

2023:PHHC:159220

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

CRR No.3497 of 2017 (O&M)

Date of decision:08.12.2023

RAVI

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr.Sandeep Goyal, Advocate for the petitioner.

Mr.Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J.

The petitioner has filed the present petition by challenging the impugned judgement of conviction and order of sentence passed by the learned Judicial Magistrate First Class, Kurukshetra on 11.03.2014 as well as the impugned judgement passed by the learned Addl. Sessions Judge, Kurukshetra dated 6.9.2017 vide which the conviction of the petitioner was upheld in case FIR No.212 dated 22.04.2010, under Sections 279, 337, 338 and 304-A IPC registered at Police Station Thanesar.

On 16.09.2017, the following order was passed:-

“ I have heard learned counsel for the petitioner and have gone through the record. Learned counsel for the petitioner has not pointed out anything in the concurrent findings given by the Courts below regarding conviction. She has also not pointed out that findings are perverse or against the evidence. She has also not pointed out as to which material evidence has not been considered by the Courts below and which material evidence has been misread by said Courts. There is nothing on record that the findings are not as per law. The injured

eye-witness, who was pillion rider on the motorcycle and has also received the fracture in his leg, has deposed consistently regarding the prosecution version. There is nothing to disbelieve the evidence of that eye-witness PW-5 Subhash, who has also entirely deposed against the accused. He has no enmity with the driver, who was on duty and driving the bus on the route on that day. No evidence was produced by the accused to show the negligence on the part of the deceased driver of the motor cycle. So the concurrent findings given by the Courts below are correct as per the evidence and conviction of the present petitioner is as per law and therefore, the conviction is upheld.

Learned counsel for the petitioner requests for reduction of sentence.

Notice of motion qua quantum of sentence for 18.12.2017.

The conviction of the petitioner was upheld and notice was issued on qua quantum of sentence. The petitioner assailed the order dated 16.11.2017 passed by this Court by filing SLP (Criminal) No.11067 of 2019. The Hon'ble Supreme Court vide order dated 9.5.2023 has passed the following order:-

“In these circumstances, we deem it appropriate to close the present matter with a request to the High Court to decide the CRR No.3497 of 2017 (O&M) expeditiously. After finalization of the revision proceeding, the petitioner is granted liberty to also challenge the conviction order by the Courts below.”

Learned counsel for the petitioner *inter alia* contends that the compromise affected between the petitioner and the complainant- Gandhi Ram (father of deceased) has taken place on 27.04.2018. The compromise has been placed on record by the petitioner by filing CRM-18313 of 2019 and vide order dated 26.08.2019, the prayer made by the petitioner for placing on record Annexure A-1 and A-2 was allowed and the compromise Annexure A-2 was taken on record. The perusal of Annexure A-2 indicates that the complainant- Gandhi Ram has specifically sworn an affidavit Annexure A-2 which indicates that the

compromise between the petitioner and the complainant is voluntarily and is without any pressure and fear and the complainant would have no objection if the petition filed by the petitioner is accepted and petitioner is acquitted in this case.

The learned counsel for the petitioner has relied upon “Tejwinder Singh Vs. State of Punjab 209 (5) RCR Criminal 526 and Ajaib Singh Vs. State of Punjab and another CRR 2851 of 2019 decided on 03.04.2022 and Bachna Ram Vs. State of Haryana 2005 (3) RCR Criminal 966”.

The learned counsel for the petitioner further submits that the petitioner would not assail the impugned judgments vide which the conviction was recorded on merit. However, the learned court below has not taken into consideration the mitigating circumstance to take recourse to provision of Section 361 Cr.P.C. and the occurrence has taken place on 24.04.2010 and the petitioner has faced protracted trial for more than 04 years and he was convicted and sentenced on 11.03.2014 by the learned Judicial Magistrate First Class, Kurukshetra, more than 13 years have passed after registration of FIR and petitioner has already been removed from the Government service and now he is an old person of 58 years of age and during the last 13 years , the petitioner have not committed any offence and is not involved in any other anti-social activity.

The present case is the outcome of the solitary criminal negligence attributed to him for the accident in which the offending vehicle was being driven by the petitioner. The petitioner has already undergone actual sentence 7 months and 15 days out of 02 years of total sentence awarded to him. Keeping in view the judgements relied upon by the counsel for the petitioner and other circumstances, I deem it appropriate to invoke the power under Section 4 of the Probation of Offender Act 1958 read with Section 361 Cr.P.C.

The learned counsel for the complainant has no objection in case the prayer made by the petitioner is allowed.

Per contra the learned State counsel opposes the prayer made by petitioner on the ground that there is a concurrent finding of facts recorded by the Courts below on proper appreciation of the evidence and any interference by this Court is not warranted. The petitioner is accused of gross criminal negligence in which one human life has been lost.

Having heard the learned counsel for the parties and after pursuing the record it transpires the FIR (supra) was lodged on 22.04.2010 and the appeal, revision is also the extension of trial as such he has suffered the protracted criminal prosecution for more than 13 years and petitioner has lost his Government job and has already undergone 07 months and 15 days. He is more than 58 years of age and apart from unfortunate accident taken place in the year 2010, the petitioner is not involved in any other criminal activity.

Keeping in view the aforementioned facts and circumstances, the ends of justice would be served instead of sending the petitioner behind the bars at this stage to serve the remaining part of the sentence, he is released on probation.

Accordingly, the revision petition is partly allowed while upholding the conviction of the petitioner, the sentence awarded to him by the Courts below is modified to the extent that the petitioner instead of undergoing rigorous imprisonment shall be released on a probation for a period of one year on his furnishing a bond in a sum of Rs.25,000/- with one surety of the like amount to the satisfaction of Chief Judicial Magistrate, Kurukshetra. The petitioner shall remain bound to keep peace and maintain a good conduct and regularly appear before the District Probationary Officer, Kurukshetra during the said period.

Keeping in view of the ratio of law as laid down in *Tejwinder Singh* (supra):-

14. The word "disqualification" used in Section 12 *ibid* is stated to mean "making someone (sic-unfit) enough for something" and hence disqualification attaching to revision petitioner's conviction cannot be made the basis of his dismissal from service.

15. *In re: Iqbal Singh v. Inspector General of Police and others*, AIR 1970 Del 240, their lordships have observed as under :

16. Section 12 of the Act uses the word "disqualification" and the meaning given to this word in Webster's Third New International Dictionary is :

- (i) the act of disqualifying or the state of being disqualified" (protesting his disqualification from office under the new law);
- (ii) "something that disqualifies or incapacitates" (A crime conviction is automatically a disqualification for that public office).

The word "disqualify" is also stated to mean - making someone unfit for something. The further meaning given is or that the person may be deprived within the meaning of the word "disqualify" of any right or privilege. We are of the view that the words "disqualification, if any, attaching to a conviction of an offence" as used in Section 12 of the Act would include a person's losing his right or qualification to remain or to be retained in service. Section 12 of the Act, clearly saves the convict from suffering such disqualification attaching to his conviction. In respect of his conviction, the petitioner had the protection of Section 12 and he was saved from suffering any disqualification such as the one which resulted in his dismissal.

In view of the above observations, petitioner's having been released on probation of good conduct, his conviction shall not be a hurdle in his way to get the retiral benefits or other service benefits.

In view of the above discussion, the petitioner having been released on probation of his good conduct, his conviction shall not be a hurdle in his way to get retrial benefits and other service benefits to which the petitioner is entitled to.

The present petition is accordingly disposed of.

(HARPREET SINGH BRAR)
JUDGE

08.12.2023
raman

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