

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

**CRR-1458-2021(O&M)
Reserved on: 08.03.2022
Pronounced on: 14.03.2022**

SATNAM SINGH **...Petitioner**

Versus

STATE OF PUNJAB **...Respondent**

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

Argued by : Ms. Shubreet Kaur, Advocate for the petitioner.

Ms. A.K. Khurana, DAG, Punjab.

VINOD S. BHARDWAJ. J.

The revision petition has been filed raising a challenge to the judgment of conviction and order of sentence dated 08.08.2017 passed by the Court of Additional Chief Judicial Magistrate, Mansa in Criminal Case No.76 dated 24.10.2013 arising out of FIR No. 45 dated 26.04.2013 registered under Sections 279, 337 and 338 IPC at Police Station Saddar Mansa, District Mansa.

2. By means of the said judgment the petitioner, who happens to be the Driver with the PRTC, had been convicted for the said offences and was sentenced as under:-

<i>Sr.No.</i>	<i>Name of convict</i>	<i>U/s</i>	<i>Sentence</i>
<i>1.</i>	<i>Satnam Singh</i>	<i>279 IPC</i> <i>338 IPC</i>	<i>Rigorous imprisonment for a period of six months</i>
			<i>Rigorous imprisonment for a period of one year.</i>

Both the sentences shall run concurrently.

3. Aggrieved of the said judgment of conviction and order of sentence dated 08.08.2017, the petitioner preferred appeal before the Sessions Judge, Mansa. Upon re-appreciation of the entire evidence and consideration of the submissions advanced by the respective parties, the appeal filed by the petitioner was dismissed and the judgment of conviction and order of sentence passed by the Judicial Magistrate First Class, Mansa was upheld. The petitioner has thus preferred the instant revision petition against the said judgments.

4. The case had come up for hearing on 18.11.2021 wherein the petitioner had given up challenge to the order on merits and had restricted the prayers only to the order awarding sentence. It was further prayed that the petitioner, having not been convicted in any other offence and also considering the nature of the case, it was incumbent for the Court to have considered the case of the petitioner for grant of benefit of probation. It was after recording the said contention that notice of motion had been issued by the Co-ordinate Bench of this Court. The counsel re-iterates her having given of the challenge to the case on merits.

ARGUMENTS

5. Learned counsel for the petitioner has argued that the petitioner not being a previous convict and the offences for which the petitioner has been convicted are punishable with an imprisonment for a term of less than 07 years, hence, the case of the petitioner ought to have

been considered by the Courts below under Section 360 Cr.P.C. or under Section 4 of the Probation of Offenders Act, 1958. It is further contended that there are no reasons to deny the petitioner the said benefit to which he is entitled under the law.

6. Reliance has also been placed on a judgment in the matter of *“Chhotu Ram versus State of Haryana”* passed in *Criminal Revision No. 3045 of 2017* dated 07.09.2017 where probation had been granted to the petitioner upon his conviction in offences under Section 279, 337 and 338 IPC. Further reference was also made to the judgments in the matter of *“Nikhil Mida versus State of Punjab and another”* passed in *Criminal Revision No.1478 of 2015* decided on 26.05.2015 reported as *2015 SCC online P & H 11855* as well as in the matter of *“Naib Singh versus The State of Punjab”* decided on 28.02.2013 passed in *Criminal Revision No.279 of 2013* and reported as *2013 SCC online P &H 4525*.

7. Per contra, learned counsel has not disputed the ratio of the aforesaid judgments but has defended the orders passed by the Courts below. It has been argued that the petitioner had endangered human life by his rash conduct. He should thus not be shown any leniency.

8. I have considered the rival submissions advanced by the counsel for both the parties.

Parameters and Principles of Sentencing:

9. 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.'

10. 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.

CONCLUSION

11. The incident in question is dated 03.04.2013. The petitioner has thus suffered the agony of the criminal trial for nearly 09 years. Besides, the petitioner is the first offender. At the time of incident, the petitioner was aged around 46 years. He is thus, around 55 years as on date. There is nothing to suggest that the petitioner was involved in any other offence of similar nature during trial pursuant to the registration of FIR in question or even thereafter.

12. The aforesaid circumstances constitute sufficient grounds for the Court to examine the case of the petitioner for release on probation.

13. Considering the facts as well as the legal principles as noticed above; the maximum sentence awarded by the Courts below as well as other mitigating circumstances, I am of the view that present case is a proper case where the interest of justice, would be well served in case the benefit under the provisions of the Probation of Offenders Act, 1958 is extended to the petitioner. As such, while maintaining conviction of the petitioner under Section 279 and 338 IPC, the sentenced passed by the learned Judicial Magistrate First Class, Mansa as upheld by the Sessions Judge, Mansa is hereby set aside and the petitioner is ordered to be released on probation for a period of one year on his furnishing personal bonds for a sum of Rs.10,000/- with one surety of the like amount to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Mansa. Consequently, the accused/petitioner be released forthwith and furnish probation bond before the learned Chief Judicial Magistrate/Duty

Magistrate, Mansa within period of two weeks from the receipt of certified copy of this order and submit compliance report to this Court.

14. During the period of probation, the petitioner shall maintain peace and good behaviour. The conviction shall not be treated as a disqualification attached to conviction as per Section 12 of the Probation of Offenders Act, 1958.

15. The petitioner is also ordered to pay a sum of **Rs.10,000/-** with the '**Poor Patient Welfare Fund**', **PGIMER, Chandigarh**.

16. In view of the above, the instant revision petition is partly allowed in terms as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

March 14 , 2022
Vishal sharma

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