

Sr. No.253

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

**CRR-3473-2018(O&M)
Date of decision:30.04.2019**

Lashad Harun Khan

..... Petitioner

versus

State of Punjab

..... Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Ms. Manmohan Kaur, Advocate
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

Rajbir Sehrawat, J(Oral)

The present petition has been filed for challenging the Order dated 06.01.2017 passed by the Court of Chief Judicial Magistrate, SAS Nagar, Mohali whereby the petitioner has been convicted and sentenced to undergo RI for a period of One Year in the offence under Section 279, 304-A IPC and also six months in the offence of 338 IPC and to pay a fine of Rs.2,000/- and Order dated 17.09.2018 passed by the Court of Additional Sessions Judge, SAS Nagar(Mohali) whereby the order passed by the Trial Court has been upheld.

Vide Order dated 06.02.2019, notice was issued in this case only qua quantum of sentence.

The brief facts of the case, leading to the present petition are that an FIR No.123, dated 09.06.2012 under Sections 279, 338, 304-A, 427 IPC at Police Station: Phase-1, Mohali was registered on the statement of one Dinesh Kumar, wherein he had alleged that on 09.06.2012, he had gone to the house of his friend Mohit Malik. He was in his car bearing

Registration No.H.R.03 R 0046. While coming back from the house of Mohit Malik, the said Mohit Malik was going ahead of him on his own motorcycle bearing Registration No.CH-24 T 0810. When the said Mohit Malik reached near Gurudwara Sahib, a car bearing Registration No.PB-65A 7676 came at a high speed and take a sudden turn towards the quarters on the side of Phase 5, SAS Nagar, Mohali, without giving any indication. The said car struck against the motorcycle of Mohit Malik, who fell down on the road and suffered serious injuries. Subsequently, he succumbed to the injuries.

With these allegations, the prosecution had led evidence in support of the case. Finding substance in the allegation and the sufficient evidence against the petitioner, the Trial Court vide Order dated 06.01.2017 convicted the petitioner under Section 279 and 304-A IPC alongwith Section 338 IPC. Accordingly, vide another order of even date, the petitioner was sentenced to undergo RI for a period of One Year for the offences under Section 279 and 304-A IPC and also six months for the offence under Section 338 IPC, and to pay a fine of Rs.2,000/-.

Against the judgment of the conviction order and sentence, the petitioner had preferred appeal before the Additional Sessions Judge, SAS Nagar, Mohal. That appeal was also dismissed by the Appellate Court except to the extent of making the sentences run concurrently. Against these orders, the present petition has been filed.

While arguing the case, learned counsel for the petitioner has submitted that although the petitioner has a very good case on merits, however, since the petitioner had already undergone a substantial part of sentence, therefore, the present petition was restricted qua quantum of

sentence only. It is further submitted by the counsel for the petitioner that the petitioner is a first offender. He is a person of young age and yet to start his life properly. Still further it is submitted by the counsel that while in custody, the petitioner has maintained absolute good behaviour. This also shows that, if at all the petitioner had committed any mistake leading to his conviction, he has learnt the lesson and he is on the way of his reformation. Accordingly, it is prayed that the sentence imposed upon the petitioner be reduced to the period of sentence already undergone by him. The petitioner has already undergone more than 8 months, out of total sentence of one year.

On the other hand, learned State counsel has produced the Custody Certificate of the petitioner, which is taken on record. Custody Certificate shows that out of the total sentence of one year, the petitioner has already undergone 7 months and 28 days, including 25 days of remissions as on 11.04.2019. Custody Certificate does not point out any other case pending or ever registered against the petitioner. However, it is submitted by the State counsel that the negligence of the petitioner has resulted into death of a person. Despite that Courts below have shown sufficient leniency while sentencing the petitioner. He does not deserve any more concession qua the sentence. Hence, the petitioner should be made to serve the entire sentence awarded to him by the Courts below.

Having heard the learned counsel for the parties and perusing the record, this Court find sufficient substance in the argument of learned counsel for the petitioner. It has come on record that out of total sentence of one year, the petitioner has already undergone more than 8 months as of today, which happens to be a substantial part of the sentence. Custody

Certificate produced by the State Counsel also shows that there is no other case against the petitioner, therefore, he happens to be first offender. Otherwise also, accident being an accident, though may have resulted into a death, partly due to the fault of the petitioner, however, the fact remains that the petitioner has been in custody for a long time. During the custody also, the petitioner has maintained good behaviour, as is reflected from the fact that the Jail Authorities have granted him remission of 25 days during a short span of about 7 months only. This would indicate that the petitioner has already learnt his lesson and he is on the way of reformation. Therefore, it would not be unjustified if the sentence of the petitioner is suitably reduced, so as to grant him another chance to join the main stream of social life.

Accordingly, the present petition is partly allowed. While dismissing the petition qua challenge to the conviction, the sentence imposed upon the petitioner by the Court below is reduced to the period of the sentence already undergone by him.

Let the petitioner be released from custody forthwith, if he is not required in connection with any other case.

30th April, 2019

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*