

Sr. No.245

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

**CRR-2309-2018(O&M)
Date of decision:06.02.2019**

Rajinder Singh @ Bhola and another

.....Petitioners

versus

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. R.K.Shukla, Advocate
for petitioner No.1 and
Mr. Kuldip Sanwal, Advocate
for petitioner No.2.

Mr. K.S.Aulakh, DAG, Punjab.

Rajbir Sehrawat, J(Oral)

This is a petition challenging judgments/orders dated 21.05.2018 passed by the Additional Sessions Judge, Patiala, whereby the appeal filed by the present petitioners against the judgment of the conviction and order of sentence dated 13.12.2016, passed by the Additional Chief Judicial Magistrate, Patiala, thereby convicting the petitioners under Sections 325 and 447 of IPC and imposing upon them the maximum sentence of 02 years and 01 year respectively, was dismissed.

At the outset, counsel for both the petitioners have submitted that since both the petitioners have already undergone substantial part of sentence, therefore, they have instructions to restrict the present petition qua the quantum of sentence only. Accordingly, the present petition is restricted qua quantum of sentence only.

The facts giving rise to the present petition are that the FIR

No.39, dated 27.06.2011 was registered under Sections 325,447/34 IPC, at Police Station Passiana, District Patiala on the statement of one Gurtejinder Singh; with the allegation that on 04.05.2011 he was working in his field, which are adjacent to the fields of the present petitioners. The petitioners were taking out the earth from their fields with JCB machine. The complainant asked the petitioners as to why they were damaging the boundary between the land of the complainant and the present petitioners. On this, the quarrel took place between the petitioners and the said complainant. Petitioner No.2 was having air pistol in his hand and he pointed out the same towards the complainant. However, the complainant snatched the same from him; and in this scuffle petitioner No.1 gave a blow with something on little finger of right hand of the complainant. In the mean-time, Gurmukh Singh, brother of the complainant reached the spot and he saved the complainant from the petitioners. After that the petitioners ran away from the spot. It was alleged in the FIR that motive behind occurrence was that there was a dispute regarding demarcation of land between the parties and the petitioners were not allowing to demarcate the land and without any demarcation, the petitioners were taking out the soil from the land in dispute.

To substantiate these allegations, the prosecution led the evidence. Finding the evidence of the prosecution to be sufficient and worth believing, both the petitioners were convicted by the Trial Court, in case of petitioner No.1, under Sections 325 and 447 IPC and in case of petitioner No.2, under Sections 325/34 alongwith Section 447 IPC. As a result the petitioner No.1 was awarded maximum sentence of 02 years, whereas petitioner No.2 was awarded maximum sentence of 01 year.

To buttress their submissions regarding the reduction of sentence, learned counsel for the petitioners have submitted that both the petitioners are the first offenders. It is further contended that both the petitioners are of the age of 40 and 38 years respectively. They are having minor children and the old age mother to support. It is also contended that even the proved situation in the case, also suggests that the quarrel between the parties had just emerged, without their being any intention to cause injury to the complainant. In the end, it is contended that, by any means, petitioner No.1 has undergone 07 months and 02 days of actual sentence and including remissions; he has undergone total sentence of 08 months and 26 days. Petitioner No.2 has undergone 08 months and 14 days of actual sentence and including remissions he has undergone 10 months and 18 days of total sentence. Hence both the petitioners have undergone substantial part of their sentence. Petitioners have also maintained absolute good conduct while in custody. Hence the petitioners deserve to be given a chance to lead their normal life by reducing their sentence. Accordingly, it is prayed that the sentence awarded to the petitioners be reduced to the period already undergone by them; respectively.

On the other hand, learned State counsel has filed the Custody Certificates of both the petitioners, which are taken on record. The Custody Certificates verify the assertions made by the counsel for the petitioners so far as the custody is concerned. However, it is submitted by State counsel that the Court below has already taken a lenient view while awarding the sentence to the petitioners. The petitioners are involved in heinous crime of causing grievous injury to the complainant. Hence they do not deserve any reduction of sentence; which has already been awarded to them by the

courts below. They are required to undergo the complete sentence awarded to them.

Having heard the learned counsel for the parties, this Court finds substance in the argument raised by learned counsel for the petitioners. Although the learned counsels for the petitioners have restricted the present petition qua quantum of sentence only, however, they have rightly pointed out the circumstances prevalent at the time of incident involved in the case to justify reduction in sentence. Although this Court is not considering the case on merit, however, for awarding the sentence as well, the circumstances in which the offence has happened can very well be taken into consideration. The circumstances of this case do suggest that the offence has just happen in a sudden quarrel between the parties. Hence, the petitioners are not entirely wrong in making a prayer; that keeping in view the situation as existing at the time of incident; the sentence of the petitioners be reduced.

The record also shows that both the petitioners are in middle of their age and are deep down in the family responsibilities. The petitioners are also the first offenders. Still further; the Custody Certificates placed on record by the State counsel also shows that the petitioners have maintained absolute good behaviour, while they were in custody. Accordingly, the petitioner No.1 has earned remission of 01 month and 24 days and petitioner No.2 has earned a remission of 02 months and 02 days, within a short span of custody of about one year. This reflects that the petitioners have reformed themselves. Therefore, it would not be unjustified if the petitioners are granted one more opportunity to lead the normal life; by joining the mainstream of social fabric.

Keeping in view the above mitigating circumstances and conduct of the petitioners, it would be appropriate if the prayer of the counsel for the petitioners is accepted and the sentence awarded to the petitioners are reduced to the period of sentence already undergone by them respectively.

Accordingly, the present petition is partly allowed. While the petition is dismissed qua challenge to the conviction of petitioners, the order of sentence is modified and it is ordered that the sentences awarded to the petitioners are reduced to the period of sentence already undergone by them respectively. Let the petitioners be released from custody, if not required; any more; in any other case.

6th February, 2019
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*