2025:PHHC:041382

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101

CRA-S-1690-SB-2004 (O&M)
Date of decision: 26.03.2025

Mahesh Kumar

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gaurav Vir Singh Behl, Advocate
for the appellant.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The prayer in the present appeal is to set-aside the judgment of conviction dated 19.08.2004 and order of sentence dated 20.08.2004 passed by learned Additional Sessions Judge, Sonepat whereby the appellant was convicted and sentenced for the offence punishable under Sections 353, 186, 34, 411, 420 IPC and Section 25 of the Arms Act, in the case stemming from FIR No.89 dated 30.05.2002 registered under Sections 379, 411, 420, 468, 471, 114, 307, 186, 332, 353, 34 IPC and Section 25 of the Arms Act at Police Station Rai.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 353 IPC	Rigorous imprisonment for a period of 1 and 1/2 years and to pay fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 02 months.
Section 186 IPC	Rigorous imprisonment for a period of 03 months.

Section 411 IPC	Rigorous imprisonment for a period of 02 years and to pay fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 04 months.
Section 420 IPC	Rigorous imprisonment for a period of 03 years and to pay fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 04 months.
Section 25 of the Arms Act	Rigorous imprisonment for a period of 01 year and to pay fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 02 months.

It was ordered that all sentences shall run concurrently.

3. Brief facts of the case are that on 30.05.2002, at about 8:00 p.m., a police party headed by ASI Rajiv Kumar was conducting a nakabandi operation at Khewra turning near the Bus Stand in village Jhundpur. They saw a car approaching from Jakhauli, and ASI Rajiv Kumar instructed HC Bhagat Singh and Constable Satbir Singh to stop the vehicle. When they signalled the car, a person sitting in the rear seat, later identified as Neeraj, ordered the driver to speed up and try to hit the police officers. HC Bhagat Singh and Constable Satbir Singh narrowly escaped. The police thereafter, stopped their car using a jeep, and as they approached, Neeraj attempted to ran away and fired a shot at HC Om Parkash and HC Kanwal Singh but fortunately missed. Thereafter, he was apprehended, and the car driver and another person were also arrested. During interrogation, the accused disclosed their identities. A country-made pistol (315 bore) and an empty cartridge were recovered from Mahesh Kumar (appellant) and his co-accused,

who could not provide a license for the weapon. The weapon was seized, and the accused were taken into police custody. Subsequently, the FIR (supra) was registered against the accused persons.

4. Thereafter, the appellant was convicted and sentenced vide judgement of conviction dated 19.08.2004 and order of sentence dated 20.08.2004 by the learned Court below.

5. Learned counsel for the appellant contends that he is not assailing the impugned judgment of conviction dated 19.08.2004 on merits and restricts his prayer qua modification of the order on quantum of sentence, to that of the sentence already undergone by the appellant, as he has already undergone a period of 07 months and 24 days.

6. *Per contra*, learned State counsel produced the custody certificate of the appellant and opposes the prayer of the appellant, on the ground that the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record. She further submits that although the appellant has been acquitted in FIR No.458 of 2000 and FIR No.154 dated 16.03.2022, however, he is facing trial in one more case i.e. FIR No.346 of 2000 and he is on bail in that case and as such, he does not deserve any leniency.

7. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was convicted under Sections 353, 186, 411, 420 IPC and Section 25 of the Arms Act, for which no minimum punishment has been prescribed. As per custody certificate, the appellant has already undergone an actual sentence of 07 months and 24 days out of total

sentence of 03 years, in the instant case. Since there is no minimum punishment prescribed under aforementioned Sections in which the appellant stands convicted, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the appellant is reduced to the period already undergone by him.

8. In ***Deo Narain Mandal Vs. 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, the 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, 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 Vs. 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 conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

9. A perusal of the judgment of conviction passed by the learned Court below indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. Learned counsel for the appellant has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua modification of quantum of sentence.

10. The FIR in the present case was registered on 30.05.2002 and the appellant has been suffering the agony of trial since the last about 22 years. Since his conviction, the appellant has grown into a law-abiding citizen and desires to live a peaceful life.

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

(i) The judgment of conviction dated 19.08.2004 passed by the learned Additional Sessions Judge, Sonepat is upheld.

(ii) The order of sentence dated 20.08.2004 is modified to the extent that the sentence of rigorous imprisonment for a period of 03 years and fine of Rs.7000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

12. All the pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

26.03.2025
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No