

(2012) 07 P&H CK 0282

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Miscellaneous No. 10239 of 2012 and Criminal Revision No. 484 of 2012
(O and M)

Satbir

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 18, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 205, 419

Hon'ble Judges: Rameshwar Singh Malik, J**Bench:** Single Bench**Advocate:** Naresh Kaushik in Criminal Rev. No. 484 of 2012 and Mr. Narender Sura in Criminal Rev. No. 632 of 2012, for the Appellant;

Judgement

Rameshwar Singh Malik, J.

This order proposes to dispose of two criminal revision petitions filed by two co-accused against the same impugned judgments of conviction and order of sentence. First is Criminal Revision No. 484 of 2012 (Satbir versus State of Haryana) and the second revision petition is Criminal Revision No. 632 of 2012 (Jamna Devi versus State of Haryana). However, the facts for the facility of reference are being culled out from Criminal Revision No. 484 of 2012. Shorn of detailed background of the case, it would suffice to mention the basic facts. Upon receipt of an application from Smt. Shalini Nagpal, the then Judicial Magistrate 1st Class, Rohtak, addressed to Station House Officer, Police Station, Civil Lines, Rohtak, regarding registration of case against Satbir Singh son of Pokhar, First Information Report ("FIR" for short) for the commission of offence punishable under Sections 419, 205 IPC was registered and investigation was carried out. During investigation, accused were arrested. Statements of witnesses were recorded. The allegations against the petitioners were that in civil suit No. 845 of 5.11.1997 titled as Jamna Devi versus Rambhaji etc., when statement was being recorded by Surender, Reader of the Court, under dictation

given by the Court, accused-Satbir represented himself as Surender (defendent No.3) and personated to make statement. He also disclosed that he was personating Surender on the asking of the plaintiff-Jamna Devi because Surender had gone to Haridwar. After completion of the investigation, the challan was filed in the court. Finding a prima facie case against the accused under Sections 419, 205 IPC, the challan was filed, accordingly.

2. In order to prove its case, the prosecution examined Smt. Shalini Nagpal, Chief Judicial Magistrate, Bhiwani as PW-1, Anil Kumar (Summary Ahlmad of the court of the then learned Chief Judicial Magistrate, Rohtak) as PW-2, Surender Kumar (Ahlmad to District and Sessions Judge, Rohtak) as PW-3 and Sultan Singh (Advocate) as PW-4. The prosecution placed on record the documents Ex. P-A statement of Satbir Singh, Ex.PB-complaint, Ex. P-1 certified copy of vakalatnama, Ex.P-2 certified copy of the plaint and Ex. PW-4/A statement of Sultan Singh (Advocate). Thereafter, the prosecution evidence was closed. Statements of the accused, were recorded u/s 313 Cr.P.C., wherein they pleaded not guilty and claimed trial.

3. The accused in their defence examined DW-1, Rajesh Kumar, who deposed that Satbir and Jamna Devi were known to him, being residents of his village.

4. After going through the evidence led by both the parties and hearing the learned counsel for the parties, the learned trial court recorded the conviction vide judgment dated 7.4.2008, holding the accused guilty for the commission of offence punishable under Sections 419, 205 IPC. Accordingly, they were sentenced to undergo rigorous imprisonment for two years and fine of Rs. 1,000/-In default of payment of fine, they were to undergo simple imprisonment for one month. They were sentenced u/s 205 IPC to undergo imprisonment for two years and fine of Rs. 1,000/-. In default of payment of fine, they were to undergo simple imprisonment for one month. However, both the sentences were ordered to run concurrently.

5. Dissatisfied with the impugned judgment of conviction and order of sentence noted above, petitioners filed their separate appeals before the learned Additional Sessions Judge, Rohtak. Both the appeals were dismissed vide common impugned judgment dated 19.7.2012.

6. Feeling aggrieved against the above said judgments of conviction and order of sentence, the petitioners have approached this Court by way of these two criminal revision petitions. That is how this Court is seized of the matter.

