

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

249

CRR-490-2018 (O&M)
Reserved on: 21/07/2022
Pronounced on: 09/08/2022

NARESH KUMAR

...Petitioner

Versus

STATE OF HARYANA AND ANR

...Respondents

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

Argued by : Mr. A.S. Gulati, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J.

The present revision petition has been filed raising a challenge to the judgement dated 19.01.2018 passed by the Additional Sessions Judge, Kaithal passed in Criminal Appeal No. 21 as well as the judgement of conviction dated 20.02.2015 and order of sentence dated 21.02.2015 passed by the Chief Judicial Magistrate, Kaithal in case FIR No.382 dated 16.08.2005 under Section 420, 467, 468, 471 and 120-B of the IPC, registered at Police Station City , District Kaithal.

2. The petitioner was tried by Chief Judicial Magistrate, Kaithal. He was held guilty, convicted and sentenced for commission of offences punishable under Sections 420, 467, 468, 471 IPC as under:-

Convict's name	Offence u/s	Sentence	Fine	In default
Naresh	420 IPC	RI for 03 years	Rs.1,000/-	RI for 03 months
Naresh	467 IPC	RI for 03 years	Rs.1,000/-	RI for 03 months
Naresh	468 IPC	RI for 02 years	Rs.500/-	RI for 02 months
Naresh	741 IPC	RI for 02 years	Rs.500/-	RI for 02 months

3. The case was registered on a complaint Ex.P5 moved by complainant Yudhister Kumar son of Om Parkash. He stated that he had purchased half share in plot No.18, MCK No.332/18 measuring 13.65 sq. meters from Sudarshan Kumar son of Hari Ram vide registered sale deed No.4022/1 dated 15.12.1989. His brother Manmohan had purchased half share from Megh Raj son of Om Parkash vide registered sale deed No.765/1 dated 04.05.1991. Both the brothers had sold that plot to Brit Singh son of Krishan, resident of village Pai District Kaithal vide registered sale deed dated 23.03.1999. They had handed over their title deeds and possession of plot to him.

4. He further informed that he was shocked to see a notice in newspaper "Amar Ujala" dated 28.07.2005 and 02.08.2005 in which their names appeared as owners of said plot. This notice further stated that they had stood guarantors for some loan obtained by the Priya Textiles which they had failed to pay and State Bank of Patiala was going to auction the said plot. He stated that they had not obtained any loan nor stood as guarantor. They had never visited SBOP Branch or executed any documents in this regard. They had also not deposited any title deed etc. Later on they came to know that proprietor of M/s Priya Textiles had obtained a loan in the year 2003 by mortgaging their title deed. They came to know that someone had forged their signatures and played fraud upon them as well as the bank and thereby causing loss to public money.

5. After registration of the case, the matter was investigated. Accused were arrested. Loan papers were taken into police possession. Their signatures were sent to FSL for comparison but the same did not match with the disputed signatures. Statements of witnesses were recorded. After completion of usual formalities, challan was initially presented in Court against accused Naresh Kumar (petitioner herein) only, as co-accused Pawan was declared P.O. Later on

supplementary challan was filed against Faquir Chand accused also.

6. Aggrieved of the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Sessions Court at Kaithal wherein the appeal was dismissed by the Additional Sessions Judge, Kaithal vide judgement dated 19.01.2018. Thus, the present revision petition.

7. During the course of arguments in the present case, learned counsel appearing on behalf of the petitioner made a specific statement at the Bar that he does not wish to contest the conviction on merits and that he would prefer to restrict his arguments to the quantum of sentence. The said statement of the counsel for the petitioner was accepted. Hence, the issue has been examined only with respect to the quantum of sentence.

Submission on quantum of sentence advanced by the learned counsel for the petitioner.

8. Learned counsel for the petitioner has referred to the following mitigating circumstances in order to contend that the sentence awarded to the petitioner be reduced to the period already undergone.

- i. It is submitted that the dispute in question pertains to the year 2005 and that the petitioner has already suffered the agony of protracted criminal trial and subsequent proceedings for a period of 17 years.
- ii. That the petitioner was awarded a total sentence of three years along with fine of Rs.3,000/- and that after the award of the said sentence, the petitioner has already undergone an actual custody of 1 year, 9 months and 22 days and a total sentence of 2 years, 1 month and 17 days.
- iii. He further contends that the petitioner has clean antecedents and that there is no involvement of the petitioner in any other criminal offence either prior to his involvement and conviction in the present case or during the entire

period of 17 years. Hence, the reformatory aspect of sentencing has been well scattered considering no preceding or subsequent involvement of the petitioner in any criminal offence.

- iv. That the petitioner is nearly 62 years of age and having undergone more than two third of the sentence already awarded to him, it would not actually advance any interest of justice to send the petitioner to further custodial detention.
- v. That the petitioner is the bread-earner of his family and that the career prospects of his children would be gravely marred in case the petitioner is subjected to undergo the remainder of his sentence.
- vi. That the complaint (Ex.P-5) was made only against Pawan Bansal (brother of the petitioner) who was the sole proprietor of M/s Priya Textile and that the petitioner was merely a helping hand and that he had never visited the concerned bank or deposited any documents.
- vii. That the Court is required to draw a fine balance between the punitive as well as the reformatory aspects while sentencing. The primary focus being reform, the said object has already been well served.

Submission of the respondent-State

9. Learned State counsel has contended that the offence is duly established against the petitioner and that both the Courts below have recorded the judgment of conviction against the petitioner. There are no mitigating circumstances that would justify reduction of the sentence and that all these factors have been taken into consideration by the Court at the stage of awarding sentence.

10. I have heard learned counsel for the parties and have perused the material on record.

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 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.'

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. The fundamental purpose of imposition of sentence is based upon making an accused realize the consequences of the crime committed by him and the creation of the dent in the life of the victims and also the social fabric. The same by itself does not oblige the Court to extend opportunity to a convict for reforming himself. The principles of proportionality have to be balanced and the impact of the offence on the society as a whole and its ramification on the victim and the immediate collectives also has to be examined.

14. Furthermore, this Court has reduced the sentence in the case of **Santram Vs State of Haryana and another** passed in Criminal Revision No.3335 of 2012 decided on 15.03.2013, wherein the sentence of three years awarded by the court was reduced to the period already undergone.

15. Taking into consideration the mitigating circumstances pointed out by the learned counsel for the petitioner and as called out in the preceding paragraphs as well as the legal position referred to above, coupled with the fact that the petitioner has faced the agony of criminal prosecution for a period of 17 years and has already undergone actual custody of 1 year, 09 months and 22 days out of total awarded sentence of three years as well as the age of the petitioner and also his reformatory conduct, I find that the interest of justice would be well served in the case the prayer made by the counsel for the petitioner is accepted. The sentence of three years awarded to the petitioner by the Chief Judicial Magistrate, Kaithal vide judgement of conviction dated 20.02.2015 and order of sentence dated 21.02.2015 and as affirmed by the Additional Sessions Judge, Kaithal vide judgement dated 19.01.2018 is modified and is reduced to the period already undergone, subject to fine being enhanced from a total of Rs. 3,000/- to Rs.15,000/- to be deposited by the petitioner within a period of 30 days of the receipt of certified copy of this order, failing which the present petition would be deemed to have been dismissed

and the petitioner shall have to undergo his remainder sentence.

16. The present petition is partly allowed. While affirming the judgement of conviction passed by the Courts below concurrently, the sentence awarded to the petitioner is modified in the terms as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

09/08/2022
S.Sharma(syr)

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