IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.1054 of 2008
Date of Decision: May 03, 2023

Ram Saran **…Petitioner**
Versus
State of Haryana **…Respondent**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Ashit Malik, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

This revision is against the order dated 17.1.2007 of conviction recorded by the trial Court, which has been affirmed by the Appellate Court on 28.5.2008.

2. Brief facts, relevant to the case are that shop of the petitioner was inspected by Food Inspector on 22.12.1994 at about 3.30 PM and sample of khoya was taken, which on analysis was found to be adulterated. After trial, learned Chief Judicial Magistrate, Kurukshetra convicted the petitioner for committing offence under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short, `the Act') vide judgment dated 17.01.2007 and vide a separate order dated 19.01.2007, sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹1,000/- with default sentence of 15 days. Appeal filed by the petitioner against the said judgment of conviction and order of sentence was dismissed by learned Sessions Judge, Kurukshetra on 28.05.2008.

3. Before this Court, short submission made by learned counsel for the petitioner is to reduce the sentence of the petitioner for the period already undergone by him, having regard to his advanced age and protracted trial. It

is pointed out by learned counsel that against the minimum prescribed standard of 20% milk fat, the sample was found to contain 19.5% milk fat i.e., only 0.5% deficiency. Offence was committed in December, 1994 and a period of almost 29 years has elapsed and by this time, petitioner is more than 70 years of age. He has remained in custody from 28.05.2008 till his sentence was suspended by this Court vide order dated 03.06.2008.

4. Learned State Counsel, on the other hand submits that minimum sentence is provided for committing the offence under the provisions of the Act. However, learned State Counsel is unable to controvert the factual position as pointed out as above and the fact that the petitioner has no criminal antecedents nor there is anything on record to show that he is involved in any criminal activity post-conviction.

5. I have considered submissions of both the sides and perused the paper book.

6. In **Ram Chander Vs. State of Haryana – CRR No.280 of 2003 (O&M),** decided on 14.01.2015, it has been held by this High Court that though Section 16(1)(a)(i) of the Act provides for the minimum sentence but for adequate and special reasons, the sentence could be awarded lower than the minimum prescribed under the Act. In that case, sample of the sweetened carbonated water was drawn on 31.05.1991. The same was found to be adulterated as sample contained saccharine 172 PPM against the maximum prescribed standard of 100 PPM. Upholding the conviction, this Court reduced the sentence to the period already undergone, though amount of fine was enhanced from ₹1,000/- to ₹11,000/- after noticing that petitioner was not a previous convict and was aged about 85 years.

7. In **Umrao Singh Vs. State of Haryana, Criminal Appeal No.404 of 1981 (arising out of SLP (Cri.) No.965 of 1981**, decided on

10.04.1981, percentage of deficiency in sample of milk was found to be 0.4% in fat contents. Accused was an old man suffering from asthma with clean past record. It was held by Hon'ble Supreme Court that it was a fit case to award the sentence lower than the minimum prescribed sentence and sentence was reduced to the period already undergone.

8. In **Satbir Vs. State of Haryana – CRR No.2048 of 2010**, decided on 02.04.2019, after noticing that petitioner had faced agony of protracted trial for a period of 22 years and had already undergone 02 months and 06 days of total sentence out of 06 months; that his sentence had been suspended in 2010 & for the period of about more than 09 years during which he was not involved in any other case showing his improved character, the sentence awarded was reduced to the period already undergone by this High Court.

9. In **Bachan Lal Vs. State of Haryana, CRR No.267 of 2005**, decided on 11.11.2022, this Court elaborated the concept of right of accused to speedy trial, being part of fundamental right of personal liberty guaranteed by Article 21 of the Constitution as explained by Hon'ble Supreme Court in **Abdul Rehman Antulay Vs. R.S. Nayak, (1992) 1 SCC 225**, and **P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578** and then referred to a three Judge Bench authority of Hon'ble Supreme Court in **Anversinh Vs. State of Gujarat, (2021) 3 SCC 12**, wherein it has been held as under:-

> "22. True it is that there cannot be any mechanical reduction of sentence unless all relevant factors have been weighed and whereupon the Court finds it to be a case of gross injustice, hardship, or palpably capricious award of an unreasonable sentence. It would thus depend upon the facts and circumstances of each case whether a superior court should interfere with, and resultantly enhance or reduce the sentence. Applying such

considerations to the peculiar facts and findings returned in the case in hand, we are of the considered opinion that the quantum of sentence awarded to the appellant deserves to be revisited.

