

CRR-2345-2019 (O & M)

In the High Court of Punjab and Haryana at Chandigarh

CRR-2345-2019 (O & M)
Date of Decision:07.01.2020

HarbansLal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Deepak Basatia, Advocate,
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the judgment dated 05.08.2019 passed by the learned Additional Sessions Judge, Ambala, whereby while dismissing the appeal filed by the petitioner, the judgment of conviction dated 07.11.2016 and order of sentence dated 08.11.2016 passed by the learned Additional Chief Judicial Magistrate, Ambala, in FIR No.88 dated 22.03.2011, under Sections 406 and 420 IPC, registered at Police Station Baldev Nagar (Ambala), have been upheld.

The petitioner was tried for committing the offences under Sections 406 and 420 IPC. As per the prosecution version, the accused had approached the complainant in the year 1990 and on 30.05.1990, the complainant purchased plot No.63, measuring 355 square yards situated in

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complainant had agreed to purchase the said plot and paid a sum of Rs.2,35,000/- to the accused-petitioner in the presence of Adish Aggarwal and Ajay Goel and the petitioner had executed a receipt dated 30.05.1990 in favour of the complainant. After receiving the full and final payment of the consideration, the petitioner had also executed a registered general power of attorney in favour of the complainant at that time. When the complainant had asked the petitioner-accused to get the sale deed registered in his favour, the accused informed that the said plot was under some litigation and as such, the accused could not get the sale deed executed. The petitioner-accused assured the complainant that he had already made the entire payment and was the owner of the plot. Believing the assurance of the accused, the complainant had entered into a further agreement to sell dated 19.09.2001 in favour of Narinder Kumar for a valuable consideration of Rs.9,65,000/- on the basis of the registered power of attorney of the accused. However, subsequently the petitioner became dishonest and with an intention to cheat the complainant, he had cancelled the general power of attorney dated 11.03.2002 and thus, committed fraud upon the complainant. Though the said plot was in the name of the petitioner-accused, but for all the intents and purposes, he had disposed of the same to the complainant vide receipt dated 30.05.1990. On receiving the complaint, FIR No.88 dated 22.03.2011, under Sections 406, 420 IPC, Police Station Baldev Nagar, was registered against the accused.

On the basis of the evidence led, it stood proved before the learned trial Court that the petitioner-accused had cheated the complainant.

Consequently, the petitioner was convicted under Section 420 IPC. He was,

Accordingly, sentenced to undergo rigorous imprisonment for a period of

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two years and to pay a fine of Rs.3,000/- and, in default of payment of fine, to further undergo simple imprisonment for a period of two months.

Aggrieved of the judgment and order passed by the learned trial Court, the petitioner preferred an appeal before the learned Sessions Judge, Ambala. However, vide judgment dated 05.08.2019 passed by the learned Additional Sessions Judge, Ambala, the appeal was dismissed, thereby affirming the judgment and order passed by the learned trial Court.

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

Learned counsel for the petitioners, at the very outset, submits that he does not intend to press the present criminal revision against the conviction recorded by the learned courts below. He further submits that the present revision petition may be considered only qua quantum of sentence. While highlighting the mitigating circumstances, he submits that the petitioner is 75 years; suffering from various ailments; has been facing the agony of trial for the last 08 years and that by now, the petitioner has already undergone the sentence of more than six months. It is, thus, submitted that the sentence imposed upon the petitioner may be reduced to the one already undergone by him. In support of his contentions, the learned counsel relies upon **Billu Vs. State of Punjab** 2011 (22) R.C.R. (Criminal) 920 and **Satbir Vs. State of Haryana** 2014 (10) R.C.R. (Criminal) 2442.

On the other hand, the learned State counsel submits that in view of the fact situation of the present case, the petitioner does not deserve any leniency and he is not entitled for reduction of the sentence.

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through the record.

Taking into consideration the cogent and trustworthy evidence produced by prosecution and well reasoned judgments of the Courts below, the findings recorded by the Courts below convicting and sentencing the petitioner, do not call for any interference and the same are accordingly affirmed.

However, keeping in view the fact that the petitioner is 75 years old and has already undergone the sentence of more than six months, I feel that ends of justice would be suitably met, if the sentence awarded to the petitioner is reduced to the period already undergone.

The view taken by this Court also finds support from the judgment rendered by this Court in ***Satbir's case (supra)***, wherein it has been held as under:

“14. After giving thoughtful consideration to the rival contentions raised and keeping in view the peculiar fact situation of the present case, this Court is of the considered opinion that it is just and expedient to reduce the sentence of the petitioners not to the period already undergone by them but to nine months. I say so because the petitioners have faced the agony of criminal trial for long 14 years since 18.7.1998. Besides this, they have also undergone the substantial part of the sentence awarded to them. Further, both the petitioners are first offenders. Petitioner-Jamna Devi is an old, illiterate and rustic village woman. So far as petitioner-Satbir is concerned, his wife is suffering from cancer, as noted above, and one of his sons has recently died. He was not the beneficiary of the transaction in question.

15. The view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in the case of 2006(4) R.C.R. (Criminal) 645 titled as “R. Soundarajan v.

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Seed Inspector, Coimbatore and another” and “Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723.

16. The relevant observations made by the Hon'ble Supreme Court in the case of ***R. Soundarajan v. Seed Inspector, Coimbatore and another (Supra)***” are as under:-

“26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment.”

In ***“Umrao Singh v. State of Haryana, (supra)***, the Hon'ble Supreme Court observed as under:-

“After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16 (1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents. 2. Having regard to these facts, the expression

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of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.

3. *The appeal is disposed of accordingly.”*

17. In view of the totality of facts of circumstances of the present case noted above, coupled with the reasons aforementioned, both these criminal revisions petitions are dismissed so far as the conviction of the petitioners is concerned. However, the sentence of the petitioners is ordered to be reduced to the period of nine months.”

Accordingly, conviction of the petitioner under Section 420 IPC is maintained. However, sentence qua imprisonment of the petitioner, is reduced to the period already actually undergone by him. The petitioner, who is in custody in this case, shall be released forthwith if his custody is not required in any other case. However, there shall be no modification in the fine.

With the aforesaid order, the revision petition is disposed of.

(HARNARESH SINGH GILL)
JUDGE

07.01.2020
parveen kumar

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No