

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

CRR-420-2016(O&M)

Date of Decision:-09.12.2022

Darshan Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Gopal Singh Nahel, Advocate for the Petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

JASJIT SINGH BEDI, J.

1. The present revision petition has been filed against the order dated 05.11.2015 passed by the Sessions Judge, Sangrur, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence both dated 30.10.2014 passed by the Judicial Magistrate, 1st Class, Malerkotla has been dismissed.

2. The brief facts of the prosecution are that on 14.09.2012 HC Jagtar Singh, along with the other police officials was on patrol duty and they were going to village Khurd, Kothala. When they reached near telephone exchange Shergarh Cheema at about 04:00 pm then a person with cut hair was seeing coming from the side of village Cheema and he suddenly turned towards the common land situated at the left side of the telephone exchange. The accused was apprehended who disclosed his name

as Darshan Singh son of Gajjan Singh and from his search a Pistol of 22 bore was recovered from the right pocket of his pant and a live cartridge was recovered from the chamber of the 12 bore pistol. On measurement the barrel of the pistol was 6-1/2 inches and the body of the pistol was 2 inches. The handle of the same was 3-1/2 inches. Two more live cartridges of a 12 bore pistol was recovered from the left pocket of the accused. The recovered pistol was taken into possession by preparing a recovery memo. Three live cartridges recovered from the accused were taken into custody by preparing a separate recovery memo which was sealed bearing impression JS and the seal was handed over to Kulwinder Singh. The Ruqa was sent through PHG Jaspal Singh. Site plan was prepared. The accused was arrested. After completion of the necessary formalities of investigation and after taking the prior permission of the Distt. Magistrate the final report under Section 173 Cr.P.C. was presented in the court.

3. The accused was charged sheeted for the offence punishable under section Sections 25 of the Arms Act, to which he pleaded not guilty and claimed trial.

4. In order to establish its case, the prosecution examined PW1 Vinod Kumar, PW2 HC Jagtar Singh, PW3 HC Kulwinder Singh, PW4 HC Malkit Singh and PW5 C Anil Kumar. Thereafter the prosecution evidence was closed by order.

5. The Statement of the accused was recorded under Section 313 Cr.P.C. wherein he denied the incriminating evidence against him and pleaded innocence. However, no evidence was led in his defence.

6. Based on the evidence lead the petitioner/accused came to be convicted under Section 25 of the Arms Act and sentenced to undergo

rigorous imprisonment for a period of one year with fine of Rs.1000/- and in default of payment of fine he was further liable to undergo rigorous imprisonment for one week.

7. The petitioner/accused preferred an appeal before the Court of Sessions Judge, Sangrur and the said appeal came to be dismissed vide judgment dated 05.11.2015.

The aforementioned two judgments are under challenge in the present revision petition.

8. The Counsel for the petitioner contends that the prosecution witnesses are discrepant on material particulars. Only official witnesses were examined and there is no independent witness of the alleged recovery. The prosecution had failed to prove the case beyond reasonable doubt and thus the judgment of the Trial Court and lower Appellate Court were liable to be set aside and the petitioner ought to be acquitted of the charges framed against him.

9. The Counsel for the State on the other hand contends that the grounds canvassed herein have been dealt with comprehensively by the Courts below. Nothing new has been argued by the learned Counsel for the petitioner. He thus contends that there is no merit in the present petition and same ought to be dismissed.

10. I have heard Counsel for the parties.

11. In the present case, the prosecution to prove his case has examined H.C. Jagtar Singh, the investigating officer who testified that on 14.09.2012 he along with HC Kulwinder Singh apprehended the petitioner on suspicion and a 12 bore pistol along with three live cartridges were recovered from his possession. They were taken into possession vide memo

Ex.P-3. The map of the pistol was prepared as Ex.P-2. PW-2 also proved on record the ruqa Ex.P-4 and formal FIR Ex.P-5. The FSL report was Ex.P-9. The aforementioned version of HC Jagtar Singh has been endorsed by PW-3 HC Kulwinder Singh. PW-2 & PW-3 were cross examined at length but their testimonies could not be shaken. Further PW-1 Vinod Kumar proved on record the sanction granted by the Additional District Magistrate. Further, the FSL report Ex.P-9 clearly reveals that the weapon recovered is in working condition. Merely because no independent witness was examined by the prosecution cannot lead to the exoneration of the petitioner when the testimonies of the official witnesses has been found to be reliable.