7. Learned counsel for the petitioners, at the very outset, submitted that they did not intend to press their respective criminal revision petitions against the conviction recorded by the learned courts below. On the other hand, they submitted that both these criminal revision petitions may be considered only qua quantum of sentence. Accordingly, notice of motion was issued only qua quantum of sentence.

8. Learned counsel for the petitioner, in Crl. Revision No. 484 of 2012, while highlighting the mitigating circumstances, submits that petitioner-Satbir was 55 years old. His wife was suffering from cancer and was being administered chemotherapy at O.P. Jindal Institute of Cancer and Research, Model Town, Hisar, wherein she was admitted vide RT No. 345/11. Learned counsel for the petitioner also shows the original card of the wife of the petitioner issued by the department of Radiotherapy, known as Radiation Treatment Patient Card, which discloses that wife of the petitioner was continuously undergoing the treatment for cancer. He further submits that petitioner was the first offender and he was not beneficiary in the alleged transaction.

9. Learned counsel for the petitioner concluded by submitting that out of total awarded sentence to undergo rigorous imprisonment for two years, the petitioner has already undergone the actual sentence for two months as on 18.3.2012, as per custody certificate dated 19.3.2012 filed by way of affidavit of Rajender Singh Siwach, Superintendent, District Jail, Rohtak. While relying upon the judgments of the Hon"ble Supreme Court in Surender Kumar Garg versus State of Uttar Pradesh, 1993 (2), R.C.R. (Cri) 452 and this Court in Amar Singh and others versus State of Haryana, 2010 (3) RCR (Cri) 823, he prays that sentence of the petitioner may be reduced to the period already undergone by him.

10. Learned counsel for the petitioner in Crl. Revision No. 632 of 2012 while highlighting the mitigating circumstances in favour of the petitioner, submitted that the petitioner was a senior citizen, being an old lady. She was a rustic village woman and a first offender. Like her co-accused Satbir, she has also undergone the actual sentence for six months out of the total awarded sentence to undergo rigorous imprisonment for two years. Learned counsel for the petitioner prays that sentence of the petitioner may be reduced to the period already undergone by her.

11. Per contra, learned counsel for the State submits that in view of the fact situation of the present case, the petitioners do not deserve any leniency and they are not entitled for reduction of the sentence. Thus, he prays for dismissal of both the criminal revision petitions.

12. I have heard the learned counsel for the parties and with their able assistance, have gone through the record of the case.

13. After giving thoughtful consideration to the rival contentions raised and keeping in view the peculiar fact situation of the present case, this Court is of the considered opinion that it is just and expedient to reduce the sentence of the petitioners not to the period already undergone by them but to nine months. I say so because the petitioners have faced the agony of criminal trial for long 14 years since 18.7.1998. Besides this, they have also undergone the substantial part of the sentence awarded to them. Further, both the petitioners are first offenders. Petitioner-Jamna Devi is an old, illiterate and rustic village woman. So far as petitioner-Satbir is concerned, his

wife is suffering from cancer, as noted above, and one of his sons has recently died. He was not the beneficiary of the transaction in question.

14. The view taken by this Court also finds support from the judgments of the Hon"ble Supreme Court in the case of 2006(4) R.C.R. (Cri) 645 titled as "R. Soundarajan v. Seed Inspector, Coimbatore and another" and "Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723.

15. The relevant observations made by the Hon"ble Supreme Court in the case of R. Soundarajan v. Seed Inspector, Coimbatore and another (Supra)" are as under:-

26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment.

16. In Umrao Singh v. State of Haryana, (supra), the Hon"ble Supreme Court observed as under:-

After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16 (1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents. 2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith. 3. The appeal is disposed of accordingly.

17. In view of the totality of facts of circumstances of the present case noted above, coupled with the reasons aforementioned, both these criminal revisions petitions are dismissed so far as the conviction of the petitioners is concerned. However, the sentence of the petitioners is ordered to be reduced to the period of nine months. Resultantly, with the modification in the sentence, noted above, both these criminal revision petitions bearing Criminal Revision No. 484 of 2012 titled as Satbir versus State of Haryana and Criminal Revision No 632 of 2012 titled as Jamna Devi versus State of Haryana are disposed of, accordingly.