

2024:PHHC:022929

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

CRR-798-2011 (O&M)

Date of Decision : February 16, 2024

Prem Singh

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. R.S.Mamli, Advocate,
for the petitioner.

Mr. Abhinash Jain, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

1. The instant revision has been directed against the verdict of conviction dated 14.03.2009, and the consequent thereto, order of sentence dated 16.03.2009, whereby, the learned Judicial Magistrate 1st Class, Fatehabad, has convicted the petitioner in FIR No. 536, dated 05.09.2002 for commission of offences punishable under Sections 323, 324, 326, 34 of the IPC, registered at Police Station Sadar Fatehabad, District Fatehabad.

2. In addition, the instant revision petition, as preferred by the present petitioner has also been directed against the judgment dated 10.03.2011, passed by the learned Additional Sessions Judge, Fatehabad, whereby, the judgment of conviction and the order of sentence (*supra*) was accepted with certain modifications.

3. The brief allegations as culled out from the judgment passed by the learned trial Court concerned reads as under:-

“2. Briefly stated the case of the prosecution is that on 5.9.2002 one Gurjit Singh son of Pala Singh made statement to the police that Darbara Singh started abusing in front of their house under the influence of liquor. Their mother informed them about this. He alongwith his father Pala Singh and his uncle Gurdutt came to their house and after enquiry from the children, they informed the police on telephone and were going in the street near the Mosque, in the meantime, Darbara Singh alongwith a kirpan/datar, Prem Singh with a dang, their father Piara Singh and Boor Singh having dang in their hands came there. Darbara Singh gave a kirpan blow to the complainant, which fell on his hand. His father tried to rescue him but Prem Singh gave a dang blow to him which fell on his right hand. Thereafter, Piara Singh gave a dang blow to his uncle and Boor Singh also gave a dang blow to him. Thereafter, scuttling took place between all of them. Darbara Singh must have suffered some injuries by falling on the ground as he was drunk. On hearing their noises, the neighbours came there and thereafter, the accused ran away from the spot. The injured were taken to the hospital. On the basis of this statement, formal FIR was registered. Investigation was set in motion. Accused were arrested. After completion of all the usual acts of investigation, challan was presented before the court for commencement of trial.”

4. The present petitioner alongwith other accused persons, were charged under Sections 323, 324, 326 and 34 of the IPC, to which they pleaded not guilty and claimed trial.

5. The prosecution in order to substantiate the allegations against accused persons, examined a total of 9 witnesses. The accused persons in defence did not examine any of the witness to support their case.

6. During the pendency of the trial, accused-Piara Singh and Darbara Singh, passed away, and proceedings *qua* them were ordered to be dropped, by the learned JMIC, Fatehabad, vide orders dated 13.09.2005 and 11.10.2008 respectively.

7. The learned trial Court concerned, after examining the entire

evidence available on record, found present petitioner-Prem Singh and one Boor Singh, guilty for the commission of offence punishable under Sections 323, 324 and 326 IPC, vide judgment dated 14.03.2009 and sentenced vide order dated 16.03.2009, and the sentence, as imposed upon them, is extracted below:-

Sr. No.	Name of the convict	the Offence under Section	Sentence
1	Boor Singh son of Thakar Singh	323 IPC	To undergo SI for six months and to pay a fine of Rs.200/-. In default of payment of fine, he shall further to undergo SI for 15 days.
		324 IPC	To undergo SI for one year and to pay a fine of Rs.300/-. In default of payment of fine, he shall further to undergo SI for one month.
		326 IPC	To undergo SI for 3 years and to pay a fine of Rs.500/-. In default of payment of fine, he shall further to undergo SI for one month.
2	Prem Singh son of Piara Singh	323 IPC	To undergo SI for six months and to pay a fine of Rs.200/-. In default of payment of fine, he shall further to undergo SI for 15 days.
		324 IPC	To undergo SI for one year and to pay a fine of Rs.300/-. In default of payment of fine, he shall further to undergo SI for one month.
		326 IPC	To undergo SI for 3 years and to pay a fine of Rs.500/-. In default of payment of fine, he shall further to undergo SI for one month.

8. Aggrieved against the judgment of conviction and order of sentence (supra), convicts Boor Singh and Prem Singh (present petitioner), filed the statutory appeal before the learned Additional Sessions Judge, Fatehabad, however, during the pendency of the appeal convict-Boora Singh also passed away, and present petitioner-Prem Singh, being the sole appellant contested the first appeal.

