

CRR-2402-2012

Date of Decision: 09.02.2024

Babu Ram and others

Versus

State of Haryana

.....Petitioners

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gopal Sharma, Advocate
for the petitioners.

Mr. Vikas Bharadwaj, AAG, Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 08.08.2012 passed by learned Additional Sessions Judge, Yamunanagar at Jagadhri whereby the appeal against judgment of conviction dated 27.10.2010 passed by learned Judicial Magistrate Ist Class, Yamunangar at Jagadhri in FIR No. 238 dated 29.10.2004 under Sections 420, 467, 468, 471 of the IPC registered at Police Station Chhapar, was partly allowed and the petitioners were additionally convicted for commission of offence under Section 471 read with Section 34 of the IPC. Each of the petitioners were sentenced as under:-

Offence	Sentence
Section 471 read with Section 34 of the IPC	Rigorous imprisonment of 3 years and a fine of Rs. 2000/-, in default of which rigorous imprisonment of 3 months
Section 467 read with Section 34 of the IPC	Rigorous imprisonment of 3 years
Section 468 read with Section 34 of the IPC	Rigorous imprisonment of 1 year and a fine of Rs. 2000/-, in default of which rigorous imprisonment of 3 months

FACTUAL BACKGROUND

2. The facts, in brief, are that on 17.09.2004, the complainant-Rajiv Kumar contacted halqa Patwari who informed him that the petitioners-accused had mortgaged 24 kanals of his agricultural land bearing khasra no. 11//8/1, 19//11, 19//12 and 19//13 in village Khera Khurd with State Bank of Patiala to avail a loan of Rs. 1, 98,000/-. He obtained a certified copy of the mortgage deed and found out that petitioner no. 1-Babu Ram had presented himself as the applicant to avail the said loan. On finding a prima facie case, charges under Sections 420, 467, 468, 471 of Indian Penal Code were framed against the accused, to which they pleaded not guilty and claimed trial.

3. The prosecution examined as many as 10 witnesses to establish its case. The respective statements of the accused under Section 313 of the Cr.P.C. were recorded wherein they denied all the incriminating evidence put to them and claimed false implication but did not examine any witnesses in their defence.

4. On assessing the material available on record, the learned trial Court vide judgment and dated 29.10.2004 convicted and sentenced the petitioners-accused under Sections 467, 468 read with 34 of the IPC. Aggrieved by the judgment of conviction, the petitioners-accused preferred an appeal before the learned lower Appellate Court which was partly allowed vide judgment dated 08.08.2012 and the petitioners-accused were also found guilty for committing an offence under Section 471 read with 34 of the IPC.

CONTENTIONS

5. Learned counsel for the petitioners submits that petitioner no. 1 died on 23.08.2021 and that he is not assailing the impugned judgments dated

08.08.2012 and 27.10.2010 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by petitioners as Jarnail Singh and Ranjit Singh have already undergone a period of 1 months 1 day of custody. He further submits that Jarnail Singh is 72 years of age while Ranjit Singh is 52 years of age, both of them have reformed and intend to live their life as law-abiding citizens.

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 and as such, they do 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. 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 are tabulated as under:-

(i) **Jarnail Singh**

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	-
2.	Custody after conviction	08.08.2010-08.09.2012	1 month 1 day
3.	Parole availed	-	-
4.	Actual custody period after conviction	08.08.2010-08.09.2012	1 month 1 day
5.	Actual undergone period	08.08.2010-08.09.2012	1 month 1 day
6.	Earned remission	-	-
7.	Total sentence including remission	08.08.2010-08.09.2012	1 month 1 day

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6.	Earned remission	-	-
7.	Total sentence including remission	08.08.2010-08.09.2012	1 month 1 day

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 petitioners has not assailed the judgments of conviction on merits, rather he has restricted his prayer to quantum of sentence qua petitioners no. 2 and 3.

CONCLUSION

11. The FIR in the present case was lodged on 29.10.2004. The petitioners have been facing agony of protracted proceedings for about 20 years and since their conviction, the petitioners have grown into a law-abiding citizens and desire to live a peaceful life. As per their custody certificate, out of the total sentence awarded of 3 years, Jarnail Singh and Ranjit Singh have already undergone a period of 1 months 1 day of actual custody. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the

sentence of rigorous imprisonment of 3 years awarded to petitioners no. 2 and 3 is reduced to the period already undergone by them.

12. Consequently, judgment dated 08.08.2012 passed by learned Additional Sessions Judge, Yamunanagar at Jagadhri, confirming the conviction of the petitioners is upheld, however, the order of sentence is modified to the extent that that the sentence of rigorous imprisonment for 3 years awarded to petitioners no. 2 and 3 is reduced to the period of sentence already undergone by them.

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

- i Proceedings abated against petitioner No. 1-Babu Ram being expired on 23.08.2021.
- ii The judgment dated 08.08.2012 passed by the learned Additional Sessions Judge, Yamunanagar at Jagadhri confirming the conviction of the petitioners is upheld, however, the order of sentence dated 08.08.2012 is modified to the extent that the sentence of rigorous imprisonment for 3 years along with default mechanism awarded to the petitioners no. 2 and 3 is reduced to the period of sentence already undergone by them.
- iii The sentence of fine of a lump sum amount of Rs. 4000/- imposed upon petitioner no. 2 and 3 is increased to Rs.10,000/- each. The petitioners are 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

petitioners 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.

09.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No