

CRR-239 of 2023 (O&M)

2023:PHHC:068556

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-239 of 2023 (O&M)
Date of decision: 11.05.2023

Nafe Singh
.....Petitioner

Versus

State of Haryana
.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Kuldeep Sheoran, Advocate,
for the petitioner.

Mr. Vishal Malik, DAG, Haryana.

NAMIT KUMAR, J.

1. Through this revision petition filed under Section 401 Cr.P.C., petitioner has challenged the judgment of conviction dated 25.07.2017 and order of sentence dated 28.07.2017 passed by the Court of learned Additional Chief Judicial Magistrate, Kaithal, whereby petitioner has been convicted and sentenced to undergo imprisonment as under: -

Sr. No.	U/S	Sentence
1.	279 IPC	To undergo rigorous imprisonment for a period of one month and to pay a fine of Rs.500/-, in default of payment of fine to undergo simple imprisonment for 10 days.
2.	337 IPC	To undergo rigorous imprisonment for a period of one month and to pay a fine of Rs.500/-, in default of payment of fine to undergo simple imprisonment for 10 days.
3.	304-A IPC	To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1500/-, in default of payment of fine to undergo simple imprisonment for one month.

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4.	357(3) IPC	To pay compensation of Rs.50,000/- to the dependents of deceased/victim, who can recover entire amount either from petitioner or from his personal properties under law after elapse/expiry of period allowed for presenting appeal/revision or if any appeal/revision is presented, then in accordance with the decision of appropriate authority therein.
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All the sentences have been ordered to run concurrently.

2. Challenge has also been laid to the judgment dated 24.11.2022 passed by the Court of learned Additional Sessions Judge, Kaithal, whereby appeal of the petitioner has been dismissed with modification to the effect that sentence of two years awarded under Section 304-A by the trial Court has been reduced to one year.

3. Brief facts of the case are that FIR in the present case was registered on the basis of the complaint of Sh.Joginder Singh son of Sh. Puran Chand resident of Dohar, Kaithal, Haryana that on 17.03.2015 at about 01:00 pm, he alongwith his wife Smt. Ramrati was proceeding towards fields of Sh.Balkar Singh son of Sh.Hakam Chand at their village Dohar, Kaithal, Haryana, to collect fodder for their cattle, subsequently on the way, one motor vehicle bearing registration No.HR 39A 8962 make Truck/TATA 1109 being driven by its driver in 'high speed, rash and negligent manner on public way' came from rear side, collided/rammed into them by running over his wife resulting into her death on spot and sustaining injuries to him, ironically taking undue advantage of the existing situation the aforementioned miscreant/driver of the offending vehicle managed to escape, accordingly a case under Section 279, 337 / 304A IPC 1860 was registered, consequently the inquest proceedings under Section 174 Cr.P.C. 1973 alongwith

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investigation was set into motion. Accidental vehicles were taken into police possession from spot of occurrence, subsequently on 18.03.2015 petitioner-Nafe Singh duly identified by the complainant was apprehended. Thereafter the statements of witnesses under Section 161Cr.P.C. were recorded. Copies of challan were supplied to the petitioner free of costs as provided under Section 207 Cr.P.C.

4. On finding *prima facie* case against the petitioner, he was charge-sheeted for the commission of the offence punishable under Section 279, 337 and 304A of Indian Penal Code, 1860, to which he pleaded not guilty and claimed trial. After hearing both the parties and going through the record, the learned trial court, vide impugned judgment of conviction dated 25.07.2017 and order of sentence dated 28.07.2017 held the petitioner guilty and sentenced him in the manner as narrated above. Aggrieved against the judgment and order of the trial Court, petitioner preferred an appeal, which was dismissed by the Appellate Court vide impugned judgment dated 24.11.2022.

