



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

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**CRR-288-2012 (O&M)
Date of decision: 24.09.2025**

RAJINDER SINGH

...Petitioner

Versus

KULJIT KAUR

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

PRESENT :- Mr. Naresh Jain, Advocate for the petitioner.

None for the respondent.

VINOD S. BHARDWAJ. J. (ORAL)

The present revision petition has been preferred against the judgment of dated 01.08.2011 passed by the learned Additional Sessions Judge, Bathinda, whereby the appeal filed by the petitioner was dismissed and the judgment of conviction and order of sentence dated 10.07.2010 passed by the learned Special Judicial Magistrate, 1st Class, Bathinda, was upheld.

2. At the very outset, learned counsel appearing on behalf of the petitioner contends that he does not wish to press the present revision petition on merits and confines his prayer only to the extent of punishment and prays that the sentence awarded to the petitioner be reduced to the period already undergone by him in view of the mitigating circumstances.



3. He contends that the incident in question pertains to the year 2008. It is also borne out from a perusal of the case file that the matter essentially arises out of a dispute pertaining to proceedings instituted under Section 138 of the Negotiable Instruments Act, 1881.

4. It is submitted that the petitioner was working as government teacher and was about 42 years old in the year 2008. A period of nearly 17 years has elapsed since the commission of the offence. It is submitted that the petitioner was not involved in any other criminal case either prior to the aforesaid incident or even thereafter. Petitioner has moved on in his life and is now well settled after overcoming the minor dispute. The very fact that he has not been involved in any other criminal case during a period of nearly 17 years despite his sentence being suspended shows that the petitioners has shown marked improvement in his conduct and has resorted to peaceful means. It is submitted that compelling the petitioner to undergo the remaining sentence at this stage would unsettle his family. He also submits that the petitioner has also undergone the agony of trial for a period of nearly 17 years.

5. No other argument has been raised by either of the counsel appearing. No judgment has also been cited.

6. I have heard the learned counsel for the parties and have gone through the documents available on record.



7. The object of punishment is not only to punish but also to rehabilitate the offenders in society. Where an accused reflects a strong possibility of improvement and reformative behaviour, the process of law should come to the aid of such an accused so as to ensure his reintegration into society.

PARAMETERS AND PRINCIPLES OF SENTENCING:

8. The Hon'ble Supreme Court has laid down certain principles to govern the Courts in the matter of sentencing. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the matter of **State of Punjab Vs. PremSagar&Ors (2008) 7 SCC 550**. The relevant extract of the said judgment is reproduced hereinbelow: -

5. 'Whether the Court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstances of each case. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

6. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences



had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice-delivery system. Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of Section 235, sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.

9. What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar



discrepancies have been noticed in regard to imposition of fine.

10. In Dhananjay Chatterjee Alias Dhana v. State of W.B. [(1994) 2 SCC 220], this Court held:

"15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime..."

11. Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjay Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges.

12. In a recent decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], this Court opined:

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by



imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of 'order' should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be--as it should be--a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

Relying upon the decision of this Court in SevakaPerumal v. State of T.N. [(1991) 3 SCC 471], this Court furthermore held that it was the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

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18. Don M. Gottfredson in his essay on "Sentencing Guidelines" in "Sentencing by Hyman Gross and Andrew von Hirsch" opines:

"It is a common claim in the literature of criminal justice and indeed in the popular press that there is considerable "disparity" in sentencing. The word "disparity" has become a prerogative and the concept



of "sentencing disparity" now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase "unwarranted disparity" may be preferred; not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly justified, beneficial and proper, so long as the variable qualities are carefully monitored for consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment- that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate."

[Emphasis supplied]

The learned author further opines:

"In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima, leaving a broad range of discretion, as to the length of sentence."



19. Kevin R. Reitz in *Encyclopedia of Crime and Justice*, Second edition "Sentencing guidelines" states:

"All guideline jurisdictions have found it necessary to create rules that identify the factual issues at sentencing that must be resolved under the guidelines, those that are potentially relevant to a sentencing decision, and those viewed as forbidden considerations that may not be taken into account by sentencing courts. One heated controversy, addressed differently across jurisdictions, is whether the guideline sentence should be based exclusively on crimes for which offenders have been convicted ("conviction offenses"), or whether a guideline sentence should also reflect additional alleged criminal conduct for which formal convictions have not been obtained ("non-conviction offenses").

