

CRR-325-2020 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(229)

CRR-325-2020 (O&M).
Date of Decision:-20.12.2021.

Nirvair Singh @ Binder

.....Petitioner

Versus

The State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Onkar Rai, Advocate for
Mr. Sanjeev K. Virk, Advocate for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

VIKAS BAHL, J. (Oral)

Challenge in the present revision petition is to the judgment dated 18.02.2015 vide which the petitioner has been convicted under Sections 411, 420, 467, 468 and 471 of IPC and sentenced as under:-

“Keeping in view the facts and circumstances of the case, the convict is sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
<i>411 IPC</i>	<i>Rigorous imprisonment for a period of one year and to pay fine of Rs.250/-, in default of payment of fine, the convict shall undergo rigorous imprisonment for a period of one month.</i>
<i>420 IPC</i>	<i>Rigorous imprisonment for a period of three years and to</i>

	<i>pay fine of Rs.250/-, in default of payment of fine, the convict shall undergo rigorous imprisonment for a period of one month.</i>
<i>467 IPC</i>	<i>Rigorous imprisonment for a period of three years and to pay fine of Rs.250/-, in default of payment of fine, the convict shall undergo rigorous imprisonment for a period of one month.</i>
<i>468 IPC</i>	<i>Rigorous imprisonment for a period of three years and to pay fine of Rs.250/-, in default of payment of fine, the convict shall undergo rigorous imprisonment for a period of one month.</i>
<i>471 IPC</i>	<i>Rigorous imprisonment for a period of three years and to pay fine of Rs.250/-, in default of payment of fine, the convict shall undergo rigorous imprisonment for a period of one month.</i>

All the sentences shall run concurrently. The period of detention, if any, already undergone by the convict in this case, shall be set off against the term of imprisonment imposed upon the convict and his liability to undergone imprisonment shall be restricted to the remainder term, if any. The case property, if any, is ordered to be dealt with as per rules after the expiry period of appeal/revision, if any. File be consigned to the judicial record room, Phagwara.”

Challenge is also to the judgment dated 10.12.2019 passed by the Sessions Judge, Kapurthala vide which the appeal filed by the petitioner has been dismissed and the judgment of conviction and order of sentence

was upheld.

The case of the prosecution is that on 19.01.2011, ASI Harmail Singh along with other police officials were present opposite JCT Mills, Phagwara, where a secret informer had informed that the petitioner is waiting for customer for selling stolen Activa and LCDs at Onkar Nagar and he can be apprehended, if a raid was to be conducted. On the basis of the said information, ruqa was sent to the Police Station through HC Harbhajan Singh and he had gone at the spot for conducting the raid, where one person who was sitting on Activa bearing registration No.PB-09-H-0786, tried to flee from the spot after seeing the police party but was apprehended and the said person disclosed his name to be Nirvair Singh i.e., the present petitioner. Apart from the above Activa, another Activa as well as, 03 LCDs of make Onida and one electronic stove had been recovered from the petitioner and he could not produce any proof of ownership of the said articles. As per the R.C. of the above-said Activa, the owner of the same was namely one Sanjeev Kumar. However, during investigation, Ajinderpal Singh had identified the said Activa to be his and one Joginderpal had identified the other Activa.

After completion of investigation, challan was presented and the charges were framed. The prosecution had examined 08 witnesses details of which are given hereinbelow:-

PW-1 Joginderpal,

PW-2 Chanchal Sharma,

PW-3 Ajinder Pal Singh,

PW-4 Nirmal Kapoor,

PW-5, ASI Paramjit Singh,

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PW-6 Varinder Singh,

PW-7 ASI Harmail Singh,

PW-8 Paramjit Kaur.

PW-1 Joginderpal had stated in his examination-in-chief that on 21.1.2011, he had gone to the Police Station City Phagwara and he had identified his Activa Honda which was stolen on 08.01.2011. PW-2, Chanchal Sharma, Transfer Clerk, had brought the summoned record with respect to the second Activa and had stated that the registered owner of the same was M/s Joginderpal and Company. PW-3, Ajinderpal Singh had also identified his Activa at the Police Station and in the Court and PW-4 Nirmal Kapoor, Clerk brought the summoned record of the first vehicle and stated that the said vehicle is registered in the name of M/s Shivala Enterprises and had submitted that the registration certificate was a forged one. PW-5 ASI Paramjit Singh had proved on record various relevant documents including ruqa Ex.PW5/A, FIR Ex.PW5/B, recovery memo Ex.PW5/C, arrest memo Ex.PW5/D, personal search memo of accused Ex.PW5/E, disclosure statement of accused Ex.PW5/F. PW-6, Varinder Singh, Junior Assistant, had submitted that as per record, the Registration No. of the vehicle PB-08-F-2990 was allotted to scooter of make Bajaj Chetak is in the name of Kuldeep Singh Lambardar. PW-7 ASI Harmail Singh was the Investigating Officer, has and had duly proved the prosecution case and various documents including identification memos of the vehicles which had been stolen. It was found that the second vehicle was in fact a Honda Activa Scooter bearing Engine No.02970 and was registered under the name of Ajinder Pal Singh. After considering the PWs and documents on record, the trial Court convicted the petitioner for the

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offences under Sections 411, 420, 467, 468 and 471 of IPC and sentenced as has been detailed hereinabove. The petitioner filed an appeal before the Sessions Judge, Kapurthala, who after re-appreciating the entire evidence and documents, dismissed the appeal. The present revision has been filed challenging the said two orders.

