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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-136-2011

Date of decision: 20.01.2024

Banto

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Gahlawat with
Mr. Rajesh Kashyap, Advocates for
Mr. K.S Chahal, Advocate
for the petitioner

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This instant revision petition has been preferred against the judgment dated 05.01.2011 passed by learned Sessions Judge, Faridkot upholding the judgment of conviction and order of sentence dated 03.12.2009 passed by learned Judicial Magistrate 1st Class, Faridkot in FIR No.66 dated 06.09.2006 under Section 382 of the IPC. The petitioner was sentenced as under:-

Petitioner	Under Section	Sentence
Banto	382 IPC	RI of 2 years with a fine of Rs.1000/- in default of which RI for 15 days

FACTUAL BACKGROUND

2. Briefly, the facts are that the petitioner along with another co-accused/co-convict (deceased) were apprehended by the people when they snatched the gold ear-rings of the complainant Kartar Kaur when she was

boarding a bus, where one of them snatched the ear-rings while the other caught hold of the arms of the complainant. Upon search by the police, one gold ear-ring was recovered from the present petitioner. The petitioner was arrested vide a separate search memo. Accordingly, the aforesaid FIR came to be registered against the petitioner.

3. The learned trial Court upon finding a prima-facie case, framed charge under Section 382 IPC against the petitioner, to which she pleaded not guilty and claimed trial. It is worthwhile to mention here that consequent upon the death of co-accused Gulabo, proceedings against her stood abated. The prosecution examined as many as 3 witnesses to establish its case. The statement of the accused under Section 313 of the Cr.P.C. was recorded wherein she denied all the incriminating evidence put to her and pleaded false implication due to altercation with the police. However, the petitioner-accused did not lead any evidence in her defense and closed the same.

4. On assessing the material available on record, the learned trial Court vide judgment dated 03.12.2009 convicted and sentenced the petitioner as mentioned above. Aggrieved by the judgment of conviction, the petitioner preferred an appeal before the learned lower Appellate Court which was dismissed vide judgment dated 05.01.2011.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 03.12.2009 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 who has already undergone a period of about 5 months of custody. He further submits that the sentence of the petitioner was suspended by this Court vide order dated 17.05.2011. Learned

counsel further submits that the petitioner has reformed and intends to live her life as a law-abiding citizen.

6. *Per contra*, learned State counsel opposes the prayer of the petitioners as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned lower appellate Court, as such, she does not deserve any leniency. It is further submitted that she has been involved in multiple FIRs since her sentence was suspended by this Court in the present case.

ANALYSIS AND OBSERVATIONS

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. 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.

9. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner is tabulated as under:-

Petitioner- Banto:

Sr No.	Particulars	Period	Duration
1.	Custody under trial	07.09.2006 to 09.09.2006	2 days
2.	Custody after conviction	05.01.2011 to 24.05.2011	139 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	-	139 days
5.	Actual undergone period	-	141 days
6.	Earned remission	-	12 days
7.	Total sentence including remission		153 days

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

CONCLUSION

11. The FIR in the present case was instituted on 06.09.2006. Petitioner has been facing protracted proceedings for about 17 years. As per her custody certificate, there are 14 other criminal cases pending against the petitioner but she has been granted the concession of bail in all of them. Out of the total sentence awarded of 2 years, she has already undergone about 5 months of custody. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 2 years awarded to the petitioner is reduced to the period already undergone by her.

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

(i)The judgment dated 05.01.2011 passed by the Additional Sessions Judge, Faridkot confirming the conviction of the petitioner is upheld, however, the order of sentence dated 03.12.2009 is modified to the extent that the sentence of rigorous imprisonment for 2 years along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by her.

(ii)The sentence of fine of an amount of Rs.1000/- imposed upon the petitioner by the learned trial Court is increased to Rs.10,000/-. The petitioner is 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 petitioner shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

13. In view of the above discussion, the present petition is partially allowed. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

20.01.2024
Neha

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