

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

Date of decision : 16.09.2022

1. CRR-3829-2015 (O&M)

Labh Singh and others

..... Petitioners

versus

State of Punjab and another

..... Respondents

2. CRR-5041-2015 (O&M)

Darshan Singh

..... Petitioner

versus

Labh Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Gaurav Jain, Advocate
for the petitioners in CRR-3829-2015 and
for respondents No.1 to 4 in CRR-5041-2015.

Mr. G.S. Nahel, Advocate
for the petitioners in CRR-5041-2015 and
for respondent No.2 in CRR-3829-2015.

Ms. Kanica Sachdeva, AAG, Punjab.

Mr. H.S. Randhawa, Advocate
for respondent No.5 in CRR-5041-2015.

PANKAJ JAIN, J. (Oral)

By way of this common order, I intend to dispose off afore-captioned two revision petitions. CRR-3829-2015 has been filed at the behest of the accused impugning their conviction. CRR-5041-2015 has been filed by the complainant challenging the acquittal of the petitioners for offences punishable under Sections 465, 467, 468, 420 and 120-B of IPC. Prayer has been made for enhancement of sentence.

2. On 15.09.2022, the following order was passed:-

“Ld. Counsel for the petitioners (in CRR-3829-2015) submits that petitioner No.1 namely Labh Singh son of Raunak Singh and petitioner No.4 i.e. Harpal Singh son of Raunak Singh have since died. He has brought copies of the death certificates of both the deceased. The same are taken on record as Mark 'A' and 'B'. Registry to tag the same at appropriate place.

In view of the aforesaid fact he submits that the present proceedings qua petitioner No.1 and 4 be abated.

Ordered accordingly.

Ld. Counsel appearing for the petitioner in CRR-5041-2015 prays for a short accommodation.

On her prayer, adjourned to 16.09.2022.

A copy of this order be kept on the file of other connected case.”

3. The petition survives qua petitioners No.2 and 3 only.

Complaint was filed against the petitioners alleging that:-

“Amar Singh, predecessor in interest of accused No.1 to 4, mortgaged land in dispute measuring 11K-9M to Kirpal Singh, predecessor in interest of complainant. It is alleged that the accused have forged and fabricated a receipt of redemption dt. 11.7.2003, without their legal consent and without getting redeemed the mortgaged land in due course of law, by impersonating his father, Bhan Kaur deceased, Nihal Kaur deceased and other L.Rs, of Kirpal Singh and getting forged their thumb impression thereon and thereafter got sanctioned and entered the mutation No.7217 on the basis thereof, from Naib Tehsildar by getting done wrong investigation from the Kanungo and identified

imposters from accused No.2 Hari Ram, whereas Jagar Singh, Nihal Kaur and Bhan Kaur had already died much earlier to 11.7.2003.”

4. Trail Court found that the petitioners were guilty of offence punishable under Section 479 IPC and ordered them to undergo RI for a period of two years and to pay a fine of Rs.1000/- each. The petitioners challenged the aforesaid judgment before the Appellate Court found that:

“xx xx xx

23. Benefit of this receipt has been taken by all the accused. Though while putting the attention of this court towards order Collector Sub Division, Lehra Ex. D1 and challan Ex.D2 Mr Jauhar argued that property was got redeemed by accused through proper channel but this type of device adopted by the accused can not be accepted by this court. Complainant filed this complaint on 28.8.2006 while proceedings for redemption of the property in question were started by the accused in the year 2012 i.e during the pendency of this complaint. So mere moving the revenue authority for redemption of land can not absolve the accused from their liability and the learned Lower Court has rightly held that accused Labh Singh, Ruldu Singh, Gurmail Singh and Harpal Singh used a forged receipt dated 11.7.2003 Ex.C2 considering it as a genuine document before the revenue authority knowing and having reason to believe the same to be a forged document. Contention of Mr. Jauhar that in the report of Handwriting and Finger Prints Expert date of receipt has been mentioned as 12.7.2003 and in the mutation sheet Ex.CI date of receipt has been mentioned as 11.2.2003 is of no help to the accused because all this is clerical mistake and is not material

for decision of the case. When there is a report of Handwriting and Finger Prints Expert on file regarding the thumb impression of some of the legal heirs of Kirpal Singh being forged and some of them are proved to be not alive at the time of when receipt has been shown to be executed then in these circumstances minor technicalities can not come to the rescue of the accused. The learned Lower Court has rightly convicted and sentenced the accused/appellants under Section 471 of Indian Penal Code.

24. Accordingly the judgment of the learned Lower Court is hereby affirmed and both appeal filed by accused- appellants Labh Singh etc bearing No. 22 of 11.4.2013 and Darshan Singh complainant respondent appellant No.55 of 23.4.2013 are hereby dismissed. Accused- appellants Labh Singh Ruldu Singh, Gurmail Singh and Harpal Singh are taken into custody and they alongwith their custody warrant be sent to jail to undergo sentence. Certified copy of this judgment be placed on the file titled as Darshan Singh Versus Labh Singh etc bearing criminal appeal No.55 dated 23.4.2013 for record. Lower Court record be sent back and appeal files be consigned to the record room.”

