

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

229

CRR-2879-2011 (O&M)
Date of decision: 19.01.2023

KULBIR SINGH AND ORS.

....Appellant(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Vipin Mahajan, Advocate
for the petitioners.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

Present revision petition has been filed challenging the order 03.09.2010 passed by Judicial Magistrate Ist Class, Gurdaspur whereby the petitioners were convicted for offence under Section 292 IPC in FIR No.21 dated 29.01.2003 registered under Sections 51, 52-A, 63, 64, 66, 68-A of the Copy Right Act and Sections 292, 293 and 420 IPC, P.S. Dhariwal and sentenced to RI for 02 years and order dated 29.10.2011, whereby the appeal filed by the petitioners against the order dated 03.09.2010 was dismissed.

Briefly put, the facts of the case are that ASI Ravinder Singh conducted the raid on the shops of the accused. Raid was conducted on the shop of Randhawa Electronics. The person present in the shop disclosed his name as Kulbir Singh alias Gony son of Ram Singh. When his shop was searched, 473 duplicate cassettes of Hindi films were recovered. One new Hindi film Dil Hai Tumhara was put in VCR for recording. 359 duplicate cassettes, 40 blue CDs, 8 cassettes were also recovered. All these cassettes and CDs were checked by

Swatantar Kumar and Sukhwant Singh Field Officers of New Ruby Distributor, Jalandhar, These cassettes were found duplicate by them, Swatantar Kumar and Sukhwant Singh were expert. Apart from this, 2 VCP, one VCD Pagaria, one National VCR and one T-series TV of 14" were also recovered. All the articles were taken into police custody. On the search of Doaba Electronics, which was owned by accused Gurcharan Singh alias Jeewan in the presence of Swatantar Kumar and Sukhwant Singh, 200 duplicate Video cassettes, 281 duplicate CDs, 9 Cds of band new films, 10 blue CDs, one CD player were also recovered. These articles were examined by Swatantar Kumar and Sukhwant Singh being experts. These cassettes were found to be duplicate CDs and VCDs. All the articles were taken into police custody. Thereafter, the shop of Surinder Singh known as Mandeep Electronics was raided. On the search of the shop, 26 duplicate Video cassettes and 5 blue CDs were recovered. They were taken into possession. The recovered articles were sealed with the seal "RS". Accused Kulbir Singh and Surinder Singh were taken into custody. Accused Gurcharan Singh was arrested on 07.02.2003. The personal search of accused Surinder Singh was conducted but nothing was recovered from his personal search. Personal search memo of accused Kulbir Singh was prepared but nothing was recovered from him. Personal search memo of accused Gurcharan Singh was prepared but nothing was recovered from him. Site plans of the shops of accused Kulbir Singh and Gurcharan Singh were prepared. Site plan of the shop of Surinder Singh was also prepared. Statements of the witnesses were recorded. Case property was deposited with MHC. Upon completion of necessary formalities, final report under Section 173 CrPC was prepared and was presented in the Court, upon which charges were framed against the accused under Sections 292,293,420 of Indian Penal Code and

Sections 51,52-A,63,64,66, 68-A of Copy Right Act, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution has examined as many as 3 witnesses

After closure of the prosecution evidence, statements of the accused were recorded under Section 313 of Cr.P.C. All the incriminating evidence was put to the accused, who denied the allegations of the prosecution. Accused did not bring any witness and closed their defence without adducing any evidence.

The learned trial Court, by the impugned judgment convicted and sentenced the accused-petitioners as mentioned in para 1.

Aggrieved petitioners preferred an appeal for setting aside the judgment of conviction and order of sentence, which was dismissed by the lower Appellate Court.

Hence, the present revision petition.

Learned counsel for the petitioners at the outset submits that he does not challenge the conviction awarded to the petitioners by the Judicial Magistrate Ist Class, Gurdaspur vide judgment dated 03.09.2010, as affirmed by the learned Additional Sessions Judge, Gurdaspur vide judgment dated 29.10.2011, whereby the petitioners were convicted and sentenced to 02 year rigorous imprisonment in FIR No.21 dated 29.01.2003. The petitioners have undergone 04 months and 27 days of sentence awarded to them and that they are first offender; poor persons and are the sole breadwinners of their families. They therefore pray that the sentence be modified to the period already undergone. He places reliance upon the judgments passed by this Court in the cases of **Bharat Bhushan Vs. State of Punjab**, CRR-172-1999 decided on 24.02.1999 and **Sahil and another Vs. State**

of Haryana, CRR-1845-2014 decided on 08.12.2014.

Opposing, the learned counsel for the State submits that the learned Courts below after appreciating every aspect of the matter have rightly convicted and sentenced the petitioners, therefore, he prays for the dismissal of the present petition.

Heard and perused.

The petitioners have given up challenge to the conviction and have prayed for reduction of their sentence as having been undergone. Still having perused the judgment of the trial Court, the evidence was thoroughly examined therein and the possession of the pornographic material was established which was found to be sufficient to hold the petitioners guilty of offence under Section 292 IPC and the prosecution has succeeded in proving only the said offence against the petitioners. The learned Appellate Court had dismissed the appeal finding no infirmity or illegality in the judgment of conviction. Accordingly, both the Courts below after having scrutinized the evidence on record have rightly convicted the petitioners and there is no scope for interference in the concurrent findings recorded by both the Courts below. As such, the conviction of the petitioners is affirmed.

Regarding the prayer of the learned counsel for the petitioners that the sentence of the petitioners may be reduced to the period already undergone, it is apposite to make a reference to the judgment of Hon'ble The Supreme Court of India in the case of **Haripada Das vs. State of W.B.** (1998) 9 SCC 678, wherein it was held thus:

“....considering the fact that the respondent had already undergone detention for some period and the case is pending

for a pretty long time for which he had suffered both financial hardship and mental agony and also considering the fact that he had been released on bail as far back as on 17-1-1986, we feel that the ends of justice will be met in the facts of the case if the sentence is reduced to the period already undergone....”

The observations as relevant to the present case, made by Hon'ble The Supreme Court in the case of **R.Soundarajan vs. Seed Inspector, Coimbatore and another**, 2006(4) RCR (Crl.) 645 read thus:-

"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."

It is settled proposition of law that each case is to be decided on its own peculiar facts and circumstances.

This Court, in the case of **Bharat Bhushan** (*supra*), wherein the conviction was under Section 292 IPC and the petitioner being first offender, the sentence was brought down from from 06 months to 1½ months. Similarly, in the case of **Sahil and another** (*supra*), the sentence of the petitioner, who was convicted under Section 292 IPC, was reduced from 1 year to 6 months.

Considering, the judgments as referred to hereinabove and the mitigating circumstances as brought out by the learned counsel for the petitioners in the present case, inasmuch as that they belong to the poor strata of the society; are first offenders; sole breadwinner of their families; and have also faced the pangs of protracted trial for the last about 20 years, this Court finds that the ends

of justice would be adequately met if the sentence of the petitioners is ordered to be reduced to the period already undergone by them i.e. 04 months and 27 out of 02 years of sentence as awarded to them.

Accordingly, while upholding the conviction of the petitioners in the criminal revision petition, the sentence is ordered to be reduced to the period already undergone by petitioners. Fine shall remain intact.

With the above modification in the order of sentence dated 03.09.2010 passed by Judicial Magistrate Ist Class, Gurdaspur, as noted above, the criminal revision petition is partly allowed.

(AMAN CHAUDHARY)
JUDGE

January 19, 2023

S.Sharma(syr)

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