

**CRR-11-2011 (O&M)****-1-****237 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH****CRR-11-2011 (O&M)****Date of Decision: 19.02.2025****BHOLA SINGH****...Petitioner****V/S****STATE OF PUNJAB****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Sunny Singla, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG Punja.

**********HARPREET SINGH BRAR J. (Oral)**

1. Present revision petition has been preferred by the petitioner against the judgment dated 19.10.2010 passed by learned Additional Sessions Judge (ADHOC), Fast Track Court, Mansa vide which judgment of conviction and order on quantum of sentence dated 02.04.2010 passed by learned Sub Divisional Judicial Magistrate, Sardulgarh, have been upheld, vide which petitioner has been convicted under Section 61(1)(c) of Punjab Excise Act and sentenced to undergo rigorous imprisonment for one year and fine of Rs. 5,000/- was imposed with default mechanism.

2. Brief facts of the case are that on 10.11.2005 HC Bhola Singh along with other police officials were present at bus stand Makha in connection with patrolling duty on a Govt. Canter bearing registration No.PB-31C-0830 driven by C. Avtar Singh. At that time HC Bhola Singh received secret information that one Bhola Singh(petitioner herein) has been distilling illicit liquor in his residential house by means of working still and if raid was conducted he could be captured while distilling illicit

**CRR-11-2011 (O&M)****-2-**

liquor. Finding the information being credible, raid in the house of petitioner was conducted and the accused-petitioner was found present while distilling illicit liquor by means of working still. He was feeding fire in the hearth at that time. He was captured. On enquiry he told his name as Bhola Singh son of Ram Singh resident of village Makha. A silver container lahan was lying on the hearth prepared in the ground. An earthen chakala was fitted on the silver container by means of mud. A plastic pipe from the side of earthen chakala was going to a plastic bottle in which liquor after distilling was pouring drop by drop. A silver pan was fitted on earthen chakala by means of mud which was being used as cooler. The still after cooling was dismantled. About 15 Kg lahan was found in the silver container. A sample nip of 180 ml illicit liquor was taken out from the plastic bottle and the remaining liquor in bottle was found half bottle. An earthen lid was fitted in the chakala permanently and a plastic pipe was fitted in the lid Silver container containing 15 KG lahan, half bottle of illicit liquor and sample nip were sealed by H.C. Bhola Singh with his seal bearing impression "BS". Recovery memo was prepared and accused-petitioner was arrested.

3. Learned trial Court after assessing the material on record convicted the petitioner under Section 61(1)(c) of Punjab Excise Act and sentenced him to undergo rigorous imprisonment for one year and fine of Rs. 5,000/- was imposed upon him with default mechanism. Appeal filed against the said judgment of conviction and order of sentence was dismissed by learned Lower Appellate Court.



CRR-11-2011 (O&M)

-3-

4. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 19.10.2010 passed by learned Additional Sessions Judge (ADHOC), Fast Track Court, Mansa on merits and restricts his prayer to modification of the order on quantum of sentence dated 02.04.2010 to that of sentence already undergone by the petitioner as he has already undergone a period of 03 months and 01 day, and not involved in any other case.

5. 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 Appellate Court and as such, he does not deserve any leniency. However, he could not controvert the fact that petitioner is not involved in any other case.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. 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,

**CRR-11-2011 (O&M)****-4-**

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.

8. A perusal of the judgment of conviction passed by the learned lower Appellate Court indicates no perversity in its findings and the said judgment 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 modification of quantum of sentence.

9. Perusal of record indicates that FIR(supra) was registered on 10.11.2005 and the petitioner has been suffering the agony of trial since the last more than 19 years. As per the custody certificate, the petitioner has undergone total sentence of 03 months and 01 day, out of rigorous sentence of one year awarded to him and he is not involved in any other case.



CRR-11-2011 (O&M)

-5-

10. 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.

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

(i) The judgment dated 19.10.2010 passed by the learned Additional Sessions Judge (ADHOC), Fast Track Court, Mansa upholding the judgment of conviction dated 02.04.2010 passed by learned Sub Divisional Judicial Magistrate, Sardulgarh is upheld, however, the order of sentence dated 02.04.2010 is modified to the extent that the sentence of rigorous imprisonment for one year awarded to the petitioner is reduced to the period of sentence already undergone by him.

(ii) Fine of Rs. 5,000/- imposed upon the petitioner is shall remain intact. 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.

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

19.02.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No