

(2011) 11 GUJ CK 0011
In the Gujarat High Court

Case No : Criminal Revision Application No. 267 of 2011 With Criminal Miscellaneous Application No. 7816 of 2011 in Criminal Revision Application No. 267 of 2011

Narpatsinh Prabhatsinh and 1

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 428
Penal Code, 1860 (IPC) — Section 114, 420

Citation : (2011) 11 GUJ CK 0011

Hon'ble Judges : MD Shah, J

Bench : Single Bench

Advocate : Ramnandan Singh for Mr Harshad K Patel s 1 - 2, for the Appellant; LR Pujari, APP for Respondent(s) 1, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice MD Shah

1. is Criminal Revision Application has been filed by the applicant-original accused No.1 u/s 397 read with Sec.401 of the Code of Criminal Procedure seeking to quash and set aside judgments and orders dated 20-5-2011 passed in Criminal Appeal No. 28 of 2000 by the learned Addl. Sessions Judge, Bharuch, whereby judgment and order of conviction and sentence dated 16-11-2000 passed in Criminal Case No.23631 of 1998 by the learned 2nd Joint Civil Judge (S.D.) and J.M.F.C., Bharuch, directing the applicant and two others to undergo RI for a period of two years with fine of Rs.1,000/-, in default, to suffer further RI for one month for the offence punishable under Sec.420 read with Sec.114 of IPC was confirmed.

2. The facts in short are that a complaint was filed by the complainant with Sagbara Police Station against against the applicant-accused and five others for the offences punishable under Secs.420 and 114 of IPC which has been

registered as C.R.No.I-41 of 1997 which was subsequently registered as Criminal Case No.23631 of 1998. At the end of trial, the applicant-original accused No.1 and original accused Nos.2 and 5 were convicted and sentenced for the offence punishable under Sec.420 read with Sec.114 of IPC to suffer RI for a period of two years with fine of Rs.1,000/-, in default, to suffer further RI for one month vide judgment and order dated 16-11-2000 passed in Criminal Case No.23631 of 1998 by the learned 2nd Joint Civil Judge (S.D.) and J.M.F.C., Bharuch. The appeal being Criminal Appeal No. 28 of 2000 filed before the Sessions Court was dismissed by the learned Addl. Sessions Judge, Bharuch. Both these judgments and orders are under challenge in this revision.

3. Heard learned advocate, Mr. Ramnandan Singh for Mr.H.K. Patel for the applicant-original accused No.1 and learned APP, Mr.L.R.Pujari for the respondent-State. This Court has gone through the judgments and orders passed by the trial court as well as the appellate court.

4. Rule. Mr.L.R.Pujari, learned APP waives service of notice of rule on behalf of the respondent-State.

5. Learned advocate for the applicant-original accused has submitted that he is pressing this revision only on the point of quantum of sentence. It is submitted that the applicant is in jail since last more than one year and two months against the conviction of two years. It is further submitted that the fine amount is also paid. He has the responsibility to maintain his whole family consisting. In view of the above, learned advocate for the applicant has submitted that some leniency be shown towards the applicant and sentence may be reduced to the period already undergone.

6. Learned APP, Mr.Pujari, has stated that appropriate order may be passed.

7. This Court has gone through the record pertaining to the case as also the submission made on behalf of the parties together with the impugned judgment and order of conviction and sentence passed by the trial court.

8. It is to be noted that the learned advocate for the applicant has restricted his submissions only on the point of quantum of sentence. Hence, I would not like to reproduce or discuss the entire evidence which are on record as the same remained unchallenged. This Court is also in complete agreement with the reasons adopted and the conclusions arrived at by the learned trial court in the impugned judgment so far as the conviction of the present applicant is concerned. However, the question to be considered is as to whether the applicant in the given facts and circumstances of the case entitled to reduction of sentence which has been awarded by the trial court or not.

9. In this connection, reference will have to be made to the decisions rendered in (1) Nasir Vs. State of Uttar Pradesh, wherein the Hon''ble Apex Court, in an offence under Sections. 399 and 402 of IPC, considering the fact that the incident is of 29 years old, reduced the sentenced from five years to the period of

six months already undergone and (2) Ghasita Sahu v. State of Madhya Pradesh reported in AIR (Criminal) 277, wherein the Apex Court, considering the poor background of the accused reduced the sentence from 5 years to one already undergone (about 4 years as noticed by the Apex Court) and also reduced the fine from Rs. 20,000/- to Rs. 10,000/- and imposed the default sentence of six months.

10. Reference will also have to be made to the decisions of Murugesan and Others Vs. Ganapathy Velar, and Ishwarlal v. State of M.P., reported in JT 1988 (3) SC 366 (1) wherein the Hon"ble Apex Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the accused to already undergone, though the offences were not compoundable.

11. It is to be noted that the applicant is also having responsibilities to maintain the whole family. As the applicant is in jail, entire family is in a helpless condition. It is to be noted that the applicant has undergone more than one year and two months against the conviction of two years which means that he has already undergone major part of sentence imposed. Considering the above aspects, this Court is of the opinion that interest of justice will be met if the sentence imposed on the applicant is reduced to the period already undergone.

12. The revision is accordingly partly allowed. The sentence of two years RI imposed on the applicant-accused for the offence punishable under Sec.420 read with Sec.114 of IPC is ordered to be reduced one year. The accused is entitled to benefit of set off under Sec.428 of Cr.P.C. The impugned judgment and order of conviction and sentence on all other aspects including fine, etc. shall remain unaltered. Rule is made absolute to the aforesaid extent. Direct service is permitted.

13. In view of the disposal of the main revision, Cri.Misc.Appln.No.7816 of 2010 does not survive and is disposed of accordingly.

14. Record and proceedings are ordered to be sent back to the court below forthwith.