

CRR-372 of 2018

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

CRR-372 of 2018

Reserved on: 22.03.2023

Date of Pronouncement: 27.03.2023

Gurmej Singh Nambardar

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Gurvinder Singh Sidhu, Advocate,
for the petitioner.

Mr. Anup Singh, AAG, Punjab.

Ms. Komalpreet Kaur, Advocate,
for Mr. Deepak Arora, Advocate,
for respondent No.2.

NAMIT KUMAR, J.

This revision petition has been filed under Section 401 Cr.P.C. against the judgment dated 25.10.2017 passed by the Court of learned Additional Sessions Judge, Tarn Taran, as well as the judgment of conviction and order of sentence dated 04.12.2013 passed by the Court of learned Judicial Magistrate Ist Class, Tarn Taran, in case titled as State v. Harjinder Singh and others arising out of FIR No.141 dated 12.06.2007 under Sections 419/420/465/471/120-B IPC, registered at Police Station City Tarn Taran, whereby petitioner has been held guilty and sentenced to undergo rigorous imprisonment for two years along with fine of Rs.5000/- under Section 419 read with Section 120-B IPC

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and in default of payment of fine to further undergo rigorous imprisonment for 15 days; to undergo rigorous imprisonment for two years along with fine of Rs.5000/- under Section 420 read with Section 120-B IPC and in default of payment of fine to further undergo rigorous imprisonment for 15 days; to undergo rigorous imprisonment for one year along with fine of Rs.2000/- under Section 465 read with Section 120-B IPC and in default of payment of fine to further undergo rigorous imprisonment for 15 days; to undergo rigorous imprisonment for three years along with fine of Rs.5000/- under Section 468 read with Section 120-B IPC and in default of payment of fine to further undergo rigorous imprisonment for 15 days and to undergo rigorous imprisonment for two years along with fine of Rs.3000/- under Section 471 read with Section 120-B IPC and in default of payment of fine to further undergo rigorous imprisonment for 15 days. All the sentences were ordered to run concurrently.

Brief facts of the prosecution case are that one complaint was received from Ravail Singh son of Gurdial Singh, R/o Bisopur, Tehsil and District Gurdaspur on dated 26.03.2007. The complainant had submitted the present complaint to Chairman, Human Rights Commission, Punjab, wherein he has submitted that he alongwith his brother Mangjeb Singh and Balbir Singh son of Gurdial Singh had entered an agreement to sell with Lakhwinder Singh alias Butu son of Anokh Singh, R/o Palasaur, Tehsil and District Tarn Taran regarding land measuring 8Kanals 13 marlas, situated in Village Palasaur, Tehsil and District Tarn Taran for a sum Rs.11,50,000/-. That master Baljit

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Singh, Gurmit of Singh and Nirmal Singh acted as middlemen in the finalization of the deal and master Baljit Singh also received a sum of Rs.5000/- for arranging the deal. That on 16.01.2006 Lakhwinder Singh executed a formal agreement to sell regarding his land measuring 8 kanals 13 marlas for a consideration of Rs.11,50,000/- and received a sum of Rs.3,50,000/- as earnest money. That the sale deed was to be got executed on before 20.06.2006. On 20.06.2006, the vendor Lakhwinder Singh alongwith middlemen told them that due to certain reasons they had not been able to arrange jamabandi from the Halqa Patwari and, therefore, the date of registration of sale deed was extended to 29.06.2006 by making a formal endorsement on the back of the agreement to sell. That Lakhwinder Singh, vendor received a further sum of Rs. 20,000/- from him. On 29.06.2006, he alongwith his brothers and the balance sale consideration remained present in the office of Sub-Registrar, Tarn Taran from 9:00 AM uptil 5:00 PM, but Lakhwinder Singh failed to turn up to get the sale deed executed in their favour. That they marked their presence in the office of Sub-Registrar through an affidavit. That later on they made an inquiry in the village as well as from the revenue record and came to know that Lakhwinder Singh, who had entered into an agreement to sell with them was being impersonated by his real brother Harjinder Singh. That they also came to know that the impersonation of Lakhwinder Singh by his brother Harjinder Singh was known to the middleman who arranged the deal between them i.e. Nirmal Singh, Baljit Singh and Master Gurmit Singh. That Harjinder Singh who impersonated as Lakhwinder

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Singh alongwith middleman, Namberdar and witnesses, who attested the agreement to sell had in connivance with each other cheated him of Rs.3,75,000/.

