

CRR-2833-2023 (O&M) 1

104 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-2833-2023 (O&M)
Date of Decision: 19.12.2023

RAJENDER KUMAR @ RAJINDER SINGH

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Lal Singh Sandhu, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition has been filed by the petitioner against the judgment dated 23.10.2023 passed by the learned Additional Sessions Judge, Sirsa whereby the appeal preferred by the petitioner against the judgment of conviction dated 19.12.2018 and order of sentence dated 20.12.2018 passed by the learned Judicial Magistrate 1st Class, Sirsa vide which the petitioner was held guilty for commission of offence under Sections 420, 447 IPC read with Section 34 IPC and was awarded substantive sentence of rigorous imprisonment for a period of three years and three months respectively in FIR No.909 dated 31.10.2013 under Sections 420, 406, 447, 323, 506 read with Section 34 IPC registered at Police Station City, Sirsa, was dismissed.

2. In brief the version of the prosecution before the learned trial Court is that on 31.10.2013, a complaint dated 12.06.2013 made by Usha Rani against Gurjinder, Deepak, Rahul and Karan was received by the police from the office of Superintendent of Police, Sirsa wherein it was alleged that an agreement to sell dated 21.09.2012 qua House No. 1247

measuring 3 marlas situated at village Khajakhera, Sirsa was executed by Rajender Kumar in favour of the complainant and he received Rs. 8,25,000/- as part payment, while the remaining amount of Rs. 25,000/- was to be paid at the time of execution of the sale deed. The possession of the property was handed over to the complainant, who raised boundary walls on the said plot. Rajender Kumar stated that the sale deed will be executed as soon as the registrations open. About one month prior to the complaint made by the complainant, she visited the plot and found that the boundary walls raised by her on the property were demolished. She confronted the vendor Rajender Kumar but he got annoyed and called his sons at the spot. All of them in connivance with each other abused the complainant and her husband. Further, they had beaten them up and pushed them out of the property. On hearing the commotion, neighbours gathered at the spot. The accused threatened the complainant and her husband with dire consequences if they raised their claim over the said property. They also refused to get the sale deed executed. The property dealer Karan Singh also favoured the accused. Complaints dated 25.03.2013 and 12.06.2013 were made to the police but no action was taken and thus, another complaint was made to the police on 21.10.2013.

3. On the basis of the complaint, the FIR was registered and investigation was conducted. All accused were arrested/joined and their disclosure statements were recorded. Statements of witnesses were also recorded. After completion of the investigation, final report under Section 173 Cr.P.C. was presented before the trial Court.

4. After completing formalities under Section 207 Cr.P.C.,

charges were framed against the accused persons under Sections 323, 406, 420, 447 and 506 IPC read with Section 34 IPC to which they pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution had examined as many as 11 witnesses. Statements of all the accused were recorded under Section 313 Cr.P.C. in which all the incriminating evidence was put to them to which they pleaded false implication and claimed innocence.

6. After hearing arguments of both the sides and perusing the evidence on record, the trial Court convicted and sentenced the petitioner as stated above.

7. Learned counsel appearing for the petitioner contends that the petitioner is not assailing the impugned judgment of conviction dated 19.12.2018 passed by the learned Judicial Magistrate 1st Class, Sirsa, which stood upheld by the learned Additional Sessions Judge, Sirsa on merits and restrict his prayer for modification of the order of sentence dated 20.12.2018 on quantum of sentence to that of the sentence already undergone by the petitioner, keeping in view the fact that the petitioner is suffering agony of protracted trial from 2013. It is also contended that petitioner has not been involved in any other criminal case during the course of trial or post conviction.

8. Per contra, learned State counsel opposes the prayer of the petitioner for modification of the order of sentence to that of already undergone on the ground that the learned trial Court has passed a well reasoned judgment based on correct appreciation of evidence available on record. However, he does not dispute the fact that no other case is pending against the petitioner. The custody certificate dated 18.12.2023

9. I have heard learned counsel for the parties and perused the record of the case with their able assistance. The FIR in question was lodged on the allegation that the petitioner cheated the complainant while selling a house and further assaulted the complainant and her husband, however, after the incident, till now, no new dispute has been arisen between the parties. It is submitted by the counsel for the petitioner that the FIR in question was registered in the year 2013 and the petitioner has been suffering the agony of trial from last about 10 years as the appeals are also continuation of trial, therefore, he prays that the order of sentence be modified to that of already undergone.

10. A two Judge Bench of the Hon'ble Supreme Court in State of **Rajasthan Vs. Dhool Singh (2004) 12 SCC 546** speaking through Justice N. Santosh Hegde, has held as under:-

“18. Before concluding, we must refer to a disturbing tendency noticed by us very often in some of the judgments impugned before this Court. As in this case in some appeals, we find the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. Therefore, there is a need for the courts to apply its mind while imposing sentence.”

A two Judge Bench of the Hon'ble Supreme Court in **Ajmer**

Singh Vs. State of Punjab (2005) 6 SCC 633 has observed as under:-

“10. We have noticed in several judgments of the High Courts which have come up for consideration before us that while reducing the sentence to the period already undergone, no notice is taken of the actual sentence undergone by the accused. There is nothing on record to indicate the period of sentence already undergone by the accused. We, therefore, consider it appropriate to observe that whenever a court reduces the sentence of an accused to the period already undergone, it should categorically notice and state the period actually undergone by the accused.”

11. 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."

12. 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. 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.

13. 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.

14. As per the custody certificate dated 18.12.2023 produced by the learned State counsel, the petitioner herein has actually undergone the period of 07 months and 21 days out of substantive sentence of 3 years.

15. A perusal of the judgment of conviction passed by the trial court and upheld in appeal by the 1st Appellate Court indicates no perversity in the findings of the trial court and the same are based on correct appreciation of evidence available on record.

16. The FIR in the present case was lodged on 31.10.2013 and the petitioner has suffered the agony of trial for about 10 years. After his conviction, he has grown into law abiding citizen with a desire to live a normal and peaceful life as no criminal case is pending against him. Out of substantive sentence of 3 years awarded to the petitioner, he has actually undergone a period of 07 months and 21 days. Since learned counsel for the petitioner has not assailed the judgment of conviction on merit and the petitioner-accused is living in harmony and peacefully as law abiding citizen, this Court is of the opinion that it would be in the interest of justice if substantive sentence of rigorous imprisonment for 3 years awarded to the petitioner is reduced to the period already undergone by him. Resultantly, the petitioner be released from the custody with immediate effect, if not involved/wanted in any other case.

17. In view of the aforesaid facts and circumstances, the judgment of conviction dated 19.12.2018 passed by the learned Judicial Magistrate 1st Class, Sirsa convicting the petitioner, which stood upheld by the 1st

20.12.2018 is modified and the substantive sentence of rigorous imprisonment for 3 years imposed upon petitioner is reduced to the period of sentence already undergone by him. However, the fine amounting to Rs. 10,000/- awarded by the trial Court shall remain intact and the petitioner is directed to deposit the fine within a period of one month before the trial Court, if not already paid. In case of any default in payment of fine, the petitioner shall undergo simple imprisonment for a period of 14 days.

18. Consequently, the instant revision petition is disposed of in above terms.

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

20. The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

(HARPREET SINGH BRAR)
JUDGE

19.12.2023
Ajay Goswami

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