

220-2

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-913-SB-2015

Date of decision: 13.02.2024

Ram Mehar

....Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Surender Dhull, Advocate
for the appellant.

Mr. Gagandeep Singh Chinna, AAG Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal has been preferred against the judgment of conviction dated 28.11.2013 and order of sentence dated 04.12.2013 passed by learned Additional Sessions Judge, Kaithal in FIR No. 40 dated 15.06.2011 filed under Sections 392, 397 of the IPC and Section 25 of the Arms Act, 1959 registered at Police Station Dhand. The appellant was sentenced as under:-

Offence	Sentence
Section 392 of the IPC	Rigorous imprisonment of 7 years and a fine of Rs. 2000/-, in default of which simple imprisonment of 2 months

FACTUAL BACKGROUND

2. The facts, in brief, are that on 15.06.2011, the complainant-Naresh Kumar was present at the taxi stand along with Anil Kumar when two clean shaven persons approached him to hire his car to go near Dhand as they had to transport a sick person from the Civil Hospital, Ambala City. The complainant informed Anil Kumar, who is the registered owner of the car and headed to

Civil Hospital, Ambala City from where they picked up the sick person. The complainant was requested by the passengers to drive to village Sakra. On the way to Sakra, a person sitting in the rear seat pointed a pistol to the neck of the complainant. They threatened him to alight from the vehicle and snatched his mobile phone, purse, two ATM cards along with cash worth Rs. 700/-. Thereafter, all three accused fled away from the spot along with the car make Indica bearing registration no. HR-01-Z-1110.

3. On finding a *prima facie* case, charges under Sections 392/397/411 of IPC and 25 Arms Act were framed against the accused to which they pleaded not guilty and claimed trial. The prosecution examined 12 witnesses to prove its case. All the incriminating evidence was put to the accused in their statement recorded under Section 313 of the Cr.P.C. wherein they pleaded false implication and claimed innocence, however, did not lead any evidence in their defence.

4. On assessing all material available on record, the petitioner was convicted by the learned trial Court vide judgment dated 28.11.2013. The sentence of the petitioner was suspended by this Court during the pendency of the present petition vide order dated 11.05.2015.

CONTENTIONS

5. Learned counsel for the appellant contends that he is not assailing the impugned judgment of conviction dated 28.11.2013 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioner as has already undergone a period of 1 year 11 months 26 days of custody and is not involved in any other criminal activity.

6. 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 and as such, he does not deserve any leniency.

OBSERVATIONS AND ANALYSIS

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

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 of the Hon'ble Supreme Court 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.

9. 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	16.06.2011 to 07.12.2011 23.07.2013 to 27.07.2013 28.11.2013 to 03.12.2013	6 months 3 days
2.	Custody after conviction	04.12.2013 to 26.05.2015	1 year 5 months 23 days
3.	Interim bail	-	-
4.	Actual custody period after conviction		1 year 5 months 23 days
5.	Actual undergone period		1 year 11 months 26 days
6.	Earned remission		1 month 18 days
7.	Total sentence including remission		2 years 1 month 14 days

10. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in their finding and the same is based on correct appreciation of evidence available on record. Learned counsel for the appellant has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

11. The FIR in the present case was lodged on 15.06.2011 and the petitioner has been suffering the agony of protracted trial since the last about 13 years. Since his conviction, the appellant has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate, he is not involved in any other case and out of the total sentence of 7 years, he has undergone actual sentence of 1 year 11 months 26 days. Accordingly, this Court

is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 7 years awarded to the appellant is reduced to the period already undergone by him.

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

(i) The judgment of conviction dated 28.11.2013 passed by learned Additional Sessions Judge, Kaithal is upheld, however, the order of sentence dated 04.12.2013 is modified to the extent that the sentence of rigorous imprisonment for 7 years along with default mechanism 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.2000/- imposed upon the petitioner by the trial Court is increased to Rs.10,000/-. The petitioner is directed to deposit the increased 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 petitioner shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

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

(HARPREET SINGH BRAR)
JUDGE

13.02.2024
Neha

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