After hearing learned counsel for the parties and on appreciation of evidence on record, the trial Court vide judgment of conviction and order of sentence dated 04.12.2013 held the petitioner guilty and sentenced him as stated above.

Against the judgment of conviction and order of sentence of the trial Court, petitioner preferred appeal before the appellate Court, which was dismissed vide judgment dated 25.10.2017.

During the course of arguments, learned counsel for the petitioner has submitted that petitioner is more than 70 years of age. Learned counsel submitted that he does not wish to challenge the conviction of the petitioner on merits but would be satisfied if a lenient view is taken with respect to the sentence which has been awarded to the petitioner. In this regard he has submitted that FIR pertains to the year 2007 and the petitioner has suffered the agony of trial/appeal/revision for all these years. It is further submitted that petitioner has already undergone six months out of three years of sentence awarded by the trial Court and his sentence was suspended by a Co-ordinate Bench of this Court vide order dated 25.05.2018. He further submitted that during the pendency of the revision petition, a compromise dated 07.05.2018 has been entered into between the parties and respondent No.2-complainant has no objection if the sentence

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awarded to the petitioner is reduced to one already undergone. Under these circumstances, the sentence imposed upon the petitioner may be reduced to the one already undergone by him.

Learned counsel for respondent No.2-complainant does not dispute the factum of compromise between the parties and submitted that she has no objection if the sentenced awarded to the petitioner is reduced to already undergone by him.

I have heard learned counsel for the parties and perused the record.

This Court is of the view that petitioner is 70 years old person and the FIR pertains to the year 2007 and the petitioner has suffered agony of trial/appeal/revision for all these years; during the pendency of revision petition compromise dated 07.05.2018 has been effected between the parties and out of total sentence of three years, petitioner has undergone six months of sentence, it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him. It is settled proposition of law that each case is to be decided on its peculiar facts and circumstances. The view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in the case of **"R. Soundarajan v. Seed Inspector, Coimbatore and another"** reported as **2006(4) R.C.R. (Criminal) 645**; **"Umrao Singh v. State of Haryana"**, **1981 AIR (SC) 1723** and the judgment of his Court in **"Sahab Singh vs. State of Haryana"** **2019(3) RCR (Crl.) 727**.

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The relevant observations made by the Hon'ble Supreme Court in the case of **R. Soundarajan** (supra) are as under:-

"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."

Similarly in the case of **Umrao Singh** (supra) the Apex Court has observed as under:-

"After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16 (1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents.

2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the

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sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.

3.The appeal is disposed of accordingly."

In the case of **Sahab Singh** (supra) by following the judgment of the Hon'ble Supreme Court in "**State of Punjab vs. Saurabh Bakshi**" 2015 (2) RCR (Criminal) 495, this Court while upholding the conviction of the petitioner therein has reduced the sentence of the petitioner by observing as under:-

*"However, the prayer of the learned counsel for reduction of the substantive sentence of the petitioner to six months in view of the Hon'ble Supreme Court's judgment in **Saurabh Bakshi's** case, merits acceptance. It may be noticed that as per the custody certificate produced on record, the petitioner has already undergone 7 months and 9 days out of the total sentence of two years imposed upon him.*

*The Hon'ble Supreme Court in **Saurabh Bakshi's** case (supra), while setting aside the order of the High Court, thereby reducing the sentence imposed upon the accused i.e. one year to the period already undergone by him i.e. 24, days, awarded the sentence of six months to the accused-respondent therein. It was held as under:-*

"17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there

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are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months."

Adverting to the facts of the present case and keeping in view the mitigating circumstances noted above, this Court is of the

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considered view and has no hesitation to conclude that the ends of justice would be adequately met if the sentence of the petitioner is ordered to be reduced to the period already undergone by him.

In view of the peculiar facts and circumstances of the present case noted above, coupled with the reasons aforementioned, the conviction of the petitioner in the criminal revision petition is upheld. However, the sentence is ordered to be reduced to the period already undergone by petitioner. However, the fine shall remain intact. The same would, however, be subject to deposit of costs of Rs.10,000/- by the petitioner with the Bar Clerks Association, Punjab and Haryana High Court, Chandigarh, within a period of one month from today. It is made clear that in case the aforesaid amount of Rs.10,000/- is not deposited within the stipulated period, then the present revision petition shall be deemed to have been dismissed.

Impugned judgment of conviction stands affirmed with above modification. The sentence of fine however, shall stand maintained and if not so deposited, same shall be paid within four weeks from the date of passing of this order.

The present petition is disposed of in aforesaid terms.

27.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No