



police officials ASI Sukhwinder and Head Constable from City Police Station Kapurthala came to the house of the complainant. Then petitioners started mandhandling with the complainant and his wife and daughter. Petitioner-Ajay Gupta also touched the private parts of his wife and torn her clothes, as such outraged her modesty. Petitioner-Anil Gupta also touched the private parts of his daughter and as such, outraged her modesty. The complainant was pushed aside by both the petitioners. Petitioner-Anil Gupta also torn the '*dupatta*' of his daughter. The aforesaid police officials also tried to forcibly take away the complainant, his wife and his daughter to Police Station City Kapurthala without showing any complaint or warrants of arrest. The petitioners while leaving the spot, gave threats to the complainant that they would cause loss to their life and property. The complainant reported the matter to the police of Police Station Basti Bewa Khel, but no action was taken against them. Thereafter, he moved the application and the FIR (supra) was registered against the accused/petitioners.

4. The petitioners were convicted vide judgment dated 02.02.2009 by the learned trial Court, which has also been upheld by lower Appellate Court vide judgment dated 04.07.2011.

5. Learned counsel for the petitioners contends that he is not assailing the impugned judgment of conviction dated 02.02.2009 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioners. Both of them have undergone a total period of 01 month and 14 days and both of them are not involved in any other case.

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 also been upheld by the learned lower Appellate Court and as such, they do not deserve any leniency.

7. I have heard learned counsel for the parties and perused the record 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. 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 petitioners has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua modification of quantum of sentence.

10. The FIR in the present case was lodged on 02.07.2003 and the petitioners have been suffering the agony of protracted trial for last more than 21 years. At the time of the conviction of the petitioners, the maximum sentence under Section 354 IPC was up to 02 years and the amendment was carried out in the year 2013. As such, there is no embargo on the modification of sentence of the petitioners. Since their conviction, the petitioners have grown into law-abiding citizens and desire to live a peaceful life. As per their custody certificate, they are not involved in any other case and have undergone total sentence of 01 month and 14 days, in the instant case.

11. 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.

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

(i) The judgment dated 04.07.2011 passed by the learned Additional Sessions Judge, Jalandhar, affirming the judgment of conviction is upheld, however, the order of sentence dated 02.02.2009 is modified to the extent that the sentence of rigorous imprisonment for 01 year along with default mechanism awarded to the petitioners is reduced to the period of sentence already undergone by them subject to the fine of an amount of Rs.10,000/-



each upon both the petitioners.

(ii) 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 rigorous imprisonment for one month.

November 11, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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