

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

**CRR No.184 of 2019(O&M)
Date of decision :16.05.2019**

Harwinder Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Rahul Vats, Advocate, for the petitioner.

Mr. Parveen Aggarwal, DAG, Haryana.

RAJBIR SEHRAWAT, J. (ORAL)

The present petition is filed against the judgment/order dated 11.01.2019 passed by Lower Appellate Court, Fatehabad, whereby, the appeal filed by the present petitioner was partly allowed; and the conviction of the petitioner under Sections 420 and 120-B IPC, independently, was set aside, while maintaining the conviction under Sections 419, 467, 468, 471 and 120-B of IPC, and his sentence was reduced from three years to rigorous imprisonment for a period of two years.

The FIR in the present case had come into existence on the complaint of one Sunil Kumar, S/o Gujjarmal; in which it was alleged that he was the owner of the property mentioned in the FIR. However, the co-accused of the petitioner, namely, Rajender and Surender ; tried to dispossess him of the said property. When the complainant objected then these two accused informed the complainant that they had already got a registered sale deed executed in their name qua the said property. Thereafter, complainant Sunil Kumar got a copy of the sale deed from the record and found that the sale deed qua the said property was executed in favour of Rajender Singh and Surender Singh. The present petitioner

Prakash @ Atam impersonated the complainant as the owner of the said property at the time of execution of the said sale deed. Therefore, it was alleged that complainant has been defrauded.

During the trial, the complainant expired on 30.06.2012, whereas Atam Parkash was tried separately.

However, the evidence was led in the case. Finding sufficient evidence against the present petitioner and his co-accused, the accused were held guilty by the trial Court under the sections mentioned above. All the accused were sentenced to three years rigorous imprisonment.

Aggrieved against the judgment of conviction and order of sentence passed by the trial Court, the petitioner preferred an appeal before the Lower Appellate Court. The Lower Appellate Court partly allowed the appeal as mentioned above and reduced the period of sentence to rigorous imprisonment for two years; for the sections under which the conviction was maintained by the Lower Appellate Court. It is against that order, the present petition has been filed.

While arguing the case, learned counsel for the petitioner has submitted that although he has a good case on merits of the case, however, keeping in view the facts that the petitioner has already undergone a substantial part of the sentence, the petitioner had restricted the present petition qua quantum of sentence only. Accordingly, notice was issued in the petition only qua quantum of sentence. It is further submitted by the counsel for the petitioner that the petitioner is the first offender and he being a Numberdar, had only identified the person who was present at the time of execution of the said sale deed. He had done this identification only on the basis of the documents shown to him regarding the identity of the person.

been found by the Court, the petitioner has already undergone more than 01 year and 05 months of sentence out of two years. The petitioner is the sole bread earner of his family. It is further submitted by the counsel for the petitioner that the petitioner is of a young age of 28 years and is having minor children. Still further, it is submitted that the petitioner appears to have learnt a lesson while in custody, therefore, he has maintained good behaviour while in jail and has even earned remissions. Hence, it is submitted by the counsel for the petitioner that the sentence imposed upon the petitioner be reduced to the period already undergone by him and he be released from the custody.

On the other hand, learned State counsel has produced the custody certificate of the petitioner, which shows that the petitioner has undergone 01 year, 05 months and 04 days of sentence. This sentence also includes 08 days of remissions earned by the petitioner. However, it is submitted by the State counsel that the petitioner is involved in heinous crime of helping others in usurping the property of innocent citizens. The Trial Court had already shown leniency in awarding the sentence to the petitioner; which has been furthered by the appellate Court. Accordingly, it is submitted that the petition deserves to be dismissed and the petitioner deserves to serve the entire sentence awarded to him.

Having heard learned counsel for the parties and perusing the record, this Court finds substance in the argument of the learned counsel for the petitioner.

It is not disputed that the petitioner is the first offender. This fact is verified by the custody certificate produced by the learned State counsel; which does not show any other case pending against the petitioner.

sentence, out of total sentence of two years. Therefore, the petitioner has already undergone substantial part of sentence. The custody certificate also shows that the petitioner has earned remissions while in custody. This fact reflects that the petitioner has maintained a good behaviour while in custody in jail. Therefore, it appears that the petitioner has learnt a lesson and have some kind of reforms for having committed the offence. Therefore, it would not be unjustified to grant him one more opportunity to join the mainstream of the social life; by granting him concession in sentence imposed upon him. This Court also finds that the period of sentence already undergone by the petitioner would be sufficient sentence, keeping in view the facts and circumstances of the case.

Accordingly, it is ordered that the present petition is partly allowed. While the conviction of the petitioner is upheld, the sentence awarded to the petitioner is reduced to the period of sentence already undergone by him. Accordingly, the order of sentence passed by the Court below is modified.

In view of the above, let the petitioner be released from the custody forthwith, if he is not required in connection with any other case.

(RAJBIR SEHRAWAT)
JUDGE

16.05.2019
hemlata/sv

Whether speaking / reasoned : Yes No.

Whether Reportable : Yes No.