

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-S-3704-SB-2018 (O&M)
Date of Decision:- 22.1.2019

Harbhajan Singh alias Kala ... Appellant

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sandeep Verma, Advocate, for the appellant.

Ms. Simranjeet Kaur, AAG, Punjab.

GURVINDER SINGH GILL, J.

CRM-33452-2018

In view of the reasons mentined in the application, the same is allowed and exemption is granted from filing certified copy of impugned judgment dated 9.8.2011 and impugned order dated 11.8.2011.

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- i. There is delay of 2532 days in filing the appeal.
- ii. It is averred in the application that the applicant belongs to a poor family and has in fact been in custody since the last about 10 years and was not advised properly and nor was possessed of sufficient funds to engage a counsel, which led to delay in filing the appeal.

- iii. Learned State counsel has today filed reply by way of affidavit of Mr. Jastinder Singh, PPS, Deputy Superintendent of Police, Sub Division Faridkot, District Faridkot, on behalf of the respondents wherein it has been stated that the application is hopelessly barred by limitation and that the plea of lack of funds cannot be accepted as the applicant could have availed services of free legal aid.
- iv. Learned counsel for the applicant while pressing upon the application has submitted that in fact the applicant does not press upon adjudication of his appeal on merits especially since the matter of co-accused has already been adjudicated upon by this Court while hearing CRA-S-3020-SB-2011 (decided on 20.2.2014) wherein the conviction of an identically situated co-accused Bohar Singh @ Bohra has been upheld while the substantive sentence of imprisonment has been reduced from 10 years to 7 years. Learned counsel has submitted that he merely seeks parity as regards the quantum of sentence and has submitted that a lenient view may be taken especially keeping in view the fact that the applicant was neither well advised nor was having sufficient funds.
- v. Having considered the submissions addressed before this Court and while keeping in mind exceptional circumstances stated above especially as regards to the fact that the appeal of co-accused already stands adjudicated and that the applicant simply seeks parity in the matter of sentence only, the delay in filing the appeal is condoned while taking a lenient view in the matter.
- vi. Accordingly, the application stands accepted

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1. By way of filing this appeal, the appellant assails judgment dated 9.8.2011 passed by learned Additional Sessions Judge, Faridkot and also order dated 11.8.2011 passed thereafter as regards imposition of sentence whereby the appellant has been held guilty and sentenced as follows:

Offence U/s	Sentence
395 IPC	Rigorous imprisonment for a period of 10 years and to pay a fine of ₹25,000/- and in default of payment of fine to further undergo R.I. for 2 years.
397 IPC	Rigorous imprisonment for a period of 10 years and to pay a fine of ₹25,000/- and in default of payment of fine to further undergo R.I. for 2 years.
342 IPC	Rigorous imprisonment for a period of 1 year and to pay a fine of ₹1000/- and in default of payment of fine to further undergo R.I. for 1 month.

2. Although the learned counsel for the appellant has restricted his arguments to the quantum of sentence only, but in any case this Court upon perusing the impugned judgment finds that the learned trial Court has marshalled the evidence thoroughly and had thereafter reached at the findings as regards the guilt of the appellant in respect of offences under Sections 395, 397 and 342 of IPC.
3. The case of the petitioner is absolutely identical with that of his co-accused Bohar Singh @ Bohra. A co-ordinate Bench of this Court while adjudicating upon an appeal filed by co-accused Bohar Singh @ Bohra has upheld the findings of conviction as recorded by the

trial Court. Since the evidence against the present appellant is the same as against the co-accused, therefore, this Court does not find any valid reason to interfere with the findings of the trial Court as regards the conviction of the appellant for offences under Sections 395, 397 and 342 of IPC and consequently the conviction of the appellant is affirmed.

4. As far as the quantum of sentence is concerned, as per custody certificate filed today in the Court, the appellant has already undergone a sentence of 10 years, 6 months and 9 days including remissions to the tune of 3 years, one month and 9 days. It was on account of the appellant not having deposited the fine that he has been kept in custody even beyond 10 years and is serving the “default sentence” on account of non-payment of fine. In order to maintain parity and the fact that a substantial sentence has already been undergone by the appellant and that the offences in question were committed more than a decade back, this Court is of the opinion that there is some room for reduction of sentence which is more justified in order to maintain parity as a co-ordinate Bench has already reduced sentence in case of identically situated co-accused Bohar Singh @ Bohra.
5. Accordingly, while upholding the conviction, the sentence imposed upon the appellant is reduced from 10 years to 7 years in respect of offence under Sections 395 IPC. Similarly the sentence in respect of offence under Section 397 IPC is also reduced from 10 years to 7 years. The fine in respect of both the offences shall however remain

unaltered and also the default clauses. The sentence of imprisonment as well as fine in respect of Section 342 IPC is however, maintained as such, as it is. The substantive sentences of imprisonment shall however run concurrently as already ordered by the trial Court.

6. The appeal is dismissed except for the aforesaid modification in sentence.

January 22, 2019
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No