

CRR-1066-2008

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

CRR-1066-2008

Date of decision :6.12.2022

Sadhu Ram and another

.....Petitioner(s)

VERSUS

State of Punjab

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Manoj Pundir, Advocate for the petitioners

Mr.Manipal Singh Atwal, DAG, Punjab

AMAN CHAUDHARY, J.

1. Challenge in the present petition is to the judgment dated 30.5.2008 passed by learned Sessions Judge, Fatehgarh Sahib dismissing the appeal filed by the petitioners against the judgment/order dated 8.8.2007, passed by learned Chief Judicial Magistrate, Fatehgarh Sahib, vide which the they were convicted and sentenced as follows:-

<i>Offence u/s</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine</i>
186 IPC	RI for one month each	Rs.500/-each	RI for 7 days
353 IPC	RI for six months each	Rs.1000/- each	RI for 15 days
379 IPC	RI for one year each	Rs.1500/- each	RI for one month
201 IPC	RI for three months each	Rs.500/- each	RI for 7 days
116 PSEC Act	RI for one month each	Rs.500- each	RI for 7 days
122 PSEC Act	RI for six months each	Rs.1500/- each	RI for 15 days
124 PSEC Act	RI for one month each	Rs.500/-each	RI for 7 days

All the substantive sentences were ordered to run concurrently.

2. Succinctly the facts of the prosecution case are that a written complaint was made by one Swaran Singh, wherein he stated that Sadhu Ram and his brother had torn the ballet papers after snatching the same

from the polling officials. On the basis of the same, formal FIR was registered. The accused were arrested and after completion of investigation, challan was presented against the accused -petitioners. Charges under Sections 186, 353, 379, 201 read with Section 34 IPC and Sections 118, 112 (1), 124 of the Punjab State Election Commission Act, 1994 was framed against the accused-petitioners, to which they pleaded not guilty and claimed trial.

3. To prove its case, the prosecution has examined as many as 9 PWs. On closing of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. They denied the allegations and alleged false implication by the police. In defence, accused did not lead any evidence.

4. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution had proved its case, bringing home guilt against accused-petitioner and they were convicted and sentenced as noticed above.

5. Aggrieved the convict-petitioners, had filed an appeal, which was dismissed by the learned Additional Sessions Judge, Fatehgarh Sahib vide impugned judgment dated 30.5.2008.

6. Hence, the present revision petition.

7. Learned counsel for the petitioners, at the very outset, gives up his challenge to their conviction, however, prays for modification of the order of their sentence awarded to the period already undergone on account of the facts, namely; the petitioners are poor labourers and the only sole

breadwinner of their respective families; the petitioners have undergone 1 month 16 days each, out of the total sentence of one year; are not involved in any other case and have faced the agony of protracted trial since the date of incident i.e. 29.8.2003.

8. Learned counsel for the State submits that the learned Courts below after appreciating every aspect of the matter have rightly convicted and sentenced the petitioners, therefore, he prays for the dismissal of the present petition.

9. Heard.

10. Though, the petitioners have given up their challenge to the conviction and prayed for reduction of their sentence as having undergone, in view of the mitigation circumstances as mentioned above. However, this Court still deems it appropriate to examine the judgment of the courts below. The learned trial Court had thoroughly examined the evidence and observed that the prosecution has proved its case beyond reasonable doubt against the petitioners as the statement of PW3 Swaran Singh, who was the complainant, has specifically stated regarding snatching of ballot papers and torn them. The said statement is fully corroborated by the statements of the officials namely PW1 Amarjit Kaur and PW-2-Lakhvir Kaur, who were on election duty at that time. Thus, on the basis of the evidence and the testimonies of the PWs, the petitioners were rightly held guilty by the trial court. Learned Additional Sessions Judge in appeal filed by the petitioners had also considered all aspects of the matter and only thereafter, upheld the judgment of the conviction and order passed by the learned Trial Court. Accordingly, both the Courts below after having scrutinized the evidence

on record have rightly convicted the petitioners as referred to above and there is no scope for interference in the concurrent findings recorded by both the Courts below. As such, the conviction of the petitioners is affirmed.

11. Regarding the prayer of the learned counsel for the petitioners that in view of the aforestated mitigating circumstances, the sentence of the petitioner may be reduced to the period already undergone, it is apposite to make a reference to the judgment of Hon'ble The Supreme Court of India in the case of **R.Soundarajan vs. Seed Inspector, Coimbatore and another**, 2006(4) RCR (Crl.) 645, which read thus:-

"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."

12. In the case of **Haripada Das vs. State of W.B.** (1998) 9 SCC 678, Hon'ble The Supreme Court of India has held as under:

"....considering the fact that the respondent had already undergone detention for some period and the case is pending for a pretty long time for which he had suffered both financial hardship and mental agony and also considering the fact that he had been released on bail as

far back as on 17-1-1986, we feel that the ends of justice will be met in the facts of the case if the sentence is reduced to the period already undergone....”

13. Similarly in the case of **Umrao Singh v. State of Haryana**’, 1981 AIR (SC) 1723 the Apex Court has 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 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."

14. Hon'ble The Supreme Court of India in the case of **Shyam Sharma vs. State of Madhya Pradesh and another** (2017) 9 SCC 362, in the case, where the appellant was convicted under Section 307, has reduced the sentence to the period already undergone about four months.

15. In the case of **Yadwinder Singh vs. State of Punjab** 2009(3) RCR (Criminal) 245, this Court, taking into consideration that the petitioner

was facing criminal proceedings for the last 10 years; was not a previous convict; fine was paid by him and had already undergone sentence of more than three months out of total sentence of one year, had reduced the sentence of the petitioner to the period already undergone by him.

16. The Delhi High Court in the case of **Joginder Lal v.State** 1998 (3) RCR (Criminal) 192, wherein the accused was convicted under Sections 420, 467, 468 and 471 IPC, reduced his sentence to the period already undergone by holding that the accused had already undergone substantial period of sentence and it would be quite harsh to direct him to undergo the remaining sentence after 30 years of the incident.

17. It is settled proposition of law that each case is to be decided on its peculiar facts and circumstances.

18. Adverting to the mitigating circumstances, as brought out by the learned counsel for the petitioners in the present case, inasmuch as the petitioners are the sole breadwinners of their respective families; besides, they have undergone a period of sentence of 1 month 16 days each, out of a total sentence of 1 year awarded to them and the fact that the petitioners, who are first offenders, have faced the pangs of a prolonged trial and in view of the judgments referred to above, this Court is of the considered view that the ends of justice would be adequately met if the sentence of the petitioners is ordered to be reduced to the period already undergone by them.

19. Accordingly, the conviction of the petitioners is upheld while modifying the order of sentence to the period already undergone by petitioners. The order of sentence dated 08.08.2007 passed by Additional

Chief Judicial Magistrate, Fatehgarh Sahib is modified to the aforesaid extent. However, the fine shall remain intact.

20. Revision petition stands disposed of accordingly.

6.12.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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