

(2012) 09 P&amp;H CK 0302

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Miscellaneous No. 47197 of 2012 in Criminal Appeal No. D-1146-DB of 2011

Rajinder @ Nikku and others

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Sept. 13, 2012**Acts Referred:**

- Arms Act, 1959 - Section 25
- Penal Code, 1860 (IPC) - Section 120B, 354, 394, 412, 451

**Hon'ble Judges:** S.S. Saron, J; S.P. Bangarh, J**Bench:** Division Bench**Advocate:** Vinod Ghai, with Mr. Ravinder Singh, /Appellant No. 2 Vinod, for the Appellant; H.S. Deol, Addl. AG, Haryana, for the Respondent**Final Decision:** Allowed

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**Judgement**

1. Learned State counsel has filed affidavit of Shri Raj Kumar Hooda, Deputy Superintendent, District Jail, Gurgaon mentioning the period of imprisonment undergone by the applicant/appellant No. 2-Vinod. The same is taken on record. Heard Learned Counsel for the parties.

2. The criminal miscellaneous application has been filed seeking suspension of sentence of imprisonment of the applicant/appellant No. 2-Vinod during the pendency of the appeal.

3. The applicant/appellant No. 2-Vinod has been convicted by the learned Additional Sessions Judge, Gurgaon for the offences under Sections 412 and 120-B IPC. He was also charged for the offence u/s 25 of the Arms Act as one country made pistol was recovered from him. However, he has been acquitted of the said charge. In pursuance of the disclosure statement (Ex.PB) of applicant/appellant No. 2-Vinod, he got recovered 25 washing machines, 17 air coolers and 5 water heaters. The applicant/appellant No. 2-Vinod has been sentenced to undergo rigorous

imprisonment for a period of seven years; besides, pay a fine of Rs. 5000/- and in default thereof to undergo further rigorous imprisonment for five months for the offence u/s 412 IPC. He has also been sentenced to undergo rigorous imprisonment for a period of seven years; besides, pay a fine of Rs. 5000/- and in default thereof to undergo further rigorous imprisonment for a period of five months for the offence u/s 120-B IPC. The sentences of imprisonment have not been ordered to run concurrently. These are, therefore, to run separately. Sentence of the co-accused of the applicant/appellant No. 2-Vinod namely Khel Singh @ Karan (appellant No. 3) and Narender @ Lodu (appellant in Crl. Appeal No.D-1152-DB of 2011) have been suspended by this Court vide order dated 06.07.2012. The sentence of imprisonment of Anil alias Bholu (appellant in Crl. Appeal No.D-1130-DB of 2011) has been suspended by this Court vide order dated 17.04.2012. The role of the present applicant/appellant No. 2-Vinod is similar except that he was charged for the offence u/s 25 of the Arms Act in which he has been acquitted.

4. In terms of the affidavit that has been filed in Court today, the applicant/appellant No. 2-Vinod has undergone imprisonment of one year, seven months and twenty seven days as on 12.09.2012. It is submitted that he has been convicted by the learned Additional Chief Judicial Magistrate, Bhiwani for the offences under Sections 394 and 451 IPC registered at Police Station, Sadar Bhiwani.

5. Learned Senior counsel for the applicant/appellant No. 2 has submitted that in fact he has been convicted for the offences under Sections 354 and 451 IPC and not u/s 394 IPC. Against the conviction, the applicant/appellant No. 2-Vinod has filed an appeal which is pending in the Court of learned Additional Sessions Judge, Bhiwani in which he has been granted bail on 13.07.2012 and his bail bonds were accepted on 14.07.2012. Copies of the order dated 13.07.2012 and 14.07.2012 have been filed in Court today which are taken on record.

6. In the circumstances, the appeal is not likely to mature for hearing in the near future; besides, the question in any case whether the sentences of imprisonment are liable to run concurrently or separately would require consideration. Therefore, it would be just and expedient to suspend the sentence of imprisonment of the applicant/appellant No. 2-Vinod during the pendency of the appeal. Accordingly, the criminal miscellaneous application is allowed and the sentence of imprisonment of the applicant/appellant No. 2-Vinod during the pendency of the appeal shall remain suspended subject to his furnishing personal bond and surety to the satisfaction of the learned Chief Judicial Magistrate, Gurgaon.