

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

CRR No.1887 of 2018 (O&M).

Decided on:-August 30, 2018.

Danish Mohd. and another

.....Petitioners.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Mohd. Yousaf, Advocate
for the petitioners.

Mr. Tanvir Joshi, AAG, Punjab.

HARI PAL VERMA, J.

The petitioners have filed the present revision petition against the judgment dated 07.05.2018 passed by learned Additional Sessions Judge, Sangrur whereby their appeal against the judgment of conviction and order of sentence dated 06.09.2016 passed by learned Sub Divisional Judicial Magistrate, Dhuri was dismissed.

Briefly stated, FIR No.95 dated 15.06.2012 under Section 7 of the Essential Commodities Act, 1955 (for short, the Act) was registered against the petitioners-accused at Police Station Sadar Dhuri, District Sangrur on the allegations that on 15.06.2012 Inspector Sat Pal along with other police officials was present at the bridge of canal Babbanpur in the Government vehicle bearing registration No.PB-13R-8707. In the meantime, he received a secret information that Sarpanch Wala Dhaba is being run by Salim Khan and his servant Danish Mohd. (petitioners herein), who used to purchase diesel

from the truck drivers at cheaper rates and used to sell to the general public on higher rates, without any permit or licence. In case a raid is conducted, a heavy quantity of diesel can be recovered from the said Dhaba. Relying upon the said information, the investigating officer sent a Ruqa through PHG Kewal Singh against the accused for registration of a case. The investigating officer handed over Rs.300/- to HC Karam Singh (Bogus Punter), who was in civil dress, vide separate memo, with a direction that he should reach Danish Mohd. and purchase 10 liters diesel for a sum of Rs.300/-. After purchasing the diesel, he passed signal to the investigating officer. Thereafter, the police officials raided the premises of the Dhaba in the presence of Inspector Gurinder Singh, Incharge of Food and Supplies Department Malerkotla and recovered four drums of diesel. The said drums were marked No.2 to 5. Three bottles of 750 Mls. each of diesel were separated as samples from each of drum and were marked as per the marks of drums. On measurement, from the plastic drum 197 liters 750 Mls. of diesel was recovered and from the other iron drum 187 liters 750 Mls. of diesel and from the third iron drum 197 liters 750 Mls. of diesel and from the fourth drum 197 liters 750 Mls diesel was recovered. Thereafter, all the four drums and samples were sealed by the investigating officer and his seal bearing impression 'SP' and Inspector Gurinder Singh, Food and Supplies also affixed his sample seal on the samples and the drums. One black plastic bucket, one keep, one measurement scale, one pipe about 10 feet, one measurement scale of 5 liter, one plastic can along with above said drums and samples were taken into possession vide separate memo. Thereafter, HC Karam Singh handed over plastic can having 10 liters of diesel to the

investigating officer, who separated 3 bottles of diesel from the plastic can and on measurement the remaining diesel found to be 7 liters 750 Mls. and sealed the above said three bottles of sample and plastic can with his seal bearing impression 'SP' and Inspector Gurinder Singh, Food and Supplies also affixed his paper seal on the same, which were taken into possession vide separate memos. Accused Danish Mohd. was arrested. His personal search was conducted. Accused Salim Khan alias Mohd. Kalim was not present at the spot.

On 25.06.2012, five bottles of samples were sent to Chemical Examiner Kharar vide report No.130 dated 25.6.2012 through Constable Darshan Singh. Accused Salim Khan was joined in the investigation and was arrested in the present case. His personal search was conducted. Statements of the 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 petitioners. On finding a prima facie case against the petitioners, they were charge-sheeted under Sections 7(1) (a) (ii) read with Section 2-D of the Act, to which they did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment and order dated 06.09.2016 held the petitioners guilty for the commission of offence punishable under Section 7 of the Act and sentenced them to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one month each.

Feeling aggrieved, the petitioner filed an appeal against the said judgment and order of sentence before the Court of Session. However, vide judgment dated 07.05.2018 passed by learned Additional Sessions Judge, Sangrur, appeal of the petitioner was dismissed.

It is in the aforesaid circumstances, the petitioners have filed the present revision petition.

At the outset, learned counsel for the petitioners has not challenged the conviction of the petitioners and confined his submissions only for a lenient view regarding quantum of sentence.

He has further submitted that as against the awarded sentence of one year, the petitioners have already undergone imprisonment for a period of more than 4 months including remission. They are first time offenders and there is no other criminal case pending against them. They are poor persons and are the sole bread earners of their respective families. They have been suffering the agony of criminal proceedings since 15.06.2012 i.e. the date of registration of the FIR in question. Thus, he has prayed that the sentence of the petitioners may be reduced to the period already undergone by them.

On the other hand, learned State counsel has not disputed the custody of the petitioners, but has opposed the plea of taking a liberal view, as pleaded by learned counsel for the petitioners. However, he states that there is no other case against the petitioners.

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 petitioners guilty for commission of offence under Section 7 of the Act. The appellate Court has also dismissed their 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 petitioners has not assailed the judgments of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the petitioners is, therefore, affirmed.

So far as the issue on quantum of sentence is concerned, as against the awarded sentence of one year, the petitioners have already undergone imprisonment for more than 4 months including remission. They are first time offenders and there is no other case pending against them. They have been facing the agony of criminal proceedings since 15.06.2012 i.e. the date when the FIR in question was registered against them. The precise allegation against them is that they were possessing 4 drums of diesel without any permit or licence.

Therefore, taking into account the protracted trial, antecedents of the petitioners and the fact that they have already suffered incarceration for a period of more than 4 months including remission, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioners is reduced to the period already undergone by them.

Ordered accordingly.

However, there is no change in the sentence of fine.

In case the petitioners have already deposited the amount of fine, they be released forthwith, if not required in any other case.

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

August 30, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No