5. Counsel for the petitioners contends that the Courts below erred in convicting the petitioners for offence punishable under Section 479 IPC. No forgery could be proved qua the petitioners and the complainant could not produce any evidence which can lead to the inference that it was the petitioners who forged receipt of redemption dated 11.07.2003. Merely finding that the receipt was forged does not lead to the conclusion that it has been forged by the petitioners. It has

been contended that the complainant was required to prove an overt act to prove the petitioners guilty of forgery. It has been further submitted that under Section 471 IPC, it has to be proved that the petitioners used a forged document fraudulently or dishonestly. He has referred to Section 24 and 25 of the Code to impress upon his contention that without proving intention of the petitioners, they cannot be held guilty of offence punishable under Section 471 of IPC.

6. Counsel for the petitioners has further drawn attention of this Court to the following observations made by the trial Court:-

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18. Before parting with this judgment, it is also important to state here that present complaint apparently is motivated in order to grab the property of deceased Amar Singh at throw away price by coercing and pressurizing his successor in interest accused No.1 to 4 to effect compromise who otherwise have to face the legal consequences of the alleged mischief done by them. There has been perceptible change in the law regarding mortgage in the past decade. The Hon'ble Apex Court as well as Punjab & Haryana High Court have clarified that once mortgage shall remain always a mortgage and the right of redemption would not get extinguish merely by efflux of time. Apprehending that the accused would definitely get their land redeemed, asserted lapse on the part of the accused has been made an instrument of oppression rather than means of redressal. It is also not out of place to mention that the mortgage money had been deposited in the treasury vide challan Ex. D2, by the accused No. 1 to 4 in the proceedings before SDM which have been hotly contested and the money has not yet been

withdrawn by the complainant. All these strenuous efforts reflect on the attempt on the part of complainant party to scuttle the redemption of land in dispute in order to usurp the said land which is never the spirit of law.”

7. It is also been contended that in fact no loss has been caused to the respondent-complainant as property was got redeemed by the accused through proper channel by depositing redemption amount in accordance with law.

8. Lastly, counsel for the petitioners submits that the petitioners are first time offenders. They were granted concession of suspension of sentence vide order dated 01.03.2016 and have never misused concession granted by this Court. There is no other case pending against them. They have never been booked for any offence apart from the present one. Thus, keeping in view their age, prolonged prosecution and other mitigating factors, the sentence of the petitioners may kindly be modified to already undergone.

9. Learned counsel appearing for the complainant submits that the Courts below wrongly acquitted the accused for offences punishable under Sections 419, 420, 467, 468, 427/120-B of IPC. It has been contended that after it was proved on record that the receipt in issue Ex.C-2 was forged and was utilized by the petitioners to their benefit, they are liable to be convicted for offences punishable under sections 419, 420, 467, 468 and 120-B of IPC, but the Courts below have wrongly acquitted them. It has been contended that as per the settled proposition of law, master of a forged document is presumed to be guilty of forgery.

10. I have heard counsel for the parties and have gone through the records of the case.

11. The Court is of the considered opinion that no fault can be found with the orders passed by the Courts below w.r.t. the acquittal of the accused for offences punishable under Sections 419, 420, 467, 468, 427/120-B of IPC. It is trite law that in order to prove guilt for offences punishable under Sections 467 and 468 of IPC, the prosecution is required to prove that there is an overt act attributable to the accused leading to forgery of a document. Merely use of a forged document cannot lead to presumption that the accused are guilty of forgery. It has come on record that it was only Labh Singh who produced the receipt before revenue authorities. Thus even presumption as claimed by the counsel cannot be raised against accused except Labh Singh.

12. At the centre of the controversy lies, receipt Ex.C-2. There is no dispute that the same is a forged document. It is also not disputed that the accused namely Labh Singh, Ruldu Singh, Gurmail Singh and Harpal Singh were direct beneficiaries from the said receipt. However at the same time, it has come on record that it is Labh Singh who produced the said receipt before revenue authorities. Both the Courts below have held the petitioners' guilty holding that since they benefited from the said receipt by producing the same before the revenue authorities, they cannot escape the guilt of offence punishable under Section 471 IPC. Two of the accused namely Labh Singh and Harpal Singh have died during the pendency of the present revision. The other accused namely, Ruldu and Gurmail Singh are not the one who produced the forged document before the revenue authorities. Apart from this, the incident relates to the year

2003. The complaint against the petitioners was instituted in the year 2006. Each of them have already undergone custody of more than 05 months. They are around 60 years of age. Apex Court in '**V.K. Verma vs. CBI**', reported as **2014(3) SCC 485** has held that:-

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11. The long delay before the courts in taking a final decision with regard to the guilt or otherwise of the accused is one of the mitigating factors for the superior courts to take into consideration while taking a decision on the quantum of sentence. As we have noted above, the FIR was registered by the CBI in 1984. The matter came before the sessions court only in 1994. The sessions court took almost ten years to conclude the trial and pronounce the judgment. Before the High Court, it took another ten years. Thus, it is a litigation of almost three decades in a simple trap case and that too involving a petty amount.

