

CRR-3120-2012

2024:PHHC:014706

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-3120-2012

Date of Decision : February 02, 2024

FAUJA SINGH AND OTHERS

.....Petitioners

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

**Present : Mr. C.S.Singh, Advocate
for petitioner No.1.**

**Mr. Jitender Dhanda, Advocate
for petitioners No.2 and 3.**

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI. J.

1. The instant revision has been directed against the verdict of conviction dated 21.4.2009 and the consequent thereto order of sentence dated 22.4.2009, whereby, the learned Judicial Magistrate 1st Class, Fatehabad has convicted the petitioners in FIR No. 550 dated 18.10.1997 for commission of offences punishable under Sections 205/419/420/465/467/468/471 read with Section 120-B IPC and the sentence, as imposed upon the petitioners, is extracted below:-

Sr. No.	Name of the convict	Offence under Section	Sentence
1	Des Raj son of Kirpal Chand	205 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.
		465 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.
		466 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.
		467 IPC	To undergo SI for three 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	Jaggo Bai wife of Kirpal Singh	205 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.
		465 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.
		466 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.
		467 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.
3	Fauja Singh son of Maan Singh	205 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.

465 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.
466 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.
467 IPC	To undergo SI for three years and to pay a fine of Rs.500. In default of payment of fine, he shall further to undergo SI for one month.

All the sentences were ordered to run concurrently.

2. In addition, the instant revision petition has also been directed against the judgment dated 13.7.2012 passed by the learned Additional Sessions Judge, Fatehabad, whereby, the judgment of conviction and the order of sentence (supra) were upheld and the appeal filed by the petitioners was dismissed.

3. Brief facts of the prosecution case, as emerged from the FIR read as under:

“On 22.12.1995 Beera Bai widow of Amir Chand the complainant filed a written complaint before the learned Sub Divisional Judicial Magistrate, Fatehabad alleging that her husband Amir Chand solemnized second marriage with Rani Bai, Des Raj is the grand son of Rani Bai. After the death of Amir Chand, she inherited the land measuring 23 kanals 1 Marla. However, the accused filed a civil suit No.371 of 1993 titled as Des Raj Versus Beera Bai in order to commit fraud with the complainant and to get undue benefit. Accused Des Raj impersonated the complainant and got civil court judgment and decree

dated 22.5.1993 which is based on fraud. On the basis of the aforesaid civil court judgment and decree, mutation No. 485 dated 2.9.1994 was sanctioned without giving notice to the complainant Des Raj sold this land to Nayab Singh, Jagdeep Singh, Jaspal Singh and Baldev Singh. The complainant never appeared in the court in the case titled Des Raj Vs. Beera Bai. She never appointed Sh. S.K. Batra, Advocate as her counsel. All these proceedings took place in her absence. Since a fraud has been committed with her, she prayed to take appropriate action against the culprits. On the basis of information, formal FIR Ex.PW11/A was registered. The investigation commenced. Accused Jaggo Bai impersonated the complainant and accused Fauja Singh identified Jaggo Bai as Beera Bai. Thumb impressions/signatures of complainant and accused taken and got compared. The accused were arrested. Statements of the witnesses under Section 161 Cr.P.C. were recorded. After usual investigations, the police found sufficient grounds to proceed against the accused and as such, a charge sheet was filed against them in the court of Ilaga Magistrate to face trial.”

4. The petitioners were charged under Sections 205/465/466/467/34 IPC, to which they pleaded not guilty and claimed trial.

5. The prosecution examined a total of fourteen witnesses, in order to prove its case.

6. The petitioners did not produce any evidence in defence but have tendered a copy of compromise (Ex.D1) and order dated 26.7.2002

(Ex.D2).

7. The learned trial Court, after examining the entire evidence available on the file and hearing the arguments of the parties convicted and sentenced the petitioners as mentioned here-in-above.

8. Aggrieved against the judgment of conviction and the order of sentence (supra), the petitioners preferred a statutory appeal before the learned First Appellate Court concerned. However, the same met the same fate and now the present petitioners have preferred the instant revision petition against the judgment of conviction and order of sentence passed by both the Courts below.

9. This Court has heard the learned counsel for the petitioners, who submitted that they don't wish to challenge the judgment of conviction pertaining to the petitioners, but they pray for the reduction of sentence, as awarded to the present petitioners to be reduced to the period already undergone by them. For this, they submitted that the present FIR, was registered way back on 18.10.1997. The petitioners have faced the agony of a protracted trial for about 12 years. They further stated that the petitioners are not involved in any other criminal case. They also submits that petitioner No.1 is more than 72 years of age, petitioner No.2 is more than 50 years of age and the petitioner No.3 is more than 80 years of age and they have suffered incarceration of about more than one year each. They further submits that the learned Courts concerned, have not considered the factum of compromise as well as the withdrawal of civil appeal by the complainant.

10. On the other hand, the learned State counsel opposes the submissions, as made by the learned counsel for the petitioners and submits that the learned Courts below, have adequately sentenced the petitioners. However, he is unable to dispute the factual submissions, as made by the learned counsel for the petitioners.

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

12. Considering the aspect that the petitioners have already undergone the substantial sentence awarded to them and they are neither involved in any other case nor they have in any manner misused the concession of suspension of sentence by this Court so far. The petitioners were released on bail way back in the year 2013. It seems that the petitioners have mended their ways and are now settled in the mainstream of the society. Therefore, it is not either in the interest of the society or the petitioners by sending them again 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."

13. Learned counsel for the petitioners 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.”

14. A perusal of the custody certificates placed on record by the learned State counsel, reveal that petitioner No.1-Fauja Singh has undergone an actual custody of 1 year, 1 month and 23 days, whereas, petitioner No.2-Des Raj has undergone an actual custody of 1 year, 1 month and 23 days and petitioner No.3-Jaggo Bai has undergone an actual custody of 1 year, 1 month and 23 days as on today.

15. Considering the age of the petitioners, 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 petitioners to the period already undergone by them.

16. In view of the above, the revision petition is partly allowed. The impugned judgment of conviction dated 21.4.2009 and order of sentence dated 22.4.2009 are upheld. However, the sentence imposed upon the petitioners is reduced to the period already undergone by them. The sentence of fine is ordered to remain intact.

February 02, 2024
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(KULDEEP TIWARI)
JUDGE

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