

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

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**CRR-423-2004 (O&M)
Date of decision: 07.05.2022**

SATISH CHANDER CHOPRA

....Petitioner(s)

Versus

STATE OF HARYANA & ANR.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Jagdish Manchanda, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

The present revision petition raises a challenge to the judgments passed by the Judicial Magistrate First Class, Karnal in Criminal Complaint No.30/3 of 1998 decided on 13.08.2002, convicting the petitioner for commission of offence under Section 420 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and order of sentence dated 14.08.2002, whereby the petitioner was sentenced to undergo a rigorous imprisonment for a period of 01 year and was directed to deposit fine of Rs.2,000/- The said judgment of conviction and order of sentence was subject matter of challenge before the Additional Sessions Judge, Karnala in Criminal Appeal No.37/2002 and vide judgment dated 09.02.2004, the appeal preferred by the petitioner was dismissed.

Brief facts:

2. The case of the complainant as stated in the complaint is that he entered into an agreement to sell with accused on 01.02.1995 by paying Rs.25000/- as earnest money for the house bearing No.A-325, situated in Sadar

Bazar, Gandhi Chowk, Karnal, 2/3 share for total consideration of Rs.2,00,000/-.

The agreement was signed after making all the necessary enquiries regarding ownership and possessory right of the accused. The accused had also given possession of one room measuring 12' x12' towards southern portion of the said house. The complainant after signing the agreement and taking possession of the above said room placed certain articles as listed in the complaint. The complainant also used to live in the above said house occasionally. But after a few months when he started asking the accused to execute the sale deed, the accused started postponing the execution of the sale deed on one pretext or the other. Later on the complainant came to know that the accused has already pledged his house with Punjab National Bank, Sonapat and has obtained loan against the said house. The complainant also learnt that the bank has obtained a civil court decree against the accused in lieu of loan given to him by mortgaging the above said house. The complainant verified from the accused about obtaining of a decree by the bank against him but the accused frankly told that he is undisputed owner of the above said house to the extent of 2/3 share and no such decree has been passed against him. The accused thereafter forcibly and illegally broke open the lock of the room in possession of the complainant and in his absence carried away all the articles placed in the room by the complainant. The complainant made representation to the higher authorities but no case has been registered against the accused, as the accused is an influential person.

3. Thereafter, the investigation in the case was completed and a final report was filed by the investigating agency. Evidence was led by the respective parties. It was noticed by the Court that the petitioner had entered into an agreement to sell with the complainant by making a declaration that the property

was free from any lien or mortgage, whereas the same was actually mortgaged with the Punjab National Bank. The factum of mortgage was duly acknowledged by the petitioner in his statement under Section 313 CrPC, wherein the petitioner has mis-stated that the aspect of mortgage with the Punjab National Bank was duly informed to the complainant. Noticing that the petitioner could not establish the stand so taken by him in his statement under Section 313 CrPC or give any valid explanation as to why there was a mis-declaration or concealment of essential fact pertaining to the property being mortgaged with the bank in the agreement to sell. He thus succeeded to induce the complainant to enter into an agreement and to pay an earnest money in his favour. The conviction under Section 420 IPC was accordingly ordered and vide judgment dated 13.08.2002 the petitioner was sentenced to undergo rigorous imprisonment of 01 year. The appeal preferred against the judgment was dismissed. Hence, the present revision petition.

Arguments of the petitioner:

4. Learned counsel for the petitioner at the very outset submitted that he does not wish to raise a challenge to the judgments passed by the Courts below on the merits and would instead restrict his prayer only to the sentence so imposed and prayed for reduction of the sentence to the period already undergone viz. 02 months and 18 days.

5. Learned counsel has pointed out that the dispute in the instant case arose on account of the alleged agreement to sell executed on 01.02.1995 with respect where to the complaint in question was instituted in the year 1997. It is vehemently argued that petitioner has already faced incarceration of criminal proceedings for a period of nearly 25 years. He further points out as on the date of conviction i.e. 13.08.2002, the petitioner was 52 years of age and he is currently

more than 72 years of age. He is thus an old man and has an ailing wife to take care of as his children are not staying with him and are residing in separate residences.

6. It is further contended that the dispute was more in the nature of a civil dispute and that having already undergone the agony of criminal prosecution for such a long time and also taking into consideration the actual custody of 02 months and 18 days, which is nearly $\frac{1}{4}$ of the actual sentence awarded by the Courts below, the same may be reduced to the period undergone.

7. Mr. Kanwar Sanjiv Kumar, AAG Haryana has however submitted that the petitioner being a practicing advocate had indulged in commission of an offence of cheating and deliberately did not disclose the fact that the house was mortgaged with Punjab National Bank and that thereafter he also tried to submit false documents before the Court in the form of a receipt to take a plea that the agreement already stood cancelled and the amount taken as earnest money was returned. Thus, it shows that the offence was committed by the petitioner in a pre-meditated manner and the same being a well thought out and executed crime, the petitioner does not deserve the concession from this Court. It is however not controverted by him that the petitioner is be more than 70 years of age as on today.

Parameters and Principles of Sentencing:

8. The Hon'ble Supreme Court has laid down certain principles to govern the Courts in the matter of sentencing. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in the matter of **State of Punjab Vs. Prem Sagar & Ors (2008) 7 SCC 550**, the relevant extract of the said judgment is reproduced hereinbelow:-

'Whether the court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstance of each case.

5. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

6. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice delivery system. The Parliament, however, in providing for a hearing on sentence, as would appear from Sub-section (2) of Section 235, Sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.

9. What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come across a large number of cases

which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.

10. In Dhananjoy Chatterjee Alias Dhana v. State of W.B. [(1994) 2 SCC 220], this Court held:

"15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime..."

11. Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjoy Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges.

