

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

219

**CRR-2093-2008 (O&M)
Date of decision: 29.07.2022**

RICHHPAL SINGH ALIAS PAL SINGH**Petitioner**

VERSUS

STATE OF HARYANA**Respondent**

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

Present: Mr. S.N. Sharma, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

VINOD S. BHARDWAJ. J.(Oral)

1. The present revision petition arises from the judgment dated 02.09.2008 passed by the Court of Additional Sessions Judge, (Adhoc), Fast Track Court, Ambala in Criminal Appeal No. 175 dated 07.12.2007 as well as against the judgment of conviction dated 06.11.2007 and the order of sentence dated 07.11.2007 passed by the Judicial Magistrate First Class, Ambala City in case bearing FIR No. 377 dated 26.09.2001 registered under Sections 356/379 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") at Police Station Baldev Nagar, Ambala City whereby the petitioner was convicted and sentenced to undergo imprisonment of 01 year along with fine of Rs. 500/- under Section 411 of the IPC.

2. The brief facts of the prosecution case are that on 26.9.2001 ASI

Badlu Ram alongwith HC Rajpal were on patrolling duty and were present at bus stand Jandli where complainant Smt. Satish Chhabra w/o Sh. Ish Chhabra resident of 13K, Virat Nagar Ambala City met them and moved application. From the application, offence punishable under Section 356 IPC was made out. Investigating Officer prepared rukka and sent it through HC Rajpal for registration of case, on the basis of which this case was registered. During the course of investigation, Investigating officer prepared site plan and petitioner-accused was arrested in this case and disclosure statement of accused was recorded and as per disclosure statement recovery was also effected. Statements of witnesses were recorded. After completion of investigation, charge sheet was submitted in the court for commencement of trial against accused.

3. From the allegations made in the report under Section 173 of the Code of Criminal Procedure, 1973 and documents attached with it, a prima facie case under Section 411 IPC was made out against the petitioner-accused and he was charge sheeted vide order dated 08.04.2003 accordingly. All the contents of the same were explained to him in a simple Hindi, to which he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined six witnesses namely Badlu Ram, Assistant Sub-Inspector as PW1, Ramesh Chander as PW2, Randhir Singh, Assistant Sub-Inspector as PW3, Jitender Singh, Head Constable as PW4, Smt.Satish complainant as PW-5, Arun Sharma, Ahlmad as PW6. Documentary evidence of the prosecution is as under:

Ex.PA

Complaint of the complainant.

Ex.PB	The written intimation sent by the Investigating Officer for registration of the case.
Ex.PC	Carbon copy of the FIR.
EX.PD	The endorsement about the registration of the case.
Ex.PE	The site plan of the place of occurrence.
EX.PW2/A	Identification memo based upon the identification of the complainant.
EX.PW3/A	Seizure memo in respect of scooter make Bajaj Chetak with helmet.
EX.PW3/B	Disclosure statement of the accused.
EX.PW3/C	Identification memo of the place of occurrence.
EX.PW3/D	Seizure memo of the ornaments.
EX.PW3/E	Site plan of place of recovery.

5. Statement of petitioner-accused was recorded. No evidence was brought in defence. After hearing both the sides, learned lower Court rendered the impugned judgment of conviction and order of sentence, against which the present appeal has been preferred.

6. Upon consideration of the evidence led by the respective parties, the Judicial Magistrate First Class, Ambala came to a conclusion that the prosecution has been able to successively prove its case against the petitioner and thus convicted him of the offences and sentenced him to the aforesaid period mentioned above.

7. Aggrieved thereof, Criminal Appeal No. 175 was filed by the petitioner which was dismissed by the Additional Sessions Judge (Adhoc), Fast Track Court, Ambala vide judgment dated 02.09.2008.

Hence, the present Criminal Revision Petition.

8. During the course of arguments, learned counsel appearing on behalf of the petitioner contended that he does not intend to challenge the judgment of conviction passed by the Courts below and would restrict his submissions only to the quantum of sentence. The prayer is accepted and the parties are heard on the issue of the quantum of sentence.

9. Learned counsel appearing on behalf of the petitioner has urged that the following mitigating circumstances exists in the present case:-

- (i) It is submitted that the offence in question relates to the year 2001 and that the petitioner has already suffered agony of a protracted criminal proceeding for a period of nearly 21 years.
- (ii) He further submits that the petitioner was in his early thirties when the offence took place and that he is already more than 52 years of age and directing detention of the petitioner to undergo the remainder of the sentence shall have grave impact on his family.
- (iii) It is also submitted that as against the sentence awarded of 01 year, the petitioner has already undergone a total sentence of 03 months and 17 days which is approximately $\frac{1}{3}^{\text{rd}}$ of the sentence so imposed.
- (iv) He further contends that even though there were various other cases that were registered against the petitioner, however, all the said cases pertained to same period i.e.

2001-2002 and that he has not indulged in any other criminal activity thereafter during the last 20 years which establishes that the petitioner has reformed.

- (v) The petitioner is the sole bread earner of his family and that his children are of marriageable age and detaining him to under further custody would have serious impact on the matrimonial alliances of his children apart from causing great financial hardship to the entire family.

10. Per contra, learned counsel appearing on behalf of the respondent-State contends that the petitioner has criminal antecedents and was involved in multiple cases. As such any concession ought not to be extended in favour of the petitioner. He, however, could not dispute the fact that all the offences for which the petitioner was tried for pertained to the year 2001-2002 and that there has been no offence committed by the petitioner during last 02 decades.

Parameters and Principles of Sentencing:

11. 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.'

12. 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.

13. Taking into consideration the principles held by the Hon'ble Supreme Court in the precedents judgments relating to the object of sentencing and the necessity of balancing the same coupled with the mitigating circumstances referred to above and also the fact that the petitioner has faced criminal proceedings for more than 02 decades and has displayed reformatory tendencies by not indulging in any other criminal act during the intervening period as well as the actual custody already undergone, the present petition is partly allowed while affirming the judgment of conviction passed by the Court of Judicial Magistrate First Class, Ambala City as affirmed by the Additional Sessions Judge (Adhoc), Fast Track Court, Ambala and the order of sentence is modified to the period already undergone. The sentence of fine imposed upon the petitioner is increased from Rs. 500/- to Rs. 5,000/- which is

required to be deposited within a period of 06 weeks from the date of receipt of the copy of instant judgment. It is made clear that in case that the enhanced fine is not deposited within the aforesaid period of 06 weeks from the date of receipt of copy of the order, the present judgment reducing the sentence of the petitioner to the period already undergone shall automatically stand vacated and the petitioner shall be required to undergo the actual sentence of 01 year apart from the sentence for default imposed by the Judicial Magistrate First Class, Ambala City.

The present petition is partly allowed in terms as aforesaid .

JULY 29, 2022
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No