

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

**Reserved on 12th of October, 2023
Pronounced on 5th of January, 2024**

CRR No.1304 of 2021 (O&M)

Rajesh Jain

.....Petitioner

versus

Sandeep Mehra @ Bunty

.....Respondent

CORAM : HON'BLE MR JUSTICE PANKAJ JAIN

Present : Petitioner in person.

Mr. Dharam Bir Bhargav, Advocate and
Mr. Kulwinder Bhargav, Advocate for the respondent.

PANKAJ JAIN, J.

Complainant is in revision impugning judgment dated 9th of August, 2021 passed by Additional Sessions Judge, Jind whereby though the finding w.r.t. the conviction has been upheld however sentence awarded to the respondent/accused has been reduced to three months.

2. Petitioner has referred to the operative part of the judgment contained in Para 9 which reads as under :

“9. At the time of arguments, the respondent/complainant has pointed out the cross-examination of the accused also to prove the pre-existing legal enforceable liability and non-payment of the amount by the appellant/accused. In this regard, it is observed that as per Section 315(1)(a) the accused can be

examined as a defence witness on his own written request only with permission of court and not otherwise. In the present case, there is no written request available on the record and no such request is mentioned in the zimni order. It appears that the appellant/accused suffered a statement to close the evidence after tendering documents Ex.D1 to Ex.D6 because the statement of appellant/accused and his counsel has been jointly recorded and both of them have signed the same. Thereafter, it appears that suddenly crossexamination started on the asking of the respondent/complainant by writing recalled for the cross-examination. No oath has been administered to the witness/accused and the evidence is not recorded on S.A. In such circumstances, illegality has been committed and it becomes questionable that whether this statement can be read into the evidence or not. However, the respondent/complainant has succeeded in proving his case from the other evidence. Therefore, there is no need to go in detail in question whether this evidence can be read in the evidence or not as the case is established without this evidence also.

It is the contention of the learned counsel for the appellant/accused that respondent/complainant has not disclosed the source of obtaining Rs.46,000/- which was given as alleged loan. He has not disclosed his financial capacity. Therefore, loan is not proved. In this regard, it is observed that amount of Rs.46,000/- is not very huge amount. In normal course a person of middle class can have such an amount. However, the copy of bank account statement has been placed by the respondent/complainant on record as Ex.CW2/A which reflects that he was having sufficient amount.

It is also the contention of the learned counsel for the appellant/accused that the amount has not been reflected in the ITR by the respondent/complainant therefore, it is not established that the said amount was given by him to appellant/accused. In this regard, it is observed that it is not a very huge amount. Moreover, if the amount is not reflected in the ITR then Income Tax Authority can take action against respondent/complainant

but conclusion can not be drawn that he has not given this amount. Reliance in this regard given on the law laid down by the Hon'ble Delhi High Court titled as **Bijender Sharma Vs. Anil Sabharwal** (Supra). In such circumstances, the case law produced by learned counsel for the appellant/accused laid down by the Hon'ble Punjab & Haryana High Court in case titled **Jaswinder Singh Vs. Kirpal Singh** (supra), **Suresh Vs. Narender Gautam** (Supra) and **Sukhdev Singh Vs. Lakhwinder Singh 'Ex-Sarpanch'** (supra) are not applicable on the facts and circumstances of the present case.

The next contention of the appellant/accused is that the notice was not signed by the respondent/complainant. In this regard, it is observed that copy of notice which was sent to the appellant/accused has not been placed on record. The appellant/accused has denied the receipt of notice. However, the notice has been sent on correct address and registered AD of the same has been placed on record as Ex.CW1/G and postal receipt is placed on record as Ex.CW1/F. The registered AD reflects that it has been duly received on behalf of the appellant/accused which shows that notice was served and therefore, without producing that notice it cannot be said that notice was not signed. The notice placed on record as Ex.CW1/5 is just a copy and it does not affect the case of the complainant that it has not been signed.

It is also the contention of the appellant/accused that respondent/ complainant is a money lender and he has no licence for money transaction. However, in this regard, no material is available on the record in the shape of evidence. The other transaction with other person are not proved on the record and no such type of documents was produced to the respondent/complainant in his cross-examination. Licence is not required for few money transactions. Therefore, due to lack of evidence it cannot be said that the respondent/complainant is a money lender.