13. In view of the above discussion, I find no merit in the present petition and the same is therefore dismissed.

14. With respect to the imposition of sentence this Court in ***Major Singh Vs. State of Haryana 2013(1) RCR (Criminal) 141*** has held as under:-

“12. Be that as it may, however, the argument of learned counsel that since the petitioner-convict is a poor person, he has already undergone the period of his substantive sentence of more than eight months out of the total sentence of one year and he is not a previous convict, so, there is a large scope of reduction in the period of sentence, has considerable force. This factual position is acknowledged by the learned State counsel.

13. Having regard to the rival contentions of learned counsel for parties, to my mind, it would be in the interest and justice would be subserved if the sentence of imprisonment imposed on the petitioner-convict by the Courts below is reduced to already undergone by him, inter-alia, on the following grounds:-

i) The recovery in this case is of 1.4.1997 and he has already faced the pangs and suffered the agony of protracted trial, appeal & revision for the last more than 15½ years.

- ii) *As per the custody certificate, the petitioner-convict has already undergone the period of substantive sentence of more than eight months out of the total sentence of one year.*
- iii) *He is on bail.*
- iv) *He is a poor person.*
- v) *He is a first offender and is not a previous convict.*
- vi) *He is the only bread winner of his family.*

14. *In the light of aforesaid reasons, as there is no merit, therefore, the revision petition filed by the petitioner-convict is hereby dismissed and the impugned judgments of conviction and order of sentence of fine imposed on the petitioner-convict are maintained. However, taking into consideration the totality of the facts & circumstances, emanating from the record, as discussed here-in-above, the sentence of simple imprisonment of one year imposed by the trial Court is reduced to eight months, already undergone by him. Accordingly, the impugned order of sentence is modified to the extent and in the manner depicted here-in-before.*

This Court in ***Gurvinder Singh Vs. State of Haryana 2018(3)***

Law Herald 2636 has held as under:-

“12. *However, as regards plea of the petitioner that he is a first time offender; no other case is pending against him; has been suffering the agony of criminal proceedings since 21.09.2002, the date when the FIR in question was registered against him, and as against the awarded sentence of 1 year by learned trial Court and affirmed by learned appellate Court, he has already undergone 3 months and 10 days, this Court finds that prayer made by learned counsel for the petitioner for reduction of sentence of the petitioner to the period already undergone by him, carries weight.*

13. *Hon'ble Supreme Court in Harjit Singh Versus State of Haryana, (2002) 10 SCC 695 had reduced the sentence of 7 years under Section 25 of the Act to the period already undergone (more than 5 years) by the accused. Similarly, in the case of Kirpal Singh Versus State of Punjab 2009(1) AICLR 243, this Court, taking into consideration the fact that petitioner has three children; there is no one to look after his family and has already undergone sentence of more than 5 months out of total sentence of one year, had reduced*

the sentence of petitioner to the period already undergone by him. Moreover, in the cases of Shiv Kailash Versus The State of Punjab 2016(5) RCR (Criminal) 438; Jagdeep Singh @ Neetu Versus State of Punjab, 2013(2) Law Herald 1849 and Sukhdev Singh Versus State of Punjab 2005(4) RCR (Criminal) 694, similar view has been adopted by this Court.

14. *Therefore, taking into consideration the pleas of petitioner and also the judgments referred hereinabove, the sentence imposed upon the petitioner under Section 25 of the Arms Act is reduced to the period already undergone by him subject to payment of fine of Rs.5,000/- instead of Rs.500/- as imposed by learned trial Court and affirmed by learned appellate Court.”*

15. Keeping in view the aforementioned judgments, it is quite apparent that the petitioner is a poor person and a first time offender. The occurrence pertains to the year 2012 and as many as 10 years have elapsed. In the last 10 years the petitioner has maintained good conduct.

16. In view of the above, the substantive sentence of the petitioner is reduced to the period of custody already undergone by him i.e. 07 months and 11 days.

Disposed of.

(JASJIT SINGH BEDI)
JUDGE

December 09, 2022

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>