

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

CRR No.2748 of 2018 (O&M).
Decided on:- October 17, 2018.

Rajpal Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Amit Kumar Walia, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, Deputy Advocate General, Punjab.

HARI PAL VERMA, J. (Oral)

The petitioner has filed the present criminal revision against the judgment dated 26.07.2018 passed by learned Additional Sessions Judge, Sangrur whereby his appeal against the judgment of conviction and order of sentence dated 04.04.2016 passed by learned Judicial Magistrate 1st Class, Sunam, was dismissed with modifications in the order of sentence.

Briefly stated, FIR No.38 dated 08.03.2012 under Section 13-A and 15-B of the Public Gambling Act, 1867 (for short, the Act) was registered against the petitioner-accused at Police Station City Sunam, District Sangrur on the allegations that on 08.03.2012, HC Narinder Singh along with other police officials was on patrolling duty in the area of New Sabzi Mandi, Sunam. At about 07.00 P.M., he received a secret information that Rajpal

Singh (petitioner herein) was indulging in the Dara Satta and was proclaiming in the area of New Grain Market under the street light, Sunam that any person staking Rs.1/- on any number would win Rs.80/- in case his number gets selected and would forfeit the amount if the number is not selected. The information being reliable, a Ruqa was sent to the Police Station, on the basis of which the FIR in question was registered. A raid was conducted at the given address and the petitioner was arrested with a piece of card board, ball pen, Parcha Darra Satta and currency notes of Rs.1,610/-.

Investigation was conducted by the police. 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 free of cost. Finding a prima facie case against the petitioner, he was charge-sheeted under Sections 13-A and 15-B of the Act to which he did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 28.07.2015 convicted the petitioner for the commission of offence punishable under Sections 13-A and 15-B of the Act. The petitioner filed a criminal appeal No.68/2015 against the said judgment of conviction and sentence dated 28.07.2015 before the learned Additional Sessions Judge, Sangrur. In the said appeal, the appellate Court came to a conclusion that there was a violation of provision of Section 236 of Cr.P.C in awarding the enhanced punishment and, therefore, the case was remanded back to the trial Court to start the proceedings from the point of conviction of the petitioner under Section 13-A of the Act and further to adopt the

procedure prescribed under Section 236 Cr.P.C. and to pass a fresh order regarding previous conviction of the petitioner after affording opportunity to him. Pursuant to the aforesaid direction issued by the appellate Court, the trial court granted opportunity to the prosecution to lead its evidence on the issue of enhancement of sentence. The prosecution placed on record the certified copies of judgment dated 24.09.2008 passed in FIR No.44 dated 20.03.2008 under Section 13-A of the Act registered at Police Station Sunam as Ex.PW, certified copy of judgment dated 22.10.2007 passed in FIR No.134 dated 26.09.2007 under Section 13-A of the Act registered at Police Station Sunam as Ex.PX, certified copy of judgment dated 11.11.2006 passed in FIR No.250 dated 25.09.2005 under Section 13-A of the Act registered at Police Station Sunam as Ex.PY and certified copy of judgment dated 06.11.2008 passed in FIR No.79 dated 29.04.2008 under Section 13-A of the Act registered at Police Station Sunam as Ex.PZ.

After recording the evidence of prosecution, the statement of petitioner under Section 313 Cr.P.C. was also recorded. On 15.02.2016, the accused closed his defence evidence under Section 15-B of the Act and specifically stated that he had not preferred any appeal against the aforesaid judgments as tendered by the prosecution.

Thus, the petitioner was further convicted under Section 15-B of the Act vide judgment dated 04.04.2016 passed by the trial Court. Vide separate order of sentence dated 04.04.2016, learned trial Court sentenced the petitioner to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- and in default thereof to further undergo rigorous imprisonment for a period of one month.

Feeling aggrieved, the petitioner preferred an appeal against the aforesaid judgment of conviction and order of sentence before the Court of Session. However, vide judgment dated 26.07.2018, learned Additional Sessions Judge, Sangrur dismissed the said appeal with a modification in the order of sentence to the effect that his sentence was reduced to the period of six months and fine was reduced to Rs.500/-.

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

At the outset, learned counsel for the petitioner has not challenged the conviction of the petitioner, but restricted his arguments on the point of quantum of sentence awarded to the petitioner.

He has argued that as against the awarded sentence of six months by the appellate Court, the petitioner has already undergone imprisonment for a period of 2 months and 29 days including remission. He has contended that the petitioner is a poor person and is the only bread earner of his family. He has been suffering the agony of criminal proceedings since 08.03.2012 i.e. the date of registration of the FIR in question.

He has further argued that though there were other cases registered against the petitioner under the Act in the year 2008, but in all the cases, he was sentenced to pay fine, which has duly been deposited by him. At present, there is no other case pending against him. Thus, he has prayed for reduction of the sentence of imprisonment awarded to the petitioner.

On the other hand, learned State counsel has not disputed the custody of the petitioner, but has opposed the plea of taking a liberal view, as pleaded by learned counsel for the petitioner. He states that at present, there is

no other case against the petitioner. Custody certified filed by learned State counsel in Court today, 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 Section 15-B of the Act. The appellate Court has also dismissed his appeal. There is no illegality or perversity in the findings given by both the Courts below regarding conviction of the petitioner under Section 15-B of the Act, which may warrant interference of this Court by invoking its revisional jurisdiction. There is very little scope of interference in the revisionary 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 custody certificate already placed on record by learned State counsel shows that as against the awarded sentence of six months by learned appellate Court, the petitioner has already undergone actual imprisonment for a period of 2 months and 19 days. Besides this, he has earned remission for a period of 10 days and in this manner, he has already undergone total imprisonment for a period of 2 months and 29 days. There is no other case pending against him. He has been facing the agony of criminal proceedings in the case since 08.03.2012 i.e. the date when the FIR in question was registered against him.

Therefore, taking into account the protracted trial and the fact that as on date, no other case is pending against the petitioner, coupled with

the fact that as against the awarded sentence of six months by learned appellate Court, he has already suffered incarceration for a period of 2 months and 29 days including remission, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioner is reduced to the period of three months, however, subject to payment of Rs.10,000/- by the petitioner to the Poor Patients' Welfare Fund of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh.

Ordered accordingly.

The petitioner be released forthwith on production of the receipt of the aforesaid amount of Rs.10,000/-, if not required in any other case.

The petitioner shall also furnish an affidavit before CJM/Duty Magistrate, Sangrur that in future he shall not indulge in the act of gambling.

There will be no change in the sentence of fine awarded to the petitioner by learned appellate Court. The petitioner shall be required to deposit fine, if not already deposited.

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

October 17, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No