

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Revision No. 1911 of 2013 (O&M)
Date of Decision: 04.09.2015**

Daya Nand & others

...Petitioner(s)

Versus

The State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Rahul Vats, Advocate
for the petitioner(s).

Mr. Manish Bansal, DAG, Haryana

HARI PAL VERMA J.(Oral)

Petitioners-Dayanand and six others, who are young persons between the age of 20-33 years, have filed the present revision petition challenging the judgment 15.5.2013 passed by learned Additional Sessions Judge, Bhiwani, whereby, the appeal against the judgment dated 23.2.2011 passed by Sub Divisional Judicial Magistrate, Loharu, has been dismissed. Vide judgment dated 23.2.2011, Sub Divisional Judicial Magistrate, Loharu has convicted the petitioners under Sections 147, 148, 452, 323 and 325 read with Section 149 IPC and vide separate order dated 25.2.2011,

sentenced them to undergo rigorous imprisonment for a maximum period of two years along with payment of fine.

Briefly stated, on an application dated 23.6.2009 submitted by complainant Mai Chand, FIR No.83 dated 14.7.2009 under Sections 147, 148, 452, 323, 325 read with Section 149 IPC was registered at Police Station Loharu against the petitioners-accused. As per the allegations made in the FIR, on 22.6.2009, at about 9-00 P.M., when the complainant was taking food in his house, Sonu, Kehender, Rakesh Govinda, Babu Ram, Inder, Daya Nand, Umed, Jony, Gobind, Bimla, Seema, Pushpa, Murti and Rajender came to his house. They were armed with *lathi*, *gulel* and stones. They started assaulting the complainant. The dispute was over some money exchange of labour work. In the meantime, his brother Rohtash, bhabhi Munni and niece Asha came for his rescue and injuries were inflicted upon these people also. When the call for help was made, Dharambir and Sombir came on the spot and rescued them from the clutches of the accused party. The injured were taken to the hospital and medical treatment, as required, was given. As against the original 15 persons, named as accused, the police submitted final report under Section 173 CrPC. But only eight persons were challaned. The trial Court, while observing that the prosecution witnesses have well elaborated the entire incident and participation of each and every accused who used the weapons like *lathis*, *gulel*, stones, giving of fist blows to the complainant and

injured persons was established, found the accused guilty under Section 147, 148, 452, 323 and 325 read with Section 149 IPC and vide separate order dated 25.2.2011, sentenced the accused as under:-

<i>Offence U/s</i>	<i>Sentence</i>
<i>147 read with Section 149 IPC</i>	<i>R.I. for a period of six months and to pay fine of Rs.250/- each and in default of payment of fine, to undergo further simple imprisonment of two months.</i>
<i>148 read with Section 149 IPC</i>	<i>R.I. for a period of six months and to pay fine of Rs.500/- each and in default of payment of fine, to undergo further simple imprisonment of two months.</i>
<i>323 read with Section 149 IPC</i>	<i>R.I. for a period of six months and to pay fine of Rs.250/- each and in default of payment of fine, to undergo further simple imprisonment of two months.</i>
<i>325 read with Section 149 IPC</i>	<i>R.I. for a period of one year and to pay fine of Rs.500/- each and in default of payment of fine, to undergo further simple imprisonment of two months.</i>
<i>452 read with Section 149 IPC</i>	<i>R.I. for a period of two years and to pay fine of Rs.500/- each and in default of payment of fine, to undergo further simple imprisonment of two months.</i>

Aggrieved against the aforesaid judgment of conviction and sentence dated 23.2.2011/25.2.2011, the petitioners preferred appeal before learned Additional Sessions Judge, Bhiwani. However, learned Additional Sessions Judge did not find any illegality in the aforesaid judgment and accordingly, dismissed the appeal vide judgment dated 15.5.2013.

It is the aforesaid judgments 23/25.2.2011 dated 15.5.2013 which are subject matter of challenge in the instant revision petition.

On the statement of learned counsel for the petitioners, this Court had passed following order on 7.6.2013:-

“Learned counsel for the petitioner states that he does not wish to address the issue on merits and prays for leniency in sentence.

Notice of motion reg: quantum of sentence for 15.7.2013.”

