

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.1867 of 2018 (O&M)
Date of Order:22.05.2019

Mahesh

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gorav Kathuria, Advocate
for the petitioner.

Mr. Sanjay Saini, AAG, Haryana.

ANIL KSHETARPAL, J.

This revision petition has been filed against the judgment of conviction dated 20.08.2016 and the order of sentence dated 24.08.2016 passed by Judicial Magistrate Ist Class, Gurugram, affirmed in appeal by the Additional Sessions Judge, Gurugram, vide judgment dated 17.02.2018, in FIR No.151, dated 27.06.2013, registered under Sections 279/337/338/304-A of the Indian Penal Code and Section 196 of the Motor Vehicles Act, at Police Station DLF Phase-I, Gurugram, whereby the appellant has been convicted and sentenced as under:-

Under Section 279 IPC	Fine of Rs.1000/-. In case of default of payment of fine convict shall undergo further simple imprisonment for one month.
Under Section 337 IPC	Fine of Rs.500/-. In case of default of payment of fine convict shall undergo further simple imprisonment for 15 days.
Under Section 304-A IPC	Rigorous imprisonment for 2 years.

Notice of motion was issued and learned State counsel appeared and contested the petition.

From the record, I find that the challan was presented against the petitioner in case FIR NO.151 dated 27.6.2013. The facts as noticed by the trial Court in para 2 are extracted as under:-

The brief facts of the prosecution case are that on 26.06.2013 one telephonic information was received at Police Post, DLF Phase-I, Gurgaon from Police Station, Kotwali, Faridabad regarding admission of injured Priyanka daughter of Rajinder and Rajinder who had died due to the injuries sustained in a road side accident. Request was made to send the Investigating Officer. Upon this information, ASI Ramphal along with Constable Jitender after reaching at Fortis Hospital obtained rukka and MLR regarding injured Priyanka and moved an application to the doctor for getting opinion of the doctor regarding fitness of the injured and the doctor declared the injured fit to make statement. The complainant Priyanka made a statement before the police alleging therein that she is resident of village Aajkabad Mokhuta, District Mahendergarh and she is B.A. And B.Ed pass. On 26.06.2013 she along with his father was going to give test (HTET) in D.P.S.School, Faridabad. At about 7.30 a.m., she along with her father was going to Gurgaon from Faridabad in a Three Wheeler and 4-5 other passengers were also sitting n the three wheeler. When they crossed the toll plaza, then auto driver drove the three wheeler in a rash and

negligence manner at a very high speed and they reached near Bandhwari cut, the three wheeler was turtle down. In this accident, other passenger sustained multiple injuries and she and her father got admitted in the Fortis Hospital, Faridabad where her father had died. This accident was caused by the driver of Three Wheeler bearing registration No.HR-38R-4731 while driving his Three Wheeler rashly and negligently. Action was sought to be taken against the said auto driver.”

Learned Judicial Magistrate Ist Class, Gurugram, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by the learned Additional Sessions Judge, Gurugram, vide judgment dated 17.02.2018.

Aggrieved from the above said judgments, present revision petition has been filed.

At the time of arguments, learned counsel for the petitioner did not dispute the concurrent findings of the Courts below regarding conviction and only contended on the point of reduction in the quantum of sentence. Learned counsel for the petitioner submitted that the petitioner is an auto-rickshaw driver and in the accident he himself had received injuries. He further submitted that the petitioner is a first offender and is not involved in any other case and he is facing protracted trial since 2013. He further submitted that the petitioner has already undergone actual sentence of 1 year 3 months out of total sentence of 2 years.

Keeping in view the facts and circumstances of the present case, the petitioner is an auto-rickshaw driver and is facing long protracted criminal proceedings since 2013 i.e. for the last about 6 years and is first offender, not involved in any other case and has already undergone actual sentence of 1 year 3 months out of total sentence of 2 years, the sentence imposed upon the present petitioner is ordered to be reduced to the period already undergone by him and be released forthwith, if he is not required in any other case.

With the aforesaid modification, the present revision petition is partly allowed.

May 22, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No