5. Learned counsel for the petitioner *inter alia* submitted that petitioner is the sole bread earner of his family with several ailments. He further submitted that he does not challenge the conviction of the petitioner and restricts his prayer only with regard to the period of sentence he has already undergone. He further submitted that fine has already been deposited and petitioner is a first time offender, therefore, lenient view may be taken qua his sentence. In this regard he has submitted that incident is of the year 2015 and the petitioner has suffered the agony of trial/appeal/revision for all these years. It is

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further submitted that petitioner has already undergone five months of the total sentence awarded by the trial Court. Under these circumstances, the sentence imposed upon the petitioners may be reduced to the one already undergone by them.

6. On the other hand, learned State counsel, while opposing the submissions made by the learned counsel for the petitioner, would submit that the sentence awarded to the petitioner is in proportion to the offence committed by him. The petitioner does not deserve any leniency. However, he submits that petitioner is first time offender and no other case is pending against him and he has undergone actual sentence of 05 months 16 days out of total sentence of one year.

7. I have heard learned counsel for the parties and perused the record.

8. This Court is of the view that the incident is of the year 2015, the petitioner has suffered agony of trial/appeal/revision for all these years and as per custody certificate dated 09.05.2023 furnished by learned State counsel, petitioner has undergone actual sentence for a period of 05 months and 16 days and thus keeping in view these facts and circumstances, it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him. It is settled proposition of law that each case is to be decided on its peculiar facts and circumstances. The view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in the case of "**R. Soundarajan v. Seed Inspector, Coimbatore and another**" reported as **2006(4) R.C.R. (Criminal) 645; "Umrao Singh v. State of Haryana'**,

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1981 AIR (SC) 1723 and the judgment of his Court in “**Sahab Singh vs. State of Haryana**” **2019(3) RCR (CrL) 727**.

9. The relevant observations made by the Hon'ble Supreme Court in the case of **R. Soundarajan** (supra) are as under:-

"26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment."

10. Similarly in the case of **Umrao Singh** (supra) the Apex Court has observed as under:-

"After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16 (1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents."

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2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.

3. The appeal is disposed of accordingly."

11. In the case of **Sahab Singh** (supra) by following the judgment of the Hon'ble Supreme Court in "**State of Punjab vs. Saurabh Bakshi**" 2015 (2) RCR (Criminal) 495, this Court while upholding the conviction of the petitioner therein has reduced the sentence of the petitioner by observing as under:-

"However, the prayer of the learned counsel for reduction of the substantive sentence of the petitioner to six months in view of the Hon'ble Supreme Court's judgment in Saurabh Bakshi's case, merits acceptance. It may be noticed that as per the custody certificate produced on record, the petitioner has already undergone 7 months and 9 days out of the total sentence of two years imposed upon him.

The Hon'ble Supreme Court in Saurabh Bakshi's case (supra), while setting aside the order of the High Court, thereby reducing the sentence imposed upon the accused i.e. one year to the period already undergone by him i.e. 24, days, awarded the sentence of six months to the accused-respondent therein. It was held as under:-

"17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or

driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months."

12. Adverting to the facts of the present case and keeping in view the mitigating circumstances noted above and in view of the

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settled proposition of law, this Court is of the considered view and has no hesitation to conclude that the ends of justice would be adequately met if the sentence of the petitioner is ordered to be reduced to the period already undergone by him.

13. In view of the peculiar facts and circumstances of the present case noted above, coupled with the reasons aforementioned, the conviction of the petitioner in the criminal revision petition is upheld. However, the sentence is ordered to be reduced to the period already undergone by the petitioner. The same would, however, be subject to deposit of costs of Rs.10,000/- by the petitioner with the Bar Clerks Association, Punjab and Haryana High Court, Chandigarh, within a period of two months from today. It is made clear that in case the aforesaid amount of Rs.10,000/- is not deposited within the stipulated period, then the present revision petition would be deemed to have been dismissed.

14. Impugned judgment of conviction stands affirmed with above modification. The sentence of compensation as awarded under Section 357(3) Cr.P.C. by the trial Court shall stand maintained. The same shall be paid within two months from the date of passing of this order, if not so paid.

15. Disposed of. Pending application(s), if any, stand disposed of in view of the aforesaid judgment.

11.05.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No