12. In **Ashok Kumar v. State (Delhi Administration), (1980)2 SCC 282**, the commission of offence of theft was in 1971 and the Judgment of this Court was delivered in 1980. The conviction was under Section 411 of IPC. This Court having regard to the purpose of punishment and "the long protracted litigation", reduced the sentence to the period already undergone by the convict.

13. In **Sharvan Kumar v. State of Uttar Pradesh, 1986(1) RCR (Criminal) 563 : (1985)3 SCC 658**, the commission of offence was in 1968 and the judgment was delivered in 1985. The conviction was under Sections 467 and 471 of IPC. In that case also, the long delay in the litigation process was one of the factors taken into consideration by this Court in reducing the sentence to the period already undergone.

14. In *Ajab and others v. State of Maharashtra, 1989 Supp (1) SCC 601* also, this Court had an occasion to examine the similar situation. The offence was committed in 1972 and this Court delivered the Judgment in 1989. The conviction was under Section 224 read with Section 395 of IPC. In that case also "passage of time was reckoned as a factor for reducing the sentence to the period already undergone". This Court in that case, while reducing the substantive sentence, increased the fine holding that the same would meet the ends of justice."

13. Likewise, in the case of '*Surender Kumar Garg vs. State of Uttar Pradesh*', reported as *1993(3) JT 369* while taking into account the mitigating circumstances, Apex Court reduced the sentence of a convict to already undergone observing as under:-

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3. So far the present appeal is concerned, leave was granted as early as in the year 1985 by this Court, but it has been listed for hearing after about 8 years. The learned Counsel appearing for the appellant, after some arguments on merit confined his submissions to the question of sentence only lie pointed out that offences aforesaid had been committed by the appellant, as early as in the year 1973, more than 20 years from now and as such a compassionate view should be taken of the whole matter especially when the amount in respect of which the offences are alleged to have been committed is not excessive. He pointed out that the appellant has remained in jail for some time, in pursuance of the order of conviction and sentence and as such he need not be sent to jail again. An affidavit detailing the mitigating circumstances has

also been filed by the appellant before us. Taking all facts and circumstances into consideration, by our order dated 26th April, 1993 we directed the appellant to first deposit an amount of Rs. 40,000 (the loan amount) with the U.P. Small Industries Corporation Ltd. Pursuant to that order Rs. 40,000 has been deposited with the U.P. Small Industries Corporation Ltd., on 4-5-1993 and original receipt granted by the Manager of the said Corporation was produced before us. The zerox copy, of the said original receipt has been kept on record and the original returned to the learned counsel for the appellant. An affidavit has also been filed on behalf of the appellant stating about the aforesaid deposit.

4. In the peculiar facts and circumstances of the case while maintaining the conviction of the appellant, we reduce the sentence of imprisonment under different Sections mentioned above to the period already undergone by him. The appellant, shall however pay a fine of Rs. 2,000 and in default of payment thereof, he shall undergo rigorous imprisonment for a period of one month. The appeal is allowed in part.”

14. In '*Ghanshyam vs. State of Maharashtra*', reported as **2012 AIR (SCW) 3775**, the sentence awarded for offence punishable under Sections 420, 468 and 471 of IPC, Apex Court reduced the sentence of a convict from 01 year to already undergone observing as under:-

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7. The Chief Executive Officer of the Zila Parishad, Beed, has filed an application before this Court in which it is mentioned that since the entire amount has been deposited by the appellant, they have no objection if the sentence under [Section 420](#) of the

Indian Penal Code is compounded. The alleged incident took place 23 years ago and the appellant has already undergone a part of the sentence.

8. We have heard the learned counsel for the appellant, learned counsel for the State and learned counsel for the complainant. In our considered view, ends of justice would meet if, while upholding the conviction of the appellant, the sentence is reduced to the period already undergone by him. We direct accordingly.”

15. In '*Naresh Chaubey vs. Central Bureau of Investigation Through Gyanendra P.D. Singh*' also, reported as *2018(1) SCC 142*, Apex Court reduced the sentence of a convict under Prevention of Corruption Act read with Sections 420, 471 and 465 of IPC to the period already undergone.

16. Petitioners No.2 and 3 namely Ruldu and Gurmail Singh have already undergone actual sentence of more than 05 months out of awarded sentence of two years. They are the first time offender. There is no case pending against them. They are stated to have never misused concession of suspension of sentence. They have already faced protracted trial for last 09 years. Considering all these facts cumulatively, sentence awarded to petitioners No.2 and 3 namely Gurmail Singh and Ruldu by the Courts below is modified to already undergone.

17. As a sequel of discussion held hereinabove, it is ordered that:

(i) CRR-5041-2015 filed by the complainant is ordered to be dismissed.

(ii) CRR-3829-2015 filed by the accused namely Labh Singh, Ruldu Singh, Gurmail Singh and Harpal

Singh stands abated qua Labh Singh and Harpal Singh.

(iii) Order of conviction qua Gurmail Singh and Ruldu is maintained.

(iv) Sentence awarded to Gurmail Singh and Ruldu is modified to already undergone.

(PANKAJ JAIN)
JUDGE

16.09.2022
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No