

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2322-2010

Date of Decision: 06.09.2019

Surta Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. S.S. Swaitch, Advocate, for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

Harnaresh Singh Gill, J.

The petitioner was tried for committing the offence under Section 25 of the Arms Act. Vide judgment and order dated 17.11.2009, learned Judicial Magistrate, Ist Class, Mansa, found the petitioner guilty for the offence under Section 25(1b)(a) of the Arms Act, and sentenced him to undergo RI for two years and to pay a fine of Rs.2,000/- and, in default of payment of fine, to further undergo RI for one month.

Aggrieved there-against, the petitioner filed an appeal before the learned Sessions Judge, Mansa. Vide judgment dated 7.8.2010, the learned Additional Sessions Judge (Adhoc) Fast Track Court, Mansa, while upholding the conviction of the petitioner under Section 25(1b)(a) of the Act, reduced the substantive sentence of the petitioner from two years to that of one year.

Still aggrieved, the petitioner has preferred the present revision petition.

As per the prosecution case, on 21.9.2003 at about 5.30 p.m., ASI Gurmail Singh along with other police officials was going from Bhikhi towards village Kishangarh Pharwahi. When they reached near canal bridge, they saw a person standing near the bridge towards Borawal side. Said person on seeing the police party, started walking towards Kaccha path. ASI-Gurmail Singh with the help of the police party stopped him. Upon enquiry, he revealed his name as Surta Singh. On his personal search, one 12 bore country made pistol was recovered. On checking the same, the pistol was found to be loaded with one live cartridge, which was unloaded. The pistol was checked. Thereafter, sketch of pistol was prepared. Upon further search, two live cartridges were also recovered. Pistol and three live cartridges were sealed with the seal impression 'GS' and were taken into police possession vide recovery memo. The accused could not produce any licence for retaining the pistol and cartridges in his possession. Accordingly, FIR was lodged against the petitioner.

After completion of investigation, challan was presented in the Court.

Charge under Section 25 of the Arms Act, was framed against the accused to which he pleaded not guilty and claimed trial.

The prosecution had, in order to prove its case, examined as many as 6 witnesses.

In his statement recorded under Section 313 Cr.P.C., the accused denied the allegations and pleaded false implication.

The learned trial Court, on the basis of evidence and after taking into consideration the rival contentions, vide judgment and order dated 17.11.2009 convicted the petitioner under Section 25(1b)(a) of the Arms Act and sentenced him accordingly, as noticed above. The appeal filed by the petitioner was partly allowed by the learned Additional Sessions Judge (Adhoc) Fast Track Court, Mansa, when it reduced the sentence from two years to that of one year.

Learned counsel appearing for the petitioner, while relying upon the Full Bench judgment of this Court reported as Joginder Singh Vs. State of Punjab, 1980 PLR 585, contends that where the minimum period of sentence is provided, benefit of Sections 360 and 361 Cr.P.C. can be granted to the accused. It is accordingly prayed that the petitioner may be granted benefit of the said provisions and he may be released on probation. Alternatively, the learned counsel for the petitioner submits that if this Court does not find favour with the said submission, then the sentence imposed upon the petitioner may be reduced to the period already undergone.

On the other hand, the learned State counsel has, while controverting the aforesaid submissions, argued that the findings recorded by the Courts below are based on cogent and convincing evidence. It is further argued that the learned trial Court had recorded a clear and categorical finding that the petitioner had been in possession of 12 bore country made pistol along with three live cartridges without any permit or licence. The said finding was upheld in the appeal filed by the

petitioner. Thus, it is submitted that there is no scope for interference in the findings recorded by the Courts below. Still further, while coming to the sentence part, the learned State Counsel prays that the learned Appellate Court had already shown a leniency in the sentence part, when it reduced the sentence from two years to that of one year.

I do not find any merit in the submission made by the learned counsel for the petitioner for releasing the petitioner on probation as in my opinion, taking into consideration the findings recorded by the Courts below and the offence committed by the petitioner, the law laid down by the Hon'ble Full Bench of this Court in Joginder Singh's case (supra), has no applicability in the present case.

In this case, FIR had been registered on 21.9.2003. Out of the total sentence of one year, the petitioner, as per the custody certificate, has already undergone 4 months 05 days of the actual sentence. Thus, in my opinion, no useful purpose would be served by sending the petitioner behind the bars once again to undergo the remaining period of sentence, especially when, the petitioner has been facing the agony of trial for the last 15 years. Instead, ends of justice would be suitably met, if the sentence imposed upon the petitioner is reduced to the period already undergone by him, but subject to enhancement of the fine amount.

In view of the above, while upholding the conviction of the petitioner as recorded by the Courts below, his substantive sentence is reduced to the period already undergone

by him, but subject to payment of 10,000/- as fine, over the amount of fine already imposed by the trial Court. The said amount shall be deposited by the petitioner before the learned Chief Judicial Magistrate, Mansa, within a period of two months from today. Failing to comply with the said direction would entail the automatic dismissal of the revision petition.

Disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

06.09.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No