During the course of arguments, learned counsel for the petitioner has submitted that he is not challenging the conviction of the petitioner under Section 420 IPC but is praying for leniency and as far as the sentence, which had been awarded to the petitioner, is concerned and with respect to the same, it has been submitted that the incident in question is of the year 2011 and almost 10 years have gone by and the petitioner has been suffering agony of trial/appeal/revision for all these years and the petitioner was even granted the bail/suspension of sentence but the petitioner has never misused the said concession. It is further submitted that petitioner is 46 years of age and is the sole bread winner of his family. It is further submitted that the petitioner has already undergone actual custody of approximately 01 year, 01 month and 03 days and has earned remission of 24 days thus, making his total custody including remission to be 01 year, 01 month and 27 days out of total sentence of rigorous imprisonment of three years.

In support of his arguments, learned counsel for the petitioner has relied upon **CRR-1931-2010** decided on 23.07.2019 titled as **Chander Bhan Vs. State of Haryana** in which in a case where the petitioner had actually undergone sentence of 04 months and 07 days in a case under Sections 279 and 304-A IPC, this Court has suspended the sentence by imposing a fine of Rs.25,000/- and the judgment of the Hon'ble Supreme

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Court in *State of Punjab Vs. Saurabh Bakshi, reported as 2015 (2) RCR (Criminal), 495* was considered. Further reliance has been placed upon a judgment of this Court in *CRR-4830-2016* decided on 08.03.2017 titled as “*Balwinder Singh @ Binder Vs. State of Punjab*” in which case also the sentence was reduced to four months in a case of conviction under Section 279/304-A IPC where rigorous imprisonment was awarded for 02 years. In the said case also, the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (supra) was considered. Further, reliance has also been placed upon case of *Jaswant Singh Vs. State of Punjab*, reported as *2020 (1) RCR (Criminal) 163*, in which also after taking into consideration the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (supra), the sentence was reduced to already undergone.

Notice of motion.

On advance notice, Mr. Sukhbeer Singh, AAG, Punjab, appears and accepts notice on behalf of State of Punjab and has submitted that he is fully prepared to argue this matter. He has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on record. However, the fact with respect to the custody of the petitioner as well as having never misused the concession of bail/suspension of sentence has not been disputed by the learned State counsel.

This Court has heard the learned counsel for the parties and perused the record.

As far as conviction of the petitioner under Sections 411, 420, 467, 468 and 471 of IPC is concerned, this Court is of the view that both the Courts below have considered the entire evidence and record in detail

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and have rightly come to the conclusion that the petitioner is liable for the said offence.

In the present case, the prosecution story fully proves the case of the prosecution. PW-1, Joginderpal had stated in his examination-in-chief that he had identified his Aactiva Honda which was stolen on 08.01.2012. PW-2 Chanchal Sharma, who was the Transfer Clerk from the SDM's office had brought the summoned record with respect to the said Aactiva and had proved on record that the registered owner of the same is namely M/s Joginderpal and Company. PW-3 Ajinderpal Singh has proved that the second Aactiva belonged to him. The Investigating Officer PW-7, ASI Harmail Singh had proved on record that the said two Aactivas along with LCDs of make Onida and one electric stove had been recovered from the petitioner and the same did not belong to the petitioner. The said witnesses had been cross-examined at length but however, nothing had come out in the cross-examination so as to dent the case of the prosecution. Thus, the conviction of the petitioner is upheld.

As far as sentence which has been awarded to the petitioner is concerned, this Court is of the view that keeping in view the fact that the incident in the present case is of the year 2011 and the petitioner has never misused the concession of bail/suspension of sentence and the petitioner is sole bread winner of his family and has already undergone actual custody of approximately 01 year, 01 month and 03 days and has earned remission of 24 days thus, making his total custody including remission to be 01 year, 01 month and 27 days out of total sentence of rigorous imprisonment of three years and also in view of the judgments relied upon by learned counsel for the petitioner, it is ordered that the sentence awarded to the

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petitioner is reduced to the period already undergone. The same is subject to the petitioner depositing an amount of Rs.20,000/- in the Punjab and Haryana High Court Lawyers Welfare Fund within a period of 02 months from today and also depositing an amount of Rs.1250/- as the fine imposed, within the said period. It is made clear that in case, the above said amounts of Rs.20,000/- and Rs.1250/- are not deposited within the stipulated period, the present petition shall be deemed to have been dismissed.

Accordingly, the present criminal revision petition is disposed of in the above-said terms.

Since the main case has been decided, pending miscellaneous application shall also stand disposed of.

(VIKAS BAHL)
JUDGE

December 20, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No