9. In the said appeal, the sentence imposed upon the present

petitioner-Prem Singh, by the learned trial Court concerned, was modified by the learned Additional Sessions Judge concerned, which reads as under:-

“16. I have duly considered this aspect of submissions made on behalf of appellant-accused. While holding the appellant-accused and another guilty for the commission of offence punishable under Section 323, 324, 326 of IPC, they were convicted for various terms of imprisonment besides directing them to pay a fine. The appellant-accused has already suffered a lot. His co-accused Darbara Singh (since deceased) gave a sword blow to Gurjit Singh complainant. The appellant-accused was convicted for the commission of offence punishable under Section 326 IPC with the aid of Section 34 of IPC. So, keeping in view all these things, a lenient view is taken and the substantive sentence awarded to appellant-accused is reduced from simple imprisonment for three years to simple imprisonment for a period of one year for committing an offence punishable under Section 326 read with Section 34 of IPC with no other modification.”

10. Now the present petitioner-Prem Singh, has preferred the instant revision petition, against the judgment of conviction and order of sentence passed by both the Courts below.

11. Today, learned counsel for the petitioner submits that he is not addressing the arguments on merits, however, he submits that considering the age of the present petitioner, as well as considering the fact that petitioner has already settled in the society, and has faced sufficient agony of the trial, a lenient view may be taken for the petitioner, by reducing his sentence to already undergone.

12. On the other hand, the learned State counsel, while opposing the submissions as made by the learned counsel for the petitioner, submits that the learned Courts below, have adequately sentenced the petitioner. However, he is not disputing the factual submissions, as made by the learned counsel for the petitioner.

13. Learned State counsel, has placed on record the custody

certificate *qua* the present petitioner, which is taken on record. Upon perusal of the custody certificate, it reveals that the petitioner has suffered incarceration of about 4 months 16 days (including remission) as on today, out of total sentence of 01 year simple imprisonment as awarded to the present petitioner. It further makes revelation that the petitioner is not involved in any other criminal case.

14. This Court has examined the entire record with the able assistance of the both the counsels for the parties.

15. Considering the aspect that the petitioner-Prem Singh has already undergone incarceration of 04 months and 16 days (including remission) out of total sentence of 01 year awarded to him by the learned First Appellate Court concerned, and he is neither involved in any other case, nor he has in any manner misused the concession of suspension of sentence, as awarded to him by this Court. The petitioner-Prem Singh was released on bail way back in the year 2011. It seems that the petitioner has mended his ways, and is now settled in the mainstream of the society. Therefore, it is not either in the interest of the society or the petitioner by sending him again back to the prison. This Court finds support from the judgment of the Supreme Court in **Sk. Sakkar @ Mannan vs. State of West Bengal, 2021(4) SCC 483** wherein, the Supreme Court after considering the mitigating circumstances reduced the sentence to the period already undergone. The relevant observations reads as under:

“11. It is manifest from [Section 20\(i\)](#) of NDPS Act (as it stood in 1997), that even though a maximum sentence of five years RI and a fine of upto Rs.50,000/-

was prescribed but there was no minimum mandatory sentence. The Legislature had in its wisdom left it to the judicious discretion of a court to award the minimum sentence albeit guided by the well known principles on the proportionality of sentence. Taking into consideration the peculiar facts and circumstances of this case, it appears to us that the ends of justice would be adequately met if the appellant's sentence is reduced to the extent of the period he has already undergone. We order accordingly."

16. Learned counsel for the petitioner placed reliance upon the judgment of **Issak Nabab Shah vs. The State of Maharashtra (Crl. Appeal No.828 of 2020)** wherein, the Supreme Court reduced the sentence from 10 to 6 years in case of commercial quantity under the the Narcotic Drugs and Psychotropic Substances Act, 1985 and observed as under:-

"5. Having heard the learned Advocates appearing for the respective parties and in the facts and circumstances of the case, more particularly when the quantity/Ganja recovered from the appellant was 6.300 kilogram, which is between small quantity and commercial quantity and considering the fact that the maximum punishment for such offence is 10 years rigorous imprisonment, out of which the appellant has already undergone six years rigorous imprisonment, we allow the present appeal in part and modify the impugned judgment and order passed by the learned trial Court, confirmed by the High Court, to the extent of imposing the sentence of six years rigorous imprisonment in place of ten years rigorous

imprisonment as imposed by the learned trial Court and confirmed by the High Court. Rest of the judgment and order passed by the learned trial Court, confirmed by the High Court, is hereby confirmed.”

17. Considering the age of the petitioner, aggravating and mitigating circumstances, while maintaining balance between deterrence against crime *viz-a-viz*, re-formative approach of punishment, this Court deems it appropriate to reduce the period of sentence of the petitioner to the period already undergone by him.

18. In view of the above, the judgment of conviction (*supra*) of present petitioner passed by the learned Additional Sessions Judge, Fatehabad, is maintained. However, order of sentence is modified to an extent by reducing his sentence to the period already undergone, i.e. 04 months and 16 days as on today. The sentence of fine is ordered to remain intact.

All pending application(s), if any, also stands disposed of.

February, 16, 2024

dharamvir

(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No