23. We say so for the following reasons: first, it is apparent that no force had been used in the act of kidnapping. There was no pre-planning, use of any weapon or any vulgar motive. Although the offence as defined under Sections 359 and 361 IPC has no ingredient necessitating any use of force or establishing any oblique intentions, nevertheless the mildness of the crime ought to be taken into account at the stage of sentencing.

24. Second, although not a determinative factor, the young age of the accused at the time of the incident cannot be overlooked. As mentioned earlier, the appellant was at the precipice of majority himself. He was no older than about eighteen or nineteen years at the time of the offence and admittedly it was a case of a love affair. His actions at such a young and impressionable age, therefore, ought to be treated with hope for reform, and not punitively.

25. Third, owing to a protracted trial and delays at different levels, more than twenty-two years have passed since the incident. Both the victim and the appellant are now in their forties; are productive members of society and have settled down in life with their respective spouses and families. It, therefore, might not further the ends of justice to relegate the appellant back to jail at this stage.

26. Fourth, the present crime was one of passion. No other charges, antecedents, or crimes either before 1998 or since then, have been brought to our notice. The appellant has been rehabilitated and is now leading a normal life. The possibility of recidivism is therefore extremely low.

27. Fifth, unlike in **State of Haryana v. Raja Ram, (1973) 1 SCC 544: 1973 SCC (Cri) 428 and Thakorlal D. Vadgama v. State of Gujarat, (1973) 2 SCC 413: 1973 SCC (Cri) 835**, there is no grotesque misuse of power, wealth, status or age which needs to be guarded against. Both the prosecutrix and the appellant belonged to a similar social class and lived in

> geographical and cultural vicinity to each other. Far from there being an imbalance of power; if not for the age of the prosecutrix, the two could have been happily married and cohabiting today. Indeed, the present instance is an offence: mala prohibita, and notmala in se. Accordingly, a more equitable sentence ought to be awarded.
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> 28. Given these multiple unique circumstances, we are of the opinion that the sentence of five years' rigorous imprisonment awarded by the courts below is disproportionate to the facts of this case. The concerns of both the society and the victim can be respected, and the twin principles of deterrence and correction would be served by reducing the appellant's sentence to the period of incarceration already undergone by him. Conclusion
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> 29. In light of the above discussion, we are of the view that the prosecution has established the appellant's guilt beyond reasonable doubt and that no case of acquittal under Sections 363 and 366 IPC is made out. However, the quantum of sentence is reduced to the period of imprisonment already undergone. The appeal is, therefore, partly allowed in the above terms and the appellant is consequently set free. The bail bonds are discharged."

10. In the case before this Court, the offence was committed in the year 1992 and petitioner was aged more than 70 years. He had already suffered incarceration of 15 days during July, 2005. Petitioner was found to be not involved in any other offence prior to the alleged offence or post-conviction. Considering all these circumstances, sentence was reduced for the period already undergone.

11. Coming to the facts of the present case, as rightly pointed out earlier by counsel for the petitioner, offence was committed way back in December, 1994, i.e., more than 28 years back and this way, petitioner has faced agony of protracted trial for such a long time. Even if he remained bail during all this period except for a short period, the demon of his

conviction was hanging on his head. At the time of filing the appeal in 2007 before the Appellate court, his age is mentioned to be 54 years, which means that by now, he is above 70 years of age. Besides, the deficiency in the milk fat was found to be just 0.5% comparing to the minimum prescribed standard. Considering all these facts, it will not be in the fitness of things to send the petitioner at such a ripe age behind bars to undergo the remaining part of sentence.

12. Having regard to all the overall factual position and the various authorities (cited supra), while maintaining the conviction of the petitioner, his sentence is reduced for the period already undergone by him.

Disposed of.

May 03, 2023 **(DEEPAK GUPTA)**
renu **JUDGE**

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