

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR-4083-2014

Date of Decision: 13.02.2024

Sukhwinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Hardik Ahluwalia, Advocate
with Mr. A.S. Manaise, Advocate for the petitioner.

Mr. H.S. Deol, Senior DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 04.10.2014 passed by learned Additional Sessions Judge, Fazilka vide which judgment of conviction dated 07.02.2013 passed by Chief Judicial Magistrate, Fazilka in FIR No. 96 dated 30.07.2007 under Section 326, 324 of the IPC registered at Police Station City Fazilka was upheld. The petitioner was sentenced as under:-

Offence	Sentence
Section 326 IPC	Rigorous imprisonment of 3 years and a fine of Rs. 1000/-, in default of which rigorous imprisonment of 30 days
Section 324 IPC	Rigorous imprisonment of 3 years and a fine of Rs. 1000/-, in default of which rigorous imprisonment of 30 days

FACTUAL BACKGROUND

2. The facts, in brief, are that on 29.07.2007 complainant Pawan Kumar was having a meal along with his friend Saral Kumar at a dhaba owned

by one Joginder when the petitioner, who was sitting on another table with 3-4 unknown persons, started abusing and using filthy language against uncle of the complainant-Ashok Gulvadhar, President, Vapar Mandal. The complainant told the petitioner to mind his language on which the petitioner gave a kapa blow which landed on the head of the complainant. Thereafter, the petitioner gave another kapa blow on the nose of the complainant while the other unknown persons gave kick blows to him. One of the unknown persons snatched the gold chain of the complainant, which he was wearing in his neck. The complainant raised hue and cry causing the owner and employees of the dhaba to come to the spot and rescue him.

3. The prosecution examined as many as 3 witnesses to prove its case. All incriminating evidence was put to the petitioner-accused in his statement recorded under Section 313 of the Cr.P.C., wherein, he pleaded false implication and claimed innocence and examined one witness in his defence.

4. On assessing all material available on record, the petitioner was convicted by the learned trial Court vide judgment dated 07.02.2013. Aggrieved by the same, the petitioner preferred an appeal before the lower Appellate Court, which was allowed vide judgment dated 04.10.2014 as the judgment of conviction was upheld.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 07.02.2013 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 as has already undergone a period of 3 months 17 days of actual custody. No other case is pending against him

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prior to the registration of the present complaint and he has not been involved in any other criminal case since his conviction.

6. Per contra, learned State counsel opposes the prayer of the petitioner 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, he does 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.

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

Sr No.	Particulars	Period	Duration
1.	Custody under trial	03.08.2007-11.09.2007	1 month 8 days
2.	Custody after conviction	04.10.2014 to 13.01.2015	3 months 9 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	04.10.2014 to 13.01.2015	3 months 9 days
5.	Actual undergone period		3 months 17 days
6.	Earned remission	-	8 days
7.	Total sentence including remission		3 months 25 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 only qua quantum of sentence.

CONCLUSION

11. The FIR in the present case was lodged on 03.07.2007 and the petitioner has suffered agony of protracted trial for 17 years. Since his conviction, the petitioner has grown into a law-abiding citizen and desires to

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live a peaceful life. He is not involved in any other criminal activity after his conviction in the present case and during the pendency of the present revision.

As per his custody certificate, there are no other criminal cases pending against him. Out of the total sentence of 3 years, he has undergone actual sentence of 3 months 17 days. 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 the petitioner is reduced to the period already undergone by him.

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

- (i) The judgment dated 04.10.2014 passed by the learned Additional Sessions Judge, Fazilka confirming the conviction of the petitioner is upheld, however, the order of sentence is modified to the extent that the sentence of rigorous imprisonment for 3 years along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him.
- (ii) The sentence of fine of an amount of Rs.1000/- imposed upon the petitioner by the trial Court is increased to Rs.20,000/-, which shall be payable to the complainant. The petitioner is 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 petitioner shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

February 13, 2024
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(HARPREET SINGH BRAR)
JUDGE

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