

2252023:PHHC:150452

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR-4666-2017

Date of Decision: November 22, 2023

DHARAMPAL SHARMA.....Petitioner

Versus

STATE OF PUNJAB.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. N.K. Chopra, Advocate for the petitioner.

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

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 29.11.2017 passed by learned Addl. Sessions Judge, Ludhiana whereby appeal against judgment of conviction and order of sentence dated 16.02.2017 passed by learned JMIC, Ludhiana in FIR No.241 of 28.07.2009 under Section 406 IPC, 1860 registered at Police Station Jodhewal, Ludhiana was dismissed. The petitioner was sentenced in the following terms:-

Convict	Offence	Sentence
Dharampal Sharma	u/s 406 IPC, 1860	Rigourous imprisonment for one year along with a fine of Rs.5000/-. In default of payment of fine, convict shall further undergo RI for period of one month.

2. Brief facts of the case are that complainant-Rakesh Khanna is in the business of manufacturing t-shirts, jackets and hosiery goods in Ludhiana and used to purchase raw material i.e. yarn from various dealers to run his business. In the year 2005, the petitioner-accused received payments from complainant to pay to concerned dealers on his behalf. However, the petitioner neither paid the said dealers nor returned the money to the complainant causing him a loss of Rs.2,40,000/-. With the intervention of the Panchayat, a compromise dated 27.03.2009 was arrived at wherein, he had agreed to pay Rs.1,20,000/- within a month to complainant. However, the petitioner failed to make said payment and resiled from the agreement.

3. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 16.02.2017 or judgment of the Lower Appellate Court dated 29.11.2017 on merits and restricts his prayer to modification of the order of sentence to that of the sentence already undergone by the petitioner. The petitioner was convicted under Section 406 IPC and sentenced to undergo rigorous imprisonment for a period of one year and a fine of Rs.5000/-. He has already undergone a period of 22 days of custody and has reformed. He further contends that the petitioner is 56 years of age and no other case was pending against him prior to the registration of the present FIR and he has not been involved in any other criminal case after suspension of his sentence in the present case by this Court's order dated 20.12.2017.

4. Per contra, learned State counsel opposes the prayer of the petitioner as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record.

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

6. 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."

7. 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."

8. 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.

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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.

9. 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.

10. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner are tabulated as under:-

Sr No.	Particulars	Period	Duration
1.	Custody under trial	—	00
2.	Custody after conviction	29.11.2017-21.12.2017	22 days
3.	Interim bail	—	00
4.	Actual custody period after conviction	29.11.2017-21.12.2017	22 days
5.	Actual undergone period	29.11.2017-21.12.2017	22 days
6.	Earned remission	—	00
7.	Total sentence including remission	29.11.2017-21.12.2017	22 days

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

12. The FIR in the present case was lodged on 28.07.2009 and the petitioner has been suffering the agony of trial for about 14 years. Since his conviction, the petitioner has grown into a law-abiding citizen and desires to live a peaceful life. He is not involved in any other criminal activity after his conviction in the present case and during the pendency of the present revision. As per custody certificate produced by State of Punjab, there is no other criminal case pending against him. Out of the total sentence of one year, he has undergone actual sentence of 22 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 awarded to the petitioner is reduced to the period already undergone by him.

13. Consequently, the present revision is disposed of in the following terms:-

- (i) The judgment dated 16.02.2017 passed by the learned JMJC, Ludhiana convicting the petitioner and judgment dated 29.11.2017 of the Lower Appellate Court are upheld, however, the order of sentence dated 16.02.2017 is modified to the extent that the

sentence of rigorous imprisonment for 1 year awarded to the petitioner is reduced to the period of sentence already undergone by him.

- (ii) The sentence of fine of an amount of Rs.5000/- imposed upon the petitioner by the trial Court is increased to Rs.10,000/-. The petitioner is 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.

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

22.11.2023
tejwinder

(HARPREET SINGH BRAR)
JUDGE

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