Another difficult issue of fact-finding at sentence for guideline designers has been the degree to which trial judges should be permitted to consider the personal characteristics of offenders as mitigating factors when imposing sentence. For example: Is the defendant a single parent with young children at home? Is the defendant a drug addict but a good candidate for drug treatment? Has the defendant struggled to overcome conditions of economic, social or educational deprivation prior to the offense? Was the defendant's criminal behavior explicable in part by youth, inexperience, or an unformed ability to resist peer pressure? Most guideline states, once again including all jurisdictions with voluntary guidelines, allow trial courts latitude to sentence



outside of the guideline ranges based on the Judge's assessment of such offender characteristics. Some states, fearing that race or class disparities might be exacerbated by unguided consideration of such factors, have placed limits on the list of eligible concerns. (However, such factors may indirectly affect the sentence, since judges are permitted to base departures on the offender's particular 'amenability' to probation (Frase, 1997).)"

20. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

1. What interests are violated or threatened by the standard case of the crime- physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.

2. Effect of violating those interests on the living standards of a typical victim- minimum well-being, adequate well-being, significant enhancement

3. Culpability of the offender

4. Remoteness of the actual harm as seen by a reasonable man.'

9. The said issue was also examined by the Hon'ble Supreme Court in the matter of **Soman Vs. State of Kerala, (2013) 11 SCC 382,** the relevant extract of the said judgment is reproduced hereinbelow:-

'15. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially



laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. In State of Punjab v. PremSagar (2008) 7 SCC 550, this Court acknowledged as much and observed as under –

“2. In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example MadhavaMenon Committee and Malimath Committee have advocated introduction of sentencing guidelines.”

16. Nonetheless, if one goes through the decisions of this Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation etc.

17. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. The question is whether the consequences of the offence can be taken as the measure for determining its harmfulness? In addition, quite apart from the seriousness of the offence, can the consequences of an offence be a legitimate aggravating (as opposed to



mitigating) factor while awarding a sentence? Thus, to understand the relevance of consequences of criminal conduct from a sentencing standpoint, one must examine: (1) whether such consequences enhanced the harmfulness of the offence; and (2) whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence.

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26. Punishment should acknowledge the sanctity of human life. We fully agree.

27. From the above, one may conclude that:

27.1. Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but



the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.

CONCLUSION

10. Keeping the aforesaid principles in mind, it is evident that the offence in question was not an offence against society at large or opposed to public order. It was also not an offence in the nature as would be dangerous to national integrity or shocking to the public conscience.

11. Undisputedly, the offence in question took place in the year 2008 and a period of nearly 17 years has elapsed since then. Much water has flown since then and the parties have reasonably resiled themselves to their fate. There have been no dispute of any nature thereafter and the petitioner has not indulged in any other criminal act or conduct. The same establishes that the petitioner has chosen to live his life under the rule of law and to abide by the norms of Society and not to breach the same. Besides, the petitioner is now at an advanced stage of his lives. Relegating the petitioner to custody at this advanced stage may have serious repercussions on the prospects and family life of the children. Besides, this Court cannot lose sight of the fact that a long incarceration in a trial and the fear of the pending petition itself is a punishment unto itself.



12. I find that such a prolonged incarceration, the protracted criminal trial and the consequent agony faced by the petitioner, the reformatory tendency shown by the petitioner by not indulging in any other offence, the age of the petitioner at the time of the incident as well as the legal principles reproduced above there are sufficient mitigating circumstances.

13. The present petition is accordingly partly allowed. While the judgment of conviction dated 10.07.2010, passed by the learned Special Judicial Magistrate, 1st Class, Bathinda, as well as the judgment passed by the Additional Sessions Judge, Bathinda, dated 01.08.2011, dismissing the appeal preferred by the petitioner are affirmed, however, the order of sentence dated 10.07.2010 is modified and the sentence awarded to the petitioner is reduced to the period already undergone by him.

14. The present revision petition stands partly allowed accordingly.

September 24, 2025.

Vishal sharma

**(VINOD S. BHARDWAJ)
JUDGE**

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