12. In a recent decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], this Court opined:

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of

the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be-- as it should be--a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

Relying upon the decision of this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471], this Court furthermore held that it was the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

18. Don M. Gottfredson in his essay on "Sentencing Guidelines" in "Sentencing: Hyman Gross and Andrew von Hirsch" opines:

"It is a common claim in the literature of criminal justice- and indeed in the popular press- that there is considerable "disparity" in sentencing.. The word "disparity" has become a prerogative and the concept of "sentencing disparity" now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase "unwarranted disparity" may be preferred; not all sentencing variation should be considered

unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly justified, beneficial and proper, so long as the variable qualities are carefully monitored or consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment- that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate."

[Emphasis supplied]

The learned author further opines:

"In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima, leaving a broad range of discretion, as to the length of sentence."

19. Kevin R. Reitz in Encyclopedia of Crime and Justice, Second edition "Sentencing guidelines" states:

"All guideline jurisdictions have found it necessary to create rules that identify the factual issues at sentencing that must be resolved under the guidelines, those that are potentially relevant to a sentencing decision, and those viewed as forbidden considerations that may not be taken into account by sentencing courts. One heated controversy, addressed differently across jurisdictions, is whether the guideline sentence should be based exclusively on crimes for which offenders have been convicted ("conviction

offenses"), or whether a guideline sentence should also reflect additional alleged criminal conduct for which formal convictions have not been obtained ("nonconviction offenses").

Another difficult issue of fact-finding at sentence for guideline designers has been the degree to which trial judges should be permitted to consider the personal characteristics of offenders as mitigating factors when imposing sentence. For example: Is the defendant a single parent with young children at home? Is the defendant a drug addict but a good candidate for drug treatment? Has the defendant struggled to overcome conditions of economic, social or educational deprivation prior to the offense? Was the defendant's criminal behavior explicable in part by youth, inexperience, or an unformed ability to resist peer pressure? Most guideline states, once again including all jurisdictions with voluntary guidelines, allow trial courts latitude to sentence outside of the guideline ranges based on the judge's assessment of such offender characteristics. Some states, fearing that race or class disparities might be exacerbated by unguided consideration of such factors, have placed limits on the list of eligible concerns. (However, such factors may indirectly affect the sentence, since judges are permitted to base departures on the offenders particular "amenability" to probation (Frase, 1997).)"

20. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

1. What interest are violated or threatened by the standard case of the crime- physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.

2. Effect of violating those interests on the living standards of a typical victim- minimum well-being, adequate well-being, significant enhancement

3. Culpability of the offender

4. Remoteness of the actual harm as seen by a reasonable man.'

9. The said issue was also examined by the Hon'ble Supreme Court in the matter of **Soman Vs. State of Kerala, (2013) 11 SCC 382**, the relevant extract of the said judgment is reproduced hereinbelow:-

'15. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. In State of Punjab v. Prem Sagar (2008) 7 SCC 550, this Court acknowledged as much and observed as under –

“2. In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines.”

16. Nonetheless, if one goes through the decisions of this Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation etc. (See: Ramashraya Chakravarti v. State of Madhya Pradesh (1976) 1 SCC 281, Dhananjay Chatterjee alias Dhana v. State

of W.B. (1994) 2 SCC 220, State of Madhya Pradesh v. Ghanshyam Singh (2003) 8 SCC 13, State of Karnataka v. Puttaraja (2004) 1 SCC 475, Union of India v. Kuldeep Singh (2004) 2 SCC 590, Shailesh Jasvantbhai and another v. State of Gujarat and others (2006) 2 SCC 359, Siddarama and others v. State of Karnataka (2006) 10 SCC 673, State of Madhya Pradesh v. Babulal (2008) 1 SCC 234, Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498)

14. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. The question is whether the consequences of the offence can be taken as the measure for determining its harmfulness? In addition, quite apart from the seriousness of the offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while awarding a sentence. Thus, to understand the relevance of consequences of criminal conduct from a Sentencing standpoint, one must examine: (1) whether such consequences enhanced the harmfulness of the offence; and (2) whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence.

26. Punishment should acknowledge the sanctity of human life. We fully agree.

27. From the above, one may conclude that:

27.1. Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.

Conclusion:

10. From a perusal of the case file, the mitigating circumstances as noticed above are found to be existing in the present case. The petitioner has already undergone nearly ¼ of the substantive sentence imposed upon him, apart from having faced agony of criminal prosecution for a period of nearly 25 years. He is already a senior citizen and more than 70 years of age. He has also not indulged in any other similar offence and cannot be assumed to have a criminal bent of mind. The power of sentencing has to be proportionally balanced by taking into consideration the subsequent conduct of a convict and as to whether reformatory behaviour has been reflected by the petitioner during the period when he was facing the criminal proceedings and was enlarged concession of bail by the Courts. The conduct of the petitioner has withstood the test of time and there has been no subsequent involvement of the petitioner in any other similar offence. It would be harsh and unreasonable at this stage to direct the petitioner to undergo

the remainder of the sentence after a period of 25 years when he is nearing his final days in life.

11. The request so made by the learned counsel for the petitioner is accordingly allowed and the sentence of the petitioner is reduced to the period already undergone. However, the sentence of fine of Rs.2,000/- as imposed by the trial Court is enhanced to Rs.10,000/- to be deposited with the Illaqa Magistrate, Karnal within a period of 02 months. In the event of failure on the part of the petitioner to deposit the enhanced fine so imposed, he shall be liable to undergo the sentence so imposed by the trial Court.

12. Present petition is accordingly partly allowed. The judgment of conviction passed by the Courts below is upheld and the sentence awarded to the petitioner is modified to the terms as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

May 07, 2022

S.Sharma(syr)

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