Further, vide order dated 26.7.2013, this Court directed learned counsel for the petitioners to deposit Rs.40,000/-, as compensation, in the trial Court, to be paid to the four injured. Thereafter, vide subsequent order dated 23.8.2013, the petitioners were directed to implead the complainant as a party in this revision petition.

Learned counsel for the petitioners contends that pursuant to order dated 26.7.2013, the petitioners have already

deposited Rs.40,000/- in the trial Court and the aforesaid amount has also been withdrawn by the witnesses-injured without there being any protest whatsoever.

Vide order dated 11.10.2013, though the respondents-injured witnesses have been ordered to be impleaded as respondents no.2 to 4 in this case and notice was also issued to the aforesaid newly added respondents, but no one has put in appearance on their behalf.

Learned counsel for the petitioners further contends that one of the accused namely Umed Singh has died during the pendency of appeal before the Appellate Court, whereas there is no other case against any of the petitioners. They are on bail since 2013. The only injured in the case Mai Chand and Munni have taken and accepted the awarded compensation. Therefore, in the light of order of this Court dated 7.6.2013, learned counsel for the petitioners has confined his arguments on the issue of quantum only.

Learned counsel for the petitioners has relied upon judgment of this Court in **Ram Chander v. State of Haryana 2011 (1) RCR (Criminal) 829**, whereby this Court had set aside the sentence imposed upon the accused and the accused were ordered to be released on probation on execution of personal bonds. Relevant para of the aforesaid judgment reads as under:-

“The petitioner has stood protracted trial for a period of more than 10 years. At present he is a man of

advance age having a family to support. Keeping in view these mitigating circumstances, I think it proper and expedient to release him on probation instead of sentencing him to any punishment. Accordingly, the sentence so imposed upon him is set aside and he is ordered to be released on probation on his executing personal bonds in the sum of ₹ 5000/- with a surety in the like amount for a period of three years to appear and receive the sentence as and when called upon to do so during that period and to keep peace and be of good behaviour in the meanwhile. For the injuries caused to the complainant, the petitioner is liable to compensate him suitably. He is directed to pay compensation of ₹15,000/- to Amrit Singh, complainant, under Section 357 of the Code. The bonds, to be furnished, and the compensation to be deposited before the trial court within one month from the date of this order.

Revision petition is disposed of accordingly.”

Similarly, reliance was also placed upon the judgment in the case of **Kesar Singh & others v. State of Punjab 2015(3) RCR (Criminal) 288**, wherein this Court while taking into account the fact that the petitioners had already suffered incarceration for four months and 16 days, reduced the sentence, of course with award of compensation to the victim and released the petitioners-therein on probation in view of Section 360 IPC subject to payment of Rs.20,000/-. In the said case, the accused were sentenced to undergo rigorous imprisonment for one year for offence punishable

under Section 325 IPC and the petitioners were the first time offenders.

Learned counsel for the State has not opposed the prayer of the learned counsel for the petitioners with regard to his contention not to challenge the conviction of the petitioners. However, he submits that in view of nature of injuries inflicted by the petitioners, they do not deserve any leniency.

I have heard learned counsel for the parties with regard to quantum of sentence of the petitioners.

The arguments raised on behalf of the petitioners carries weight especially considering the fact that the petitioners are the first offenders and they have suffered the incarceration since 2009. In this case, the occurrence had taken place on 22.06.2009. Petitioners have already deposited the compensation of Rs.40,000/- with the trial Court which has duly been withdrawn by the victims. Thus, this Court feels that without there being any protest, the petitioners deserve the relief of probation in the present case in view of the provisions laid down under Section 360 Cr.P.C.

Accordingly, taking into account the facts and circumstances of the case, the present revision petition is partly allowed. The impugned order of sentence so imposed upon the petitioners is modified to the extent that the petitioners are ordered to be released on probation, on execution of personal bonds in the sum of Rs.5,000/- each with one surety each, in the like amount, for

the period of one year. It is further ordered that during the period of probation, the petitioners shall keep peace and have good behaviour and shall not commit any other offence during probation.

Since the petitioners have already deposited Rs.40,000/-, no further order for payment of compensation is called for .

The revision petition is disposed of accordingly.

September 04, 2015
AK

(HARI PAL VERMA)
JUDGE