

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

**CRR-874-2008 (O&M).
Decided on: August 6, 2022.**

Harmesh Singh @ Mesha
...Petitioner

Versus

The State of Punjab
...Respondent

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

PRESENT **Mr.Rajat Dogra, Advocate,
for the petitioner.**

Ms. Amarjit Kaur Khurana, DAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The present revision petition has been preferred against the judgment of conviction and order of sentence dated 14.08.2007, passed by the Judicial Magistrate First Class, Moga, in FIR No.09 dated 09.02.2004, under Section 61/1/14 of the Punjab Excise Act, registered at Police Station Kot Ise Khan, Moga, whereby the petitioner has been sentenced as under:-

<i>Name of convict</i>	<i>Under Section</i>	<i>Sentence</i>
<i>Harmesh Singh @ Mesha</i>	<i>61 (1)(c) of the Punjab Excise Act.</i>	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one month.

2. The present petition has also been preferred against the judgment dated 21.04.2008, passed by the Additional Sessions Judge, Moga, whereby the appeal preferred by the petitioner bearing number criminal Appeal No.118 of 21.08.2007, against the judgment of conviction and order of sentence dated 14.08.2007, passed by the Judicial Magistrate First Class, Moga, had been dismissed and the order of conviction as well as sentence has been affirmed.

3. The petitioner - accused was put on trial before the Judicial Magistrate Ist Class, Moga on the allegations that on 09.02.2004 ASI Mohinder Singh alongwith his police party were present at the bus stand of village Mander, where he received a secret information that Harmesh Singh alias Mesha (petitioner herein) was habitual of distilling illicit liquor by way of operating working still in his house in the area of village Daulewala and if raid be conducted he could be nabbed. Finding the secret information to be reliable, ASI Mohinder Singh sent ruqa to the police station on the basis of which formal FIR under Section 61/1/14 of the Punjab Excise Act was registered against the petitioner - accused. After sending the ruqa, ASI Mohinder Singh alongwith the other police officials conducted raid in the house of the accused where the accused was found distilling illicit liquor by way of operating working-still. He was nabbed at the spot. The working-still was cooled down and dismantled. ASI Mohinder Singh took out one sample of 180 mls. in a nip from the distilled liquor. The remaining illicit liquor on measurement came out half bottle and the same was re-put in the same bottle which was being used as a receiver. He then sealed the sample nip, the bottle containing the remaining illicit liquor and drumi boiler

containing 15 Kgs of lahan with his seal of mark MS. The whole of the case property was taken into possession by preparing a separate recovery memo. ASI Mohinder Singh prepared site plan of the place of recovery and recorded statements of the witnesses on the spot. On going to the police station he deposited the entire case property with MHC Komal Singh. Later MHC Komal Singh produced the drumi containing lahan before the Excise Inspector who tested the contents of the boiler and opined that the same was lahan fit for distillation of liquor. Sample nip was sent to the office of the Chemical Analyst. After completion of investigation and on receipt of the report of the Chemical Analyst, the petitioner - accused was challaned to face trial for offence punishable under Section 61/1/14 of the Act.

4. After submission of challan, copies under Section 207 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') were supplied to the accused by the trial Magistrate. Charge under Section 61(1) (c) of the Punjab Excise Act was framed against him to which he pleaded not guilty and claimed trial.

5. After closure of prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded before the trial Magistrate by putting to him the entire incriminating circumstances that he denied. Version relied on by the petitioner - accused was of denial simpliciter. He led no evidence in defence.

6. After hearing the Assistant Public Prosecutor as well as the defence counsel and also going through the entire prosecution evidence and plea of the accused, the trial Court convicted and sentenced the petitioner as stated above.

7. Aggrieved of the aforesaid judgment of conviction and order of sentence dated 14.08.2007, passed by the Judicial Magistrate First Class, Moga, the petitioner preferred an appeal before the Court of Sessions, Moga bearing Criminal Appeal No.118 of 21.08.2007, which was dismissed by the Additional Sessions Judge, Moga, vide judgment dated 21.04.2008 and the judgment of the Judicial Magistrate First Class, Moga, was affirmed. Hence, the present revision.

ARGUMENTS

8. During the course of hearing on the present revision petition, learned counsel appearing on behalf of the petitioner has contended that he does not wish to press the present revision petition on merits and does not raise a challenge to the judgment of conviction and that he would confine his submissions only to the question of quantum of sentence.

9. The counsel appearing on behalf of the State states that she has no objection in case the prayer is confined to the quantum of sentence only.

10. The learned counsel appearing on behalf of the petitioner has urged as under:-

- (i) That the incident in question pertains to the year 2004 and the petitioner was in his early 20's at that time and thus was at a vulnerable age;

- (ii) That the petitioner has faced the agony of a protracted criminal trial for a period of more than 18 years;
- (iii) That the petitioner has already undergone an actual sentence of more than 1 month and 16 days in a case pertaining to a magisterial trial; and
- (iv) That confining the petitioner to undergo the remainder of his sentence after a gap of nearly 18 years is not likely to serve any object of justice.

11. Learned counsel appearing on behalf of the State vehemently contends that the prosecution has duly established its case against the petitioner – accused and that it is imperative that harsh punishment be imposed upon the criminals so as to send a strict message to the Society. The punitive aspect of the punishment has deterrent effect in the society and effectively checks repetition of the offence by the accused and controls any allurements of other persons from foraging into the adventure.

PARAMETERS AND PRINCIPLES OF SENTENCING:

12. 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 Dhananjay 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 Dhananjay 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.'

13. 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.

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

14. Taking into consideration the protracted criminal trial and the consequent agony faced by the petitioner, the actual sentence out of total sentence already undergone by the petitioner, the reformatory tendency shown by the petitioner by not indulging in any other offence, the age of the petitioner at the time of the incident as well as the legal principles reproduced above, the present petition is partly allowed. The judgment of conviction dated 14.08.2007, passed by the Judicial

Magistrate First Class, Moga, convicting the petitioner under Section 61 (1) (c) of the Punjab Excise Act as well as the judgment passed by the Additional Sessions Judge, Moga dated 21.04.2008, dismissing the appeal preferred by the petitioner, is affirmed. However, the order of sentence dated 14.08.2007, is modified and the sentence awarded to the petitioner is reduced to the period already undergone by him, however, the fine is enhanced from Rs.5,000/-to Rs.15,000/-.

15. In the event of the enhanced fine having not been paid within a period of one month from the receipt of certified copy of this order, the present appeal would be deemed to have been dismissed and the petitioner would have to undergo his substantive sentence as awarded by the learned trial court.

16. The present revision petition stands partly allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

August 06, 2022
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No