

***CRR-2793-2019 (O&M) &
CRR-2831-2019 (O&M)***

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

**CRR-2793-2019 (O&M)
Date of Decision:-16.08.2021.**

(1.)

Sanjay

.....Petitioner

Versus

State of Haryana

.....Respondent

(2.)

CRR-2831-2019 (O&M)

Naim

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

**Present: Mr. Randeep.S. Dhull, Advocate for the petitioner in
CRR-2793-2019.**

**Mr. Ankur Malik, Advocate for the petitioner in
CRR-2831-2019.**

Mr. Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

**By this common order, two criminal revisions i.e. CRR-2793-
2019 preferred by Sanjay and CRR-2831-2019 preferred by Naim shall be**

disposed of together as the impugned judgments in both these criminal revisions are the same. Prayer in the said criminal revision petitions is for setting aside the judgment dated 06.03.2018 and order of sentence dated 07.03.2018 passed by the Court of Judicial Magistrate Ist Class (hereinafter referred to as the 'JMIC'), Panipat, as well as judgment dated 11.10.2019 passed by the Court of Sessions Judge, Panipat. The learned JMIC, Panipat, *vide* judgment dated 06.03.2018 has convicted both the petitioners in both the Revision Petitions in the following terms:-

“3. In view of the arguments advanced by Ld. Counsels for the convicts and Ld. APP for the State assisted by Ld. Counsel for the complainant, the punishment of convicts is as under:-

Section 411 read with section 34 of Indian Penal Code:

The convicts are sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/- for the commission of offence punishable under section 411 read with section 34 of Indian Penal Code.

Section 201 read with section 34 of Indian Penal Code:

*The convicts are sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of **Rs.100/-** for the commission of offence punishable*

under section 201 read with section 34 of Indian Penal Code.

In default of fine the convicts will further sentence to undergo simple imprisonment of two months.

Period of imprisonment already undergone by the convicts during the course of trial in the present case shall be counted towards substantive sentence of imprisonment awarded to them. All the sentences shall run concurrently. Fine paid. File be consigned to the record room after due compliance and be put up again as and when the accused Wasid surrenders himself or apprehended by the police.

Pronounced in open Court”

However, the petitioners were acquitted of the charge under Section 379 IPC.

Aggrieved by the same, the petitioners filed an appeal. The appeal was dismissed by the Court of Sessions Judge, Panipat *vide* his judgment dated 11.10.2019 by upholding the conviction and maintaining the sentence.

The case of the prosecution was that a police party headed by ASI Krishan Kumar was on patrolling duty when a secret information was received that three persons, namely, Sanjay, Naim (petitioners in the present two revisions) and Wasid are going towards Delhi in a canter having registration No.UP-92-T-4241. As per the said information, they had stolen

another canter and had dismantled the same. In pursuance of the secret information, the raiding party created a barricade and the above said ASI gave a signal to the driver of the canter to stop. The driver of the vehicle fled away but the police was successful in apprehending two persons, who disclosed their names as Wasid and Sanjay and also disclosed the name of the person who had escaped as Naim. Further, as per the prosecution version, the said persons could not produce any documents and, thus, the pieces of the canter vehicle were taken into possession and a case under Sections 379/411 and 201 IPC was registered. Disclosure statements were suffered by the accused and subsequently, the offence under Section 34 was also added. *Vide* order dated 11.03.2015, charges were framed against the three accused under Sections 379 and 411 IPC. The third accused, namely, Wasid subsequently absented himself and was declared as proclaimed person. In all, six witnesses were examined by the prosecution which are detailed as under:-

- (i)PW-1 Head Constable Kaptan Singh, who deposed with respect to the secret information received and regarding putting of the barricade and apprehending the accused.
- (ii)PW-2 Dr. R.S. Poonia, who deposed about visiting the crime scene and preparing report Ex.PW2/A as per which the dismantled pieces of the canter were lying in the premises of the Police Station and the chasis number and engine number of the same were found to be erased and missing, respectively.

(iii)PW-3 EASI Suresh Kumar, who also deposed about the secret information and then apprehending the accused along with the canter. He further deposed that Ex.PW3/A which was the memo of recovery of pieces of canter in question and also about the disclosure statements made by Sanjay, Wasid and Naim and several other documents were produced and proved by him.

(iv)PW-4 Asjad Hasmi, who deposed that on 31.10.2013, he had purchased the vehicle in question, which was stolen, regarding which an FIR had been got registered in Delhi. He produced and proved on record the certificate of sale Ex.P-1 and other documents relating to the vehicle.

(v)PW-5 ASI Krishan Kumar (No.30), who deposed about the registration of FIR Ex.PW-5/A.

(vi)PW6 ASI Krishan Kumar (No.336), who deposed the forming of the raiding party and then conducting the investigation in accordance with the prosecution version. Apart from the documents already proved in evidence, he proved Ex.PW6/A tehrir/complaint prepared by him, Ex.PW6/B rough site-plan of place of occurrence, Ex.PW6/C rough site-plan of the place of recovery, Ex.PW6/D memo of recovery of documents of ownership of canter vehicle bearing Registration No. UP-92-T-4241.

