the legal heirs of Kharati Lal as to how he has become owner, the said Kuldeep Singh disclosed that he had impersonated Amir Chand, the original owner in collusion with the officials, namely, Patwari, Kanungo and Tehsildar and after paying them the money, they have got the sale deed executed in favour of Kuldeep Singh. On this assertion of the said Kuldeep Singh, the complainant/LR of Kharati Lal went to Tehsildar for obtaining the copy of the sale deed. There 2-3 persons threatened them to vacate the land. It was further alleged that the legal heirs Ashok Kumar and Ajay Kumar were threatened to be killed, in case they did not vacate the premises. Accordingly, the FIR was got lodged.

During the investigation, the present petitioner was also arrested on 16.04.2010. During the investigation, it came to the light that the sale deed was executed in favour of Kuldeep. In execution of the sale deed, the original owner Amir Chand was stated to have been impersonated by one Ishwar Singh, who was identified by co-accused Anuj. Accordingly, all these persons were sent for trial by the Police.

The prosecution led its evidence. After appreciating the evidence, the trial Court convicted the co-accused, as well as the present petitioner. However, since the direct role of the petitioner was not found in execution of the sale deed, nor was he proved to be beneficiary or signatory to the sale deed, therefore, the petitioner was convicted only under Section 120-B IPC, holding that he was the conspirator behind this forgery.

Aggrieved against the judgment of conviction and order of sentence passed by the trial Court, the petitioner preferred the appeal before the Additional Sessions Judge, Hisar. However, that appeal was also dismissed by the lower Appellate Court. Accordingly, the present revision petition has been filed by the petitioner.

Learned counsel for the petitioner, at the outset, has submitted that the petitioner does not wish to press the present petition qua his conviction. His prayer is that the present petition be considered qua sentence only.

To substantiate his submissions for reduction of sentence, counsel for the petitioner has submitted that the co-accused of the petitioner, who was attributed a direct role in identifying the impersonator Ishwar Singh, has already been granted the reduction of sentence, to the period already undergone by him. Counsel further submits that the petitioner is the sole bread earner of the family. He is having minor children and aged mother in his family. It is further contended that in fact the petitioner has been a victim of malicious initiation of criminal proceedings at the instance of one particular Police Officer. Otherwise, the petitioner is not involved in the crime at all. In the present case also, no specific role has been found

against the petitioner as such. In the end, counsel for the petitioner has submitted that the petitioner has maintained good behaviour even during the custody. Therefore, the petitioner was granted remissions of 15 days by the jail authorities as well. Hence, the petitioner has shown sufficient intentions to reform himself and to confirm the social norms. Counsel further submits that the petitioner has undergone a sentence of one year and three months out of total sentence of two years. Hence, it is prayed that the petitioner has sufficiently served the sentence, therefore, the sentence awarded to the petitioner be reduced to the sentence already undergone by him.

On the other hand, learned counsel for the State has produced the custody certificate of the petitioner. The custody certificate shows that the petitioner has undergone one year two months and nine days as on 24.09.2018. However, the custody certificate also shows as many as 46 cases have been against him. Therefore, it is prayed that the petitioner is habitual offender. Hence, no leniency be shown to him.

As response to this, counsel for the petitioner had submitted that, in fact, all these cases were falsely got registered at the instance of the above said police official. In any case, the petitioner has already either undergone the sentence in the relevant cases or he has been acquitted. As of today, there is no other case pending against the petitioner. The petitioner is not in custody in any other case.

To counter this submission of counsel for the petitioner, learned State Counsel had sought time to file a specific affidavit as to which are the cases pending against the petitioner as of now; and also specifying if the petitioner was undergoing sentence in any other case, except the present

one. Vide order dated 05.10.2018, counsel for the State was granted time to file such affidavit. However, no such affidavit has come on record. Therefore, there is no reason for the Court, not to believe the version of the petitioner that he is not in custody in any other case, as of now.

As pointed by counsel for the petitioner, the petitioner is a person of 42 years of age, therefore, he would be deep down in the responsibilities of the family life. The custody certificate produced by the State also shows that the petitioner has been granted remissions by the jail authorities. Hence, it is reflected from the custody certificate that the petitioner has shown sufficient tendency of reform himself. Therefore, it would not be unjustified if the sentence of the petitioner is reduced, as prayed for by the counsel for the petitioner.

Keeping in view the facts and circumstances of this case, this Court finds that the period of sentence already undergone by the petitioner would be sufficient punishment for him in this case.

In view of the above, the present petition is partly allowed. While maintaining the conviction of the petitioner, the sentence awarded to the petitioner is reduced to the period of sentence already undergone by the petitioner, along with the fine imposed upon him. Counsel for the petitioner submits that fine has already been paid by the petitioner.

Accordingly, it is ordered that the petitioner be released from the Jail forthwith, in case, he is not in custody or required in any other case.

October 12, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No