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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-3237-2023 (O&M)

Date of decision: 05.04.2024

SHAM LAL

....Appellant.

Versus

STATE OF PUNJAB

....Respondent.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Sandeep Verma, Advocate,
for the applicant-appellant.

Mr. Harpreet Singh, Addl. AG, Punjab.

SANJIV BERRY, J. (ORAL)

CRM-46396-2023

1. The instant application preferred by the applicant under Section 5 of the Limitation Act seeking condonation of delay of 3687 days in filing of the present appeal on the ground that the petitioner could not file the appeal in time because he was already in custody in some other case and being a poor man could not contact his counsel.
2. Heard.
3. Keeping in view the averments made in the application seeking condonation of delay of 3687 days in filing the present appeal, the same is allowed subject to all just exceptions.
4. Application stands disposed of.

Main appeal

1. Instant appeal has been preferred against the judgment of conviction and order of sentence dated 27.07.2012, passed by learned Additional Sessions Judge-Cum-Judge Special Court (under NDPS Act, 1985), Ferozepur, whereby the appellant had been held guilty in case FIR No.72 dated 05.05.2010, under Sections 15 and 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short, ‘the NDPS Act’) registered at Police Station Sadar Abohar, Appellant was sentenced as under: -

Name of convict	Offence	Period of sentence and fine imposed	Period of sentence in default of payment of fine.
Sham Lal	15 and 18 of the NDPS Act	RI for 06 months with a fine of ₹ 2000/-	RI for 15 days.

2. Feeling aggrieved by the aforesaid conviction and order of sentence, appellant has preferred the present appeal.

3. It has been *inter alia* contended by learned counsel for the petitioner at the very outset that the petitioner does not challenge the finding recorded by the learned trial Court in the judgment of conviction dated 27.07.2012 but his only limited prayer is for seeking modification of the order of sentence dated 27.07.2012 passed by the learned trial Court (supra) by submitting that the petitioner has already undergone more than 5 months in custody and petitioner is ready to deposit the fine, as such he prayed that the period already undergone by he petitioner in custody may be treated as sentence undergone and the impugned order of sentence be modified accordingly.

4. Learned State Counsel has produced the custody certificate dated 04.04.2024 to contend that the appellant has already undergone more than 05 months out of the total sentence of 6 months awarded to him.

5. After hearing the arguments advanced by learned counsel for the parties, it transpires that although the learned counsel for the appellant has not challenged the genuineness of the impugned judgment of conviction dated 27.07.2012 but yet from the perusal of the impugned judgment, it transpires that it is based on correct appreciation of evidence on record and is not suffered from any infirmity so as to call for any interference. As a consequent the conviction recorded vide judgment dated 27.07.2012 by learned Additional Sessions Judge-Cum-Judge Special Court Ferozepur against the appellant is hereby upheld.

6. Coming to the limited request raised by the learned counsel for the appellant in this case seeking modification of order of sentence dated 27.07.2012, admittedly, the appellant had been in custody in other case after his conviction and order of sentence passed in the present case and as per the custody certificate, he had spent the period from 17.05.2012 to 08.12.2023 as conviction in the other case. Further, as per the custody certificate, the appellant has already undergone more than 5 months and 26 days of actual custody, therefore, in these circumstances considering the fact that the appellant has already undergone 5 months and 26 of actual custody out of 6

months awarded vide the impugned order of sentence dated 27.07.2012, it is deemed a fit case where order of sentence can be modified, as no minimum sentence is prescribed for the said offence for which appellant has been convicted.

7. Resultantly, in the circumstances of the case, the impugned order of sentence dated 27.07.2012 is modified to the period already undergone by the appellant in custody, therefore, the present appeal is disposed of with the modification in the impugned order of sentence dated 27.07.2012 passed by learned Additional Sessions Judge-cum-Judge, Special Court, Ferozepur, thereby reducing the sentence of the appellant to the already undergone custody period by him subject to payment of ₹2,000/- as fine imposed vide impugned order dated 27.07.2012 in default of the payment of fine he has to further undergo simple imprisonment for 15 days.

8. Pending application(s), if any, shall stands disposed of.

05.04.2024

Gyan

i)

Whether speaking/reasoned?

Yes/No

ii)

Whether reportable?

Yes/No

(SANJIV BERRY)

JUDGE