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* IN THE HIGH COURT OF DELHI AT NEW DELHI

(i) + CRL.REV.P. 136/2013

SAMAY SINGH

..... Petitioner

Through: Mr. Joginder Kumar & Mr. Jayant
Tewari, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Gupta, Additional Public
Prosecutor for State

(ii) + CRL.REV.P. 182/2013

OM PRAKASH

..... Petitioner

Through: Mr. Joginder Kumar & Mr. Jayant
Tewari, Advocates

versus

STATE

..... Respondent

Through : Mr. Mukesh Gupta, Additional Public
Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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08.07.2013

The above-captioned two petitions arise out of common judgment of 16th March, 2012, passed by the learned Metropolitan Magistrate and order of 18th February, 2013 passed by the Appellate Court upholding petitioners' conviction in FIR No.316/96 under Section 326/323/34 IPC registered at PS Vikaspuri, Delhi. Vide order of 18th February, 2013 the substantive sentence imposed upon petitioners was reduced from one year SI to six

months SI while sentence of fine of ₹5,000/- with default clause had been maintained. Learned counsel for petitioners does not assail the impugned judgment on merits but submits that nature of offence committed by petitioners does not fall under Section 326 IPC as it has not been opined by any medical expert that injuries caused to the injured were endangering life. It is submitted on behalf of petitioners that petitioner-*Om Prakash* is aged 65 years and petitioner-*Samay Singh* is aged 55 years and they have already remained behind bars in this case for about one month, have faced the agony of these proceedings since June, 1996 and are leading retired life and they are not involved in any other case and so, it is a fit case for grant of probation to petitioners.

Learned Additional Public Prosecutor for State supports the impugned judgment and submits that benefit of probation cannot be extended to petitioners as they are convicted under Section 326 IPC, which is punishable for life imprisonment.

Upon hearing and on perusal of impugned judgment and the material on record, I find that conviction of petitioners under Section 326 IPC is not sustainable for the reason that there is no opinion by any medical expert that the injury caused to the injured Surat Singh endangered his life. However, in view of the deposition of PW-1 Jitender, I find that the petitioners are liable to be convicted for the offence under Section 325/323/34 IPC as it is not borne out from the record that injured Surat Singh had remained hospitalized due to grievous injuries suffered by him. Accordingly, the conviction of petitioners is altered from Section 326 of IPC to Section 325 of IPC read with Sections 323 and 34 IPC. However, on the quantum of sentence, I find that the courts below have not extended the benefit of

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probation to petitioners in view of their conviction for the offence under Section 326 IPC, and rightly so. However, since the conviction of petitioners now stands altered from Section 326 of IPC to 325 of IPC, therefore, there is no bar to grant probation to petitioners.

Accordingly, both these petitions are disposed of while granting benefit of probation to petitioners, who shall appear before the trial court on 22nd July, 2013 to furnish the probation bond in the sum of ₹10,000/- each for maintaining good behaviour for a period of one year with one surety of like amount to the satisfaction of trial court. The fine deposited by petitioners is converted to cost of proceedings and compensation of ₹10,000/- each shall be deposited by petitioners before the trial court on 22nd July, 2013. Compensation of ₹10,000/- each so deposited by petitioners be released by trial court to the injured PW-1 -Jitender. Upon completion of period of probation, Probation Officer shall submit the report to the trial court. In case petitioners do not maintain good conduct during the period of probation then they shall be liable to undergo the substantive sentence already awarded. Trial court be apprised of this order forthwith.

Both the petitions stand disposed of accordingly.

Dasti.


(SUNIL GAUR)
Judge

JULY 08, 2013

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