The entire incriminating evidence was put by the prosecution to the

accused persons under Section 313 Cr.P.C. who denied all the allegations and pleaded their false implication. However, no defence evidence was adduced. Learned trial Court, after examining the evidence in detail, acquitted the petitioners in the present two revision petitions under Section 379 IPC but, however, convicted them under Sections 411 and 211 read with Section 34 IPC *vide* judgment dated 06.03.2018. Further, *vide* order of sentence dated 07.03.2018, the petitioners were sentenced to a maximum imprisonment of two years, as has been detailed hereinabove. A composite fine of Rs.1100/- was imposed upon the petitioners which is stated to have already been paid. The petitioners filed the appeal before the Sessions Judge, Panipat and the learned Sessions Judge, Panipat, after considering the entire evidence and the material on record, dismissed the appeal of the petitioners. Hence, the petitioners have filed these two Criminal Revision Petitions.

During the course of arguments, learned counsel for both the petitioners have submitted that they are not challenging the findings recorded by the Lower Courts on the merits of the case and would be satisfied if some leniency is shown in the matter of sentence. For the said fact, the learned counsel for both the petitioners has submitted that the incident is of the year 2014 and the petitioners have suffered agony of trial and they have never misused the concession of bail/special parole nor they have repeated the offence. It has been submitted by the learned counsel(s) for both the petitioners that although there is another FIR, i.e., FIR No.841 of 2014 under Section 379 IPC in New Delhi registered against both the

petitioners, the petitioners have been granted bail in the same *vide* orders dated 25.09.2014 and 20.10.2014, respectively. It is submitted that the said FIR is also with respect to the canter in question. It is also submitted that even the said incident is of the year 2014 and since then, the petitioners have not indulged in any illegal activity, much less repeated the crime.

Learned counsel appearing for petitioner-Sanjay has further stated that as per the custody certificate, which is taken on record, petitioner-Sanjay has already undergone actual sentence of 05 months and 18 days and has earned remission of 03 months and 29 days and, thus, has a total sentence including remission of 09 months and 17 days. It is also submitted that he is sole bread winner of his family and has three marriageable daughters.

Learned counsel appearing for petitioner-Naim has also stated that per the custody certificate, which is taken on record, petitioner-Naim has undergone actual period of 06 months and 23 days and has earned remission of 03 months and 24 days and, thus, his total sentence including remission is 10 months and 17 days. In both the cases, the maximum sentence is two years.

On the other hand, learned counsel for the State has submitted that both the Courts have correctly come to the conclusion that the petitioners had committed an offence and were, thus, rightly convicted. It has further been argued that there is no redeeming feature so as to reduce the sentence.

This Court has heard the arguments of the learned counsel for

the parties and has minutely gone through both the judgments as well as the record and has come to the conclusion that the finding of both the Courts on merits with respect to conviction of the petitioners is correct and does not call for any interference. The prosecution has been able to prove their case beyond doubt, inasmuch as the evidence which has been led, clearly proves that the dismantled canter was recovered from the petitioners and one Wasid. Thus, the findings of the Courts below as far as the conviction of the petitioners under Section 411 and 201 read with Section 34 IPC are upheld. However, with respect to the sentence, this Court is of the opinion that since the incident is of the year 2014 and the petitioners have suffered agony of trial/appeal/revision for more than six years and have never misused the concession of bail/special parole and have also not indulged in criminal activity. With respect to the other FIR registered in Delhi, which is also of the year 2014, the petitioners have already been granted bail since the year 2014 and have not committed any crime since then and in fact, the said FIR is also in relation to the canter in question. The petitioner- Naim is about 50 years of age and the petitioner-Sanjay is around 40 years of age and both of them are the sole bread winners of their family and there are marriageable daughters of both the petitioners.

Thus, keeping in view the above facts and circumstances, this Court is of the opinion that sentence awarded to both the petitioners is reduced to the period already undergone by them. However, the same would be subject to the petitioners depositing the amount of Rs.15,000/- each in the PHHCBA Chandigarh Disaster Management Relief Fund,

Account No.39265696267, State Bank of India, High Court Branch, Sector 1, Chandigarh, within a period of two months from the date of receipt of a certified copy of this judgment.

In view of the above, both the revision petitions are disposed of with the above said modification in the sentence. It is made clear that in case, the petitioners fail to deposit the aforesaid amount within the stipulated period, then these petitions would be deemed to have been dismissed with no further orders.

Since the main revision petitions have been disposed of, CRMs No.32973 and 33388 of 2019 stand disposed of as infructuous.

**(VIKAS BAHL)
JUDGE**

August 16, 2021.

sandeep

Whether speaking/reasoned:-

Yes

Whether Reportable:-

Yes