The next contention of the learned counsel for the appellant/accused is that the statement under section 313 Cr.P.C.

cannot be made the base of the conviction. In this regard, it is observed that merely the statement under Section 313 Cr.P.C. has not been made the base of conviction. There was other evidence also against the appellant/accused. It is the case of the appellant/accused from the very beginning that the amount has been returned which he could not prove. Therefore, it cannot be said that the conviction is based on the statement under Section 313 Cr.P.C. only. Therefore, the law laid down in **Sanatan Naskar & Another Vs. State of West Bengal** (supra) is not applicable on the facts and circumstances of the present case. In such circumstances, it is well made out that the appellant/accused has been rightly convicted by the learned Trial Court. As far as the order on quantum of sentence is concerned, the appellant/accused is alleging that for small amount of cheque i.e. Rs.46000/- rigorous imprisonment of six months punishment has been imposed by the learned Trial Court, apart from granting compensation of Rs.46,000/- which is on higher side. The respondent is alleging that the compensation is at lower side and more compensation could be granted and cost may also be granted to respondent. In this regard, it is observed that compensation is paid to compensate the party but not to enrich any party and for more damages only civil suit is required to be filed. Compensation amount appears to be reasonable and no grounds of grant any additional cost are made out. Therefore, the law laid down by the Hon'ble Supreme Court of India in case titled as **Rohitbhai Jivanlal Patel Vs. State of Gurjant & Another 2019 GLJ (SC) 359** and **Satyapal Singh Vs. Union of Indian & Another 2010(1) RCR(Civil) 491** are not applicable on the facts and circumstances of the present case. As far as sentence of six months is concerned that appears to be on higher side in view of the amount of the cheque and in view of the fact that the compensation equal to the cheque amount has also been granted. Therefore, sentence of rigorous imprisonment for six months required to be reduced for three months. In case of non-payment of compensation under Section 357(3) the appellant/accused has to undergo 2 months simple imprisonment

as held by learned Trial Court.”

He submits that no reason has been assigned for reduction of sentence.

3. Reliance is being placed upon **Suryakant Baburao @ Ramrao Phad vs. State of Maharashtra, 2019(3) LRC 287 (SC), Jagdamba Devi vs. Hem Ram and others, (2008) 3 SCC 509, Bsalingappa vs. Mudibasappa, 2019(2) Criminal Court Cases 0433, Krishna Janardhan Bhat vs. Dattatraya G. Hegde, (2008) 4 SCC 54, Ganesha vs. Shranappa and another, (2014) 1 SCC 0087, Sheetala Prasad and others vs. Sri Kant and another, (2010) 2 SCC 0190 and Sarabjeet Singh Wadhawan and others vs. M/s Dinesh Steel through its Proprietor, 2021(4) PLR 527.**

4. Per contra, counsel for the respondent has argued that the Appellate Court has passed a well reasoned judgment and after taking into consideration all the facts and circumstances of the case has reduced the sentence awarded to the respondent/accused.

5. Having heard rival contention of the parties and after carefully going through records of the case, this Court finds that apart from stating that cheque amount was merely Rs.46,000/- the lower Appellate Court has assigned no reason for reduction of sentence.

6. Law w.r.t. reduction of sentence is well settled by Apex Court in State of **Madhya Pradesh vs. Santosh Kumar, 2006 AIR**

(Supreme Court) 2648. Apex Court held as under :

“11. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *Dennis Councle Mc Gautha v. State of California* : 402 US 183 : 28 L.D. 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

12. In *Jashubha Bharatsinh Gohil v. State of Gujarat* 1994(2) RCR (Criminal) 511 : (1994(4) SCC 353), it has been held by this Court that in the matter of death sentence, the Courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Even though the principles were indicated in the background of death sentence and life sentence, the logic applies to all cases where appropriate sentence is the issue.

13. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, (more particularly a child of tender age) dacoity,

kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

14. In *Dhananjay Chatterjee v. State of W.B.*, 1994(1) RCR (Criminal) 429 : (1994(2) SCC 220), this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

15. Similar view has also been expressed in *Ravji v. State of Rajasthan*, (1996(2) SCC 175). It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for

extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance. These aspects have been elaborated in State of M.P. v. Babbu Barkare alia Dalap Singh, 2005(3) RCR (Criminal) 18 : 2005(2) Apex Criminal 213 : (2005(5) SCC 413).

17. Both in cases of sub-sections (1) and (2) of Section 376 the Court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for 'adequate and special reasons'. If the Court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum.

18. In order to exercise the discretion of reducing the sentence the statutory requirement is that the Court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no strait-jacket formula can be indicated. What is applicable to trial Courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court is the young age of the accused and the fact that he belongs to a Scheduled Tribe. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative.”

7. In view of above this Court finds that where the Appellate Court exercises jurisdiction to reduce the sentence, the same has to be backed by cogent reasons and can't be arbitrary.

8. Consequently, the present revision is allowed.

9. The matter is remanded back to the Lower Appellate Court
to decide the quantum of sentence afresh in accordance with law.

January 05, 2024	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No