

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1150-2011 (O&M)
Date of decision: 25.07.2024

JAMSHED AND OTHERS

...PETITIONER

V/S

FARMINA AND ANOTHER

...RESPONDENTS

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Y.P. Singh, Advocate
for the petitioners.

Ms. Vikas Bhardwaj, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (ORAL)

1. Present revision petition has been preferred against the judgment dated 10.05.2011 passed by learned Additional Sessions Judge, Nuh upholding the judgment of conviction and order of quantum of sentence dated 23.07.2009/28.07.2009 passed by learned Judicial Magistrate Ist Class, Nuh in complaint case No. 70 dated 03.03.2001 registered at Police Station Tauru, Mewat, vide which the petitioner was sentenced as under:

Sr No.	Name of petitioners	Conviction under Sections	Sentence awarded	Fine imposed
1.	Jamshed	498-A of Indian Penal Code	Rigorous imprisonment for two years	Rs. 500/- and in default of payment of fine, further awarded rigorous imprisonment for 15 days.
		323 of IPC	Rigorous imprisonment for three months	Rs. 200/- and in default of payment of fine, further awarded rigorous imprisonment for 07 days.
		506 of IPC	Rigorous imprisonment for three months	--



2.	Subhani	498-A of Indian Penal Code	Rigorous imprisonment for two years	Rs. 500/- and in default of payment of fine, further awarded rigorous imprisonment for 15 days.
		323 IPC	Rigorous imprisonment for three months	Rs. 200/- and in default of payment of fine, further awarded rigorous imprisonment for 07 days.
		506 IPC	Rigorous imprisonment for three months	--
3.	Fajru	498-A of Indian Penal Code	Rigorous imprisonment for two years	Rs. 500/- and in default of payment of fine, further awarded rigorous imprisonment for 15 days.
		323 IPC	Rigorous imprisonment for three months	Rs. 200/- and in default of payment of fine, further awarded rigorous imprisonment for 07 days.
		506 IPC	Rigorous imprisonment for three months	--

2. Briefly stated, the facts of the case of the complainant are that the complainant was married petitioner No.1 on 30.05.1999 as per Muslim rites and ceremonies at village Chharoda. No child was born from the said wedlock. As result of non birth of child, petitioners No.1 and 2 used to make taunt upon the complainant and petitioner No.1 at the instance of petitioner No. 3, forced the complaint to fetch more money in the Challa (Gauna). The complainant did not disclose the said fact to her parents. Later on, in the month of Ramjan, the complainant was sent to her parental house with a threat to come back with cash of Rs.50,000/-. Father of the complainant visited the house of petitioners but petitioner No. 3 insulted the father of complainant and they were ready to



keep the complainant subject to payment of Rs.50,000/- within three months. The petitioners also tortured the complainant during the said period and also raised the demand of motor cycle and aforesaid amount of Rs.50,000/-. The complainant showed her inability. On this, petitioner no.1 dragged the complainant and petitioner no. 2 tied her hands, petitioner no.1 clutches her legs and petitioner No. 3 raised alarm to lit match to the complainant. Petitioner no.1 poured kerosene oil upon on the complainant. The complainant raised alarm on this petitioners left the complainant. Accused persons threatened to kill the complainant if their demand was not fulfilled. The petitioners misappropriated the dowry articles given in the marriage. The matter was reported to the police but no action was taken. On these allegations, complaint mentioned above was filed.

3. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 10.05.2011 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioners as they have already undergone a period of 04 months and 26 days respectively, and are not involved in any other criminal activity.

4. Per contra, learned State counsel opposes the prayer of the petitioners on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record which has also been partly upheld by the learned lower Appellant Court and as such, he does not deserve any leniency.



5. I have heard learned counsel for the parties and perused the record with his able assistance.

6. 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.

7. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. Moreover, 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.

8. The complaint in the present case was filed on 03.03.2001 and the petitioners have been suffering the agony of trial since the last 23 years. Since their conviction, the petitioners have grown into law-abiding citizens and desire to live peaceful lives. As per their custody certificate, they are not involved in any other case and have undergone actual sentence of 04 months and 26 days out of substantive sentence of 02 years in the instant case.

9. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the petitioners is reduced to the period already undergone by them.

10. Consequently, the present petition is disposed of in the following terms:-

(i) The judgment dated 10.05.2011 passed by the learned Additional Sessions Judge, Nuh upholding the judgment of conviction is upheld, however, the order of sentence dated 28.07.2009 is modified to the extent that the substantive sentence of simple imprisonment for 02 years along with default mechanism awarded to the petitioners is reduced to the period of sentence already undergone by them.

(ii) Fine of Rs. 700/- each imposed upon the petitioners is enhanced to Rs. 10,000/- each. The petitioners are 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 simple imprisonment for one month.

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

July 25, 2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No