

CRR-346 of 2020 (O&M)

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

CRR-346 of 2020 (O&M)

Reserved on: 03.02.2023

Date of Pronouncement: 08.02.2023

Suresh and another

.....Petitioners

Versus

The State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Ravi Malik, Advocate,
for the applicant-petitioners.

Mr. Vikrant Pamboo, DAG, Haryana.

NAMIT KUMAR, J.

CRM-4289 of 2020

This application has been filed by the applicant-petitioners under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of 13 days in filing the revision petition.

Notice.

Mr. Vikrant Pamboo, DAG, Haryana, accepts notice on behalf of the respondent-State and submits that he has no objection if the delay of 13 days in filing the revision petition is condoned.

In view of the averments made in the application, same is allowed. Delay of 13 days in filing the revision petition is condoned.

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This revision petition has been filed under Section 401 Cr.P.C. against the judgment dated 18.10.2019 passed by the Court of

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learned Additional Sessions Judge, Kurukshetra, as well as the judgment of conviction dated 27.09.2016 and order of sentence dated 28.09.2016 passed by Presiding Officer, Special Environment Court, Kurukshetra, whereby petitioners have been held guilty and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.10,000/- each under Section 39 read with Section 51 of the Wildlife (Protection) Act, 1972 (hereinafter referred to as 'the Act') and in default of payment of fine to further undergo rigorous imprisonment for a period of one month.

Brief facts of the case are that on 05.06.2012 Azad Singh Inspector Wildlife along with Ram Singh Sub Inspector Wildlife and Azad Member (People for Animal) were on patrolling duty and at about 5.00 p.m. they caught petitioners near Jamuna Canal Railway floyover, Uchana along with *Khudala* and an alive Monitor Lizard. The damage report No.4 was chalked out. It was further submitted that Monitor Lizard is a Schedule-1 animal and it could not be caught and killed as per law. Thereafter confessional statements of the petitioners were also recorded. Statements of Azad Singh Inspector Wildlife, Ram Singh Sub Inspector Wildlife and Azad Member (People for Animal) were also recorded. Monitor Lizard was released in jungle at about 10.00 p.m. by the wildlife officials after preparing a proper panchnama. Thus, a complaint under Sections 9, 39 and 51 of the Act was filed.

After hearing learned counsel for the parties and on appreciation of evidence on record, Presiding Officer, Special Environment Court, Kurukshetra vide judgment of conviction dated

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27.09.2016 and order of sentence dated 28.09.2016 held the petitioners guilty and sentenced them as stated above.

Against the judgment of conviction and order of sentence of the trial Court, petitioners preferred appeal before the appellate Court, which was dismissed vide judgment dated 18.10.2019.

During the course of arguments, learned counsel for the petitioners has submitted that he does not wish to challenge the conviction of the petitioners on merits but would be satisfied if a lenient view is taken with respect to the sentence which has been awarded to the petitioners. In this regard he has submitted that incident is of the year 2012 and the petitioners have suffered the agony of trial for all these years. It is further submitted that petitioners have already undergone half of the 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.

In support of his arguments, learned counsel for the petitioners has relied upon judgments of this Court in ***Darshan Singh v. State of Punjab, 2010(9) R.C.R.(Criminal) 648; Manjit Singh @ Mita and another v. State of Punjab, 2011(3) R.C.R.(Criminal) 392, Puran Singh and others v. State of Punjab, 2011(22) R.C.R.(Criminal) 921 and CRR-62 of 2020 – Jagtar Singh @ Ghugu v. State of Haryana decided on 13.09.2022***, in which also taking a lenient view the sentence was reduced to already undergone.

On the other hand, learned State counsel, while opposing the submissions made by the learned counsel for the petitioners, would

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submit that the sentence awarded to the petitioners is in proportion to the offence committed by them. The petitioners do not deserve any leniency. However, he submits that petitioners are first time offenders and no other case is pending against them and petitioner No.1-Suresh has undergone actual sentence of 01 year 06 months and 23 days and petitioner No.2-Vicky has undergone actual sentence of 01 year 08 months and 05 days out of total sentence of three years.

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

This Court is of the view that the incident is of the year 2012, the petitioners have suffered agony of trial for all these years and as per custody certificates dated 08.01.2023 furnished by learned State counsel, petitioner No.1-Suresh has undergone actual sentence for a period of 01 year 06 months and 23 days and petitioner No.2-Vicky has undergone actual sentence for a period of 01 year 08 months and 05 days out of total sentence of three years and thus keeping in view these facts and circumstances and judgments relied upon by learned counsel for the petitioners, it is just and expedient to reduce the sentence of the petitioners to the period already undergone by them. 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**", **1981 AIR (SC) 1723** and the judgment of his Court in

"Sahab Singh vs. State of Haryana" 2019(3) RCR (Cr1.) 727.

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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."

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.

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.

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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."

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

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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."

Adverting to the facts of the present case and keeping in view the mitigating circumstances noted above, this Court is of the considered view and has no hesitation to conclude that the ends of

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justice would be adequately met if the sentence of the petitioners is ordered to be reduced to the period already undergone by them.

In view of the peculiar facts and circumstances of the present case noted above, coupled with the reasons aforementioned, the conviction of the petitioners in the criminal revision petition is upheld. However, the sentence is ordered to be reduced to the period already undergone by petitioners. However, the fine shall remain intact. The same would, however, be subject to deposit of costs of Rs.25,000/- by the petitioners with the Bar Clerks Association, Punjab and Haryana High Court, Chandigarh, within a period of one month from today. It is made clear that in case the aforesaid amount of Rs.25,000/- is not deposited within the stipulated period, then the present revision petition would be deemed to have been dismissed.

Impugned judgment of conviction stands affirmed with above modification. The sentence of fine however, shall stand maintained, if not so deposited which shall be paid within four weeks from the date of passing of this order.

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

08.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No