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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2313-2017 (O&M)

Date of decision: 09.08.2024

SHALU @ VISHAL

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Virender Kumar, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. Present revision petition has been preferred against the judgment dated 01.06.2017 passed by learned Additional District & Sessions Judge, Karnal upholding the judgment of conviction and order of quantum of sentence dated 01.03.2014/04.03.2014 passed by learned Judicial Magistrate Ist Class, Karnal in case FIR No. 458 dated 06.05.2010 registered under Sections 323, 354, 452 and 506 of Indian Penal Code at Police Station City Karnal, vide which the petitioner was sentenced as under:

Sr No.	Name of petitioner	Conviction under Sections	Sentence awarded	Fine imposed
1.	Shalu @ Vishal	323 of Indian Penal Code	Simple imprisonment for six months	Rs. 500/- and in default of payment of fine, further awarded simple imprisonment for one week.
		354 of Indian Penal Code	Simple imprisonment for two years	Rs. 500/- and in default of payment of fine, further awarded simple imprisonment for one week.
		452 of Indian Penal Code	Simple imprisonment	Rs. 500/- and in default of payment of fine, further awarded



		Code	for 03 years	simple imprisonment for one week.
		506 of Indian Penal Code	Simple imprisonment for one year	Rs. 500/- and in default of payment of fine, further awarded simple imprisonment for one week.

2. In nutshell, the facts of the case are that on 06.05.2010, ASI Shilak Ram, HC Anoop Singh & Constable Pardeep were present at Banso Gate, Karnal for performing patrolling duty. The complainant Neetu accompanied by her husband Mukesh Kumar met them and moved an application to the effect that she was resident of Ward no.19, Bhat Colony, Shiv Puri Road, Karnal. At about 6:00 p.m., she was alone at her home. The accused Shalu (petitioner herein) entered into her house with an intent to outrage her modesty. Upon this, she stopped the petitioner from doing any obscene act and asked him to leave her house but he was not ready to leave the house. The petitioner threatened to kill her and thereafter torn the clothes of the complainant. Left with no other option, the complainant raised an alarm, in the mean time, her husband had reached home. He came to the rescue of the complainant but the petitioner also gave several slaps & fist blows to him. On hearing the alarm, many neighbours gathered at the spot and the petitioner was apprehended. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 01.03.2014 on merits and restricts his prayer to modification of the order of quantum of sentence to that of sentence already undergone by the petitioner as he has already undergone a period of 09 months and 24 days.

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4. Per contra, learned State counsel opposes the prayer of the petitioner on the ground that 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 Appellant Court and as such, he does not deserve any leniency. Moreover, the petitioner is also involved in number of other cases.

5. I have heard learned counsel for the parties and perused the record with his able assistance.

6. 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

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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.

7. 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 petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

8. The FIR in the present case was filed on 06.05.2010 and the petitioner has been suffering the agony of trial since the last 14 years. The amendment in Section 354 of IPC was carried out in the year 2013, in which minimum sentence has been prescribed. As such there is embargo to modification of the sentence by reducing the same to the sentence already undergone by the petitioner. As per the custody certificate, the petitioner has undergone actual sentence of 09 months and 24 days out of substantive sentence of 03 year in the instant case.

9. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the petitioner is reduced to the period already undergone by him.

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

- (i) The judgment dated 01.06.2017 passed by the learned Additional District and Sessions Judge, Karnal upholding the judgment of conviction is upheld, however, the order of sentence dated 04.03.2014 is modified to the extent that the total sentence of simple imprisonment

for 03 years along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him.

(ii) Fine of Rs. 2000/- imposed upon the petitioner is enhanced to Rs. 10,000/-. The petitioner is 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 petitioner shall be liable to be taken into custody and made to undergo simple imprisonment for one month.

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

August 09, 2024

Ajay Goswami

(i) Whether speaking/reasoned

(ii) Whether reportable

(HARPREET SINGH BRAR)

JUDGE

Yes/No

Yes/No