

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.3593 of 2018 (O&M)

DATE OF DECISION: MAY 9, 2019

RAM PHAL

...PETITIONER

VERSUS

HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH AND ANOTHER

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. DEEPAK KUMAR, ADVOCATE FOR THE PETITIONER.
MR. SIDDHARTH SANWARIA, DAG, HARYANA.

MANOJ BAJAJ, J.(ORAL)

CRM-38379-2018

This is an application for condonation of delay of 71 days in filing the revision petition.

For the reasons mentioned in the application, the delay is condoned and the application is allowed.

CRM-38380-2018

This is an application praying for suspension of sentence to the applicant-petitioner during the pendency of the revision petition.

As the revision petition itself is being taken up for final disposal, therefore, the present application is rendered infructuous.

CRR No.3593 of 2018

The petitioner has preferred the revision petition challenging the Appellate Court judgment dated 3.5.2018, passed by the learned Additional Sessions Judge, Hisar, whereby the judgment of conviction and order of sentence dated 28.1.2015 and 4.2.2015, respectively, passed by the

trial Court against the petitioner was upheld.

The prosecution arises from a complaint filed by High Court under Sections 177, 193, 205, 209, 465 and 471 IPC following the procedure under Section 340 Cr.P.C. through the Registrar General, Punjab & Haryana High Court, Chandigarh, emanated during the proceedings of RSA No.1877 of 2011.

The petitioner was awarded S.I. for 6 months for the offence punishable under Section 177 IPC; S.I. for 3 years alongwith fine of ₹1000/- and in default to undergo a further period of S.I. for 1 month for the offence punishable under Section 193 IPC; S.I. for 6 months alongwith fine of ₹500/- and in default to undergo a further period of S.I. for 20 days for the offence punishable under Section 209 IPC ; S.I. for 3 years alongwith fine of ₹1000/- and in default to undergo a further period of S.I. for 1 month for the offence punishable under Section 471 IPC; All the sentences were ordered to run concurrently.

The facts in brief leading to revision are that Ram Phal son of Baru Ram, resident of Masudpur, Tehsil Hansi filed a Civil Suit No.1436 of 1993 against his sister Birmati wife of Shera Ram resident of village Bardu, Tehsil Loharu, District Bhiwani and obtained a consent decree dated 17.3.1993 from the Court and also got sanctioned the Mutation. On coming to know about the above fact, Birmati filed a Civil Suit No.744 of 1993 challenging the aforesaid consent decree obtained by Ram Phal on the basis of fraud as she never appeared in Court to suffer consent decree. The said decree was set aside on 5.5.1998 and the suit was decreed in favour of Birmati. An appeal was filed by Ram Phal challenging the aforesaid

judgement and decree which was dismissed on 1.3.2011 by the Addl. District Judge, Hisar. Thereafter, an appeal bearing RSA No.1877 of 2011 was filed by Ram Phal which was also dismissed by this Hon'ble Court on 29.4.2011 with a direction to the Registrar General of this Hon'ble Court to file a criminal complaint against Ram Phal under Section 340 Cr.P.C.

After investigation of this case, the final report (challan) under Section 173 Cr.P.C. was submitted before the Court and the learned trial Court after completion of formalities proceeded to frame the charges against the accused under Sections 177, 193, 205, 209, 465 and 471 IPC. The accused claimed trial.

To bring home the guilt of the accused, the prosecution in all examined 6 witnesses and also adduced documentary evidence. Thereafter the statement of accused was recorded under Section 313 Cr.P.C., wherein he denied the charges and produced Ex.D1 certified copy of order dated 17.2.2011 passed in Ram Phal vs. Smt. Birmati and another and Ex.D2, certified copy of the application for withdrawal of the suit titled Ram Phal vs. Smt. Birmati and another, in his defence.

The trial Court after examining the material on record proceeded to hold the accused guilty and imposed the sentence as noticed above. Dissatisfied with the judgment of conviction dated 28.1.2015 and order of sentence dated 4.2.2015, passed by the Chief Judicial Magistrate, Hisar, an appeal was carried by the convict bearing Appeal No.22 of 2015. The appeal failed and it was dismissed vide judgment dated 3.5.2018, passed by learned Additional Sessions Judge, Hisar.

On 29.10.2018, learned counsel appearing on behalf of the

petitioner was heard and learned counsel did not press his challenge to the conviction part in the impugned judgment and confined his prayer only for reduction of sentence alone awarded to the petitioner.

Learned counsel for the petitioner contends that the petitioner is facing the agony of trial and appeal for the last 8 years. He has also lost his son and is the sole breadwinner of his family. It is pointed out that his prayer for extending the benefit of probation before the trial Court was not accepted and the sentence was imposed by the trial Court. It is prayed that the petitioner may be released on probation or in the alternative his sentence may be reduced to the period already undergone by him.

At this stage, learned counsel for the State has referred to the custody certificate dated 15.12.2018 filed by Jangsher Singh, Deputy Superintendent, Central Jail No.1, Hisar to contend that the petitioner has undergone a period of more than 1 year as on date pursuant to the impugned judgment of conviction and order of sentence. It is not disputed that there is no other case against the petitioner.

After hearing learned counsel for the parties, this Court finds that the petitioner has been suffering the agony of trial and appeal for the last 8 years approximately. As the petitioner is first offender and is the sole bread winner of his family, therefore, some leniency deserves to be extended to him, considering the circumstances. The ends of justice would be met in case the sentence imposed upon the convict is reduced to the period already undergone by him.

Resultantly, the petition is partly allowed, and the conviction recorded by the learned trial Court and upheld by the Appellate Court is

maintained. However, the order of sentence is modified and reduced to the period already undergone by the convict. The petitioner be released forthwith, if his custody is not required in any other case.

Revision petition is disposed off.

May 9, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No