

CRR-1819 of 2022

2023:PHHC:043515

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

CRR-1819 of 2022

Date of decision: 23.03.2023

Sushil

.....Petitioner

Versus

The State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Shivam Malik, Advocate,
for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

NAMIT KUMAR, J.

This revision petition has been filed under Section 401 Cr.P.C. against the judgment dated 12.08.2022 passed by the Court of learned Additional Sessions Judge, Panipat, as well as the judgment of conviction dated 10.05.2016 and order of sentence dated 11.05.2016 passed by the Court of learned Judicial Magistrate Ist Class, Panipat, whereby petitioner has been held guilty and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.10,000/- under Section 467 IPC, in default of payment of fine to further undergo rigorous imprisonment for six months; to undergo rigorous imprisonment for two years and to pay fine of Rs.10,000/- under Section 468 IPC, in default of payment of fine to further undergo rigorous imprisonment for six months and to undergo rigorous imprisonment for two years and to pay fine of Rs.10,000/- under

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Section 471 IPC, in default of payment of fine to further undergo rigorous imprisonment for six months. All the sentences were ordered to run concurrently.

Prosecution against the petitioner and co-accused was launched upon a complaint filed by complainant Subhash with the allegations that he was a resident of house no.1078, New Housing Board Colony, Panipat. The complainant, his brothers and father had jointly purchased a plot measuring 2 bigha 5 biswai.e. 45/112 share of total land measuring 5 bigha 12 biswa comprised in khasra no.4336 (3-12), 4364 (2-0) Patti Insar Panipat vide registered sale deed bearing vasika no.324 dated 19.04.1983 from Sh. Devender Kumar. Father of the complainant Sh. Arjun Dev expired in the year 1988. After his death, his share was inherited by the complainant and his brothers and sisters. The complainant alongwith his brothers was in possession of the said plot since the very beginning. One Virender Kumar son of Balak Ram, had filed a civil suit no.343/2005 against the complainant and his brothers to grab the aforesaid plot. Said Virender Kumar had also filed an application for stay in the said case which was dismissed by the Court on 08.10.2007. In 3rd January 2008, the complainant was informed that Sushil Kumar son of Ram Mehar had got prepared a forged power of attorney of the complainant and his brothers from Gonda, U.P and had sold the land of the complainant to one Narender son of Ram Mehar vide three sale deeds in December 2007. The complainant was shocked to learn about the same. He made inquiries in the Tehsil and found that petitioner-Sushil Kumar alleging himself to

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be the power of attorney of the complainant and his brothers had executed two sale deeds no.10541 and 10459 dated 05.12.2007 and sale deed bearing no.10557 dated 06.12.2007 in favour of Narender. The complainant alleged that neither he nor his brothers had ever visited Gonda, U.P for the purpose of executing and getting registered a power of attorney in favour of petitioner-Sushil Kumar. They had never met petitioner-Sushil Kumar till date and had never sold their plot to any person. The complainant further alleged that the accused had forged a power of attorney and got registered the sale deeds on the basis of the same only to grab the land of the complainant and his brothers. He pleaded for appropriate action against the culprits.

After hearing learned counsel for the parties and on appreciation of evidence on record, the trial Court vide judgment of conviction dated 10.05.2016 and order of sentence dated 11.05.2016 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 12.08.2022.

During the course of arguments, learned counsel for the petitioner has 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 2008 and the petitioner has suffered the agony of trial/appeal/revision for all these years. It is further submitted that

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petitioner has already undergone actual sentence of 01 year 06 months and 23 days out of two years of sentence awarded by the trial Court and his sentence was suspended by this Court vide order dated 23.09.2022. Under these circumstances, the sentence imposed upon the petitioner may be reduced to the one already undergone by him.

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

This Court is of the view that the FIR pertains to the year 2008 and the petitioner has suffered agony of trial/appeal/revision for all these years and petitioner has undergone actual sentence of 01 year 06 months and 23 days out of two years of sentence awarded by the trial Court, 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 this Court in "**Sahab Singh vs. State of Haryana**" **2019(3) RCR (Crl.) 727**.

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

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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 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."

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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 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

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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 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.

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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.

Disposed of. Pending application(s), if any, stand disposed of in view of the aforesaid judgment.

23.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No