

**322 IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRR-1533-2009

Date of Decision: 19.05.2023

Jaspal Singh @ Palli and another

...Petitioners...

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Ms. Lovepreet Kaur, Advocate
for the petitioners.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.

1. Challenge in the present revision petition is to the judgment dated 16.05.2009 passed by the court of Additional District and Sessions Judge, FTC, Ludhaina, whereby the appeal filed against the judgment of conviction and order of sentence dated 01.12.2007 passed by the court of Judicial Magistrate Ist Class, Ludhiana, was dismissed, thereby upholding the judgment of conviction recorded under Section 411 IPC, though reducing the sentence to 06 months.

2. Facts of the case are that the petitioners were arrayed as accused in FIR No.257 dated 16.06.2003, under Sections 454, 380 and 411 IPC, registered at Police Station Haibowal, Ludhiana, on the allegations that they dishonestly kept in their possession stolen property i.e. one kara and one pair of gold topas. On the basis of the evidence recorded, learned trial

court convicted the petitioners under Section 411 IPC and sentenced to undergo rigorous imprisonment for a period of 1 year, vide judgment/order dated 01.12.2007.

3. Aggrieved thereof, the petitioners filed first appeal before the court of Additional District and Sessions Judge, FTC, Ludhiana, which was dismissed vide judgment dated 16.05.2009, thereby upholding the judgment of conviction, however, the sentence was reduced to 6 months.

4. While assailing the aforesaid judgments passed by the courts below, learned counsel for the petitioners submits that the prosecution has failed to connect the case property with the case in hand as the same has not been identified by the complainant or any witness before the trial court and further the prosecution version is based on the evidence of interested witnesses as no independent witness joined at the time of recovery, thus, judgments passed by both the courts below are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant revision.

5. On the other hand, learned State counsel has strongly supported the judgments passed by the courts below while submitting that the same are absolutely in accordance with the legal proposition of law applicable to the facts and circumstances of the case in hand.

6. I have heard learned counsel for the parties and gone through the paper book.

7. Before proceeding further to decide the instant revision on merit, it would be desirable to highlight that the scope and extent of revisional jurisdiction of the High Court in dealing with order passed by the trial court and upheld by appellate court is limited and revisional

jurisdiction should be exercised in exceptional cases where there was some glaring defect in the procedure or a manifest error on a point of law and consequently, a flagrant miscarriage of justice.

8. Adverting to the facts of the case in hand, the submissions which have been made by learned counsel for petitioners challenging conviction and sentence of petitioners have already been dealt with by Id. Magistrate, which have also been upheld by Id. Appellate Court. Moreover, petitioners have suffered disclosure statements, on the basis of which, stolen articles were recovered from their residential house and were taken into possession vide separate memos.

9. On perusal of judgments passed by both the courts below, I am of the considered view that they have rightly appreciated the evidence on the record while holding the petitioners guilty of the charge framed against them. There is no infirmity or illegality in the findings given by the Courts below. Therefore, the conviction of the petitioners is, thus, affirmed.

10. As far as the additional plea raised regarding reduction of quantum of sentence, to the period already undergone, counsel for the petitioners referred to the judgments passed by this Court in ***CRA-S-660-SB-2005***, titled as ***“Lakhwinder Kumar vs. State of Punjab”*** decided on 03.03.2023, ***“Mohinder Singh vs. State of Punjab”***, ***2018(2) Law Herald 1678*** and ***“Rajinder Singh vs. State of Punjab”***, ***2019(4) RCR (Criminal) 711***. Paras No.9 to 11 of ***Lakhwinder Kumar's*** case (supra) being relevant, are reproduced hereunder:-

“9. On the issue of reformatory theory in context to any wrong doer, His Lordship V.R. Krishna Iyer, J., of Hon'ble Apex Court, in case titled as “Mohammad Giasuddin v. State of Andhra Pradesh, (1977) 3 SCC

287, has observed as under:-

“5. If every saint has a past, every sinner has a future, and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the word treasury of criminology. The drawback of our criminal process is that often they are built on the bricks of impressionist opinions and dated values. Ignoring empirical studies and deeper researches.”

(emphasis added)

10. In case titled as **“Satish @ Sabbe v. State of Uttar Pradesh (Special Leave Petition (Crl.) No.7369 of 2019, decided on 30.09.2020)**, His Lordship Surya Kant, J., says as:

“Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free-roaming criminal creating havoc in the lives of ordinary peace loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first time offenders ought to be liberally accorded a chance to repent their past and look-forward to a bright future.”

(emphasis added)

11. This Court also can not ignore the observation made by their Lordships' of Hon'ble Apex Court in the case of **Commissioner of Police and others vs. Sandeep Kumar, (2011) 4 SCC 644:-**

“9..... The modern approach should be to reform a person instead of branding him as a criminal all his life.”

11. Considering the facts of the present case, wherein the petitioners have already undergone actual sentence for a period of 01 month and 2 days out of 6 months, besides they being young men aged about 44 and 41 years respectively, not involved in any other case, since the date of registration of present FIR, i.e. for the past more than 19-1/2 years as well as keeping in mind the law laid down in the aforementioned judgments, the sentence awarded to the petitioners is ordered to be reduced to the period already undergone by them. Except with the modification in quantum of

sentence, as indicated herein above, the present petition is dismissed.

19.05.2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No