

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

CRR-558-2022 (O&M)

Date of Decision: November 23, 2023

M/S SODHI PALACE AND ORS.

.....Petitioners

Versus

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. J.S. Dhaliwal, Advocate for petitioners.

Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Vishal Garg, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 15.03.2022 passed by learned Addl. Sessions Judge, Ludhiana whereby appeal against judgment of conviction and order of quantum of sentence dated 15.11.2016 passed by learned Chief Judicial Magistrate, Ludhiana passed in complaint case No.421 of 11.11.2019, COMA No.34809/2013 under Sections 43, 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'Water Act') was dismissed. The petitioners have been convicted and sentenced as under:-

Convict	Offence	Sentence
Bhagat Singh	u/s 44 of Water (Prevention and Control of Pollution) Act, 1974	Rigourous Imprisonment for one year and six months along with a fine of Rs.1000/-. In default of payment of fine, convict shall further undergo simple imprisonment for period of one month.
Rajwinder Singh	u/s 44 of Water (Prevention and Control of Pollution) Act, 1974	Rigourous imprisonment for one year and six months along with a fine of Rs.1000/-. In default of payment of fine, convict shall further undergo simple imprisonment for period of one month.

FACTUAL BACKGROUND

2. Brief facts of the case are that petitioner No. 1 is a firm running the business of a marriage palace in the name and style of M/s. Sodhi Palace, Village Pohir, District Ludhiana since 2002. Petitioner No. 2 is the Proprietor and petitioner No.3 is the Manager of the same. The said firm was discharging untreated trade/domestic effluents on to land in adjoining plot, without obtaining consent of Punjab Pollution Control Board-respondent No.2, thereby violating the provisions of Section 24, 25 and 26 punishable under Sections 43 and 44 of the Water Act. The premises were inspected by the authorized officer of the board and on 11.09.2009 complainant-Shiv Kumar made observations to the aforesaid effect and prepared an inspection report/field data sheet in the presence of petitioner No.3.

3. The matter was tried by Chief Judicial Magistrate, Ludhiana and the petitioners were convicted vide judgment dated 15.11.2016 as

mentioned above. Thereafter, the petitioners preferred an appeal in the Court of Addl. Sessions Judge, Ludhiana which was dismissed vide judgment dated 15.03.2022.

CONTENTIONS

4. Learned counsel for the petitioners contends that he is not assailing the impugned judgment of conviction dated 15.11.2016 or judgment of the Lower Appellate Court dated 15.03.2022 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioners as they have already undergone a period of one month and eight days of custody. No other case is pending against them prior to the registration of the present complaint and they have not been involved in any other criminal case after suspension of their sentence in the present case vide this Court's order dated 21.04.2022.

5. Learned counsel for the petitioner further contends that petitioner Nos. 2 and 3 namely Bhagat Singh and Rajwinder Singh are 55 years and 40 years of age respectively and both of them have reformed and intend to live their life as law-abiding citizens.

6. Per contra, learned State counsel opposes the prayer of the petitioners as their actions have caused serious harm to the environment and as such they do not deserve any leniency. It is also contended that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on

Record and rightly convicted the petitioners.

ANALYSIS AND OBSERVATIONS

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

8. A two Judge Bench of the Hon'ble Supreme Court in **State of Haryana Vs. Janak Singh AIR 2013 SC 3246** has dealt with the power of this Court to reduce the sentence as to the one already undergone in cases where the accused is convicted for an offence for which a minimum sentence is prescribed by law. Speaking through Justice Ranjana Prakash Desai, the Hon'ble Supreme Court observed as under:-

“10.....It was open for the respondents to press the appeals on merits and pray for acquittal. Had the case been argued on merits, the High Court could have acquitted the respondents if it felt that the prosecution had not proved its case beyond reasonable doubt. Assuming the respondents did not press the appeals, the High Court had to still consider whether the concession made by the counsel was proper because it is the duty of the court to see whether conviction is legal. But, once the respondents stated that they did not want to press the appeals and the High Court was convinced that conviction must follow, then, ordinarily it could not have reduced the sentence to the sentence already undergone by the respondents which is below the minimum prescribed by law. The High Court could have done so only if it felt that there were extenuating circumstances by giving reasons therefor. While reducing the sentence, the High Court has merely stated that it was “just and

expedient” to do so. These are not the reasons contemplated by the proviso to Section 376(1) of the Indian Penal Code. Reasons must contain extenuating circumstances which prompted the High Court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like rape. Besides, at the cost of repetition, it must be stated that such a course would be against the mandate of Section 376(1) of the IPC.”

9. A two Judge Bench of the Hon’ble Supreme Court in **Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926**, speaking through Justice V.R. Krishna Iyer, has observed as under:-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to antisocial behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

10. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

11. A perusal of the ratio decidendi culled out in the above-mentioned judgments of the Hon'ble Supreme Court indicates that in order to determine the quantum of sentence, Courts should bear in

mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

12. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioners are identical and are tabulated as under:-

Sr No.	Particulars	Period	Duration
1.	Custody under trial	—	00
2.	Custody after conviction	15.03.2022-22.04.2022	1 month and 8 days
3.	Interim bail	—	00
4.	Actual custody period after conviction	15.03.2022-22.04.2022	1 month and 8 days
5.	Actual undergone period	15.03.2022-22.04.2022	1 month and 8 days
6.	Earned remission	—	00
7.	Total sentence including remission	15.03.2022-22.04.2022	1 month and 8 days

13. A perusal of the judgment of conviction passed by the trial Court and the Lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Counsel for the petitioners has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

14. The complaint in the present case was lodged on 11.11.2019 and since their conviction, the petitioners have grown into law-abiding citizens and desire to live a peaceful life. They are not involved in any other criminal activity after their conviction in the present case and during the pendency of the present revision. As per their custody certificate, there are no other criminal cases pending against them. Out of the total sentence of one year and six months, they have undergone actual sentence of one month and eight days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment for one year and six months awarded to the appellants is reduced to the period already undergone by them.

15. Consequently, the present appeal is disposed of in the following terms:-

(i) The judgment dated 15.03.2022 passed by the Additional Sessions Judge, Ludhiana convicting the petitioners is upheld, however, the order of sentence dated 15.11.2016 is modified to the extent that the sentence of rigorous imprisonment for 1 year and 6 months along with default mechanism awarded to the petitioners is reduced to the period of sentence already undergone by them.

(ii) The sentence of fine of an amount of Rs.1000/- imposed upon the petitioners by the trial Court is

increased to Rs.10,000/- each. The petitioners are directed to deposit the amount of fine, in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioners shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

16. Pending application(s), if any, shall also stand disposed of.

23.11.2023
tejwinder

(HARPREET SINGH BRAR)
JUDGE

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