

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

CRR-2889-2013

Date of Decision : 09.04.2015

Bachan Singh

..... Petitioner

Versus

State of Haryana & others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PARAMJEET SINGH

Present : Mr. Vivek Suri, Advocate
for the petitioner.

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PARAMJEET SINGH, J. (ORAL)

Challenge in the present criminal revision is to the judgment dated 08.07.2013 passed by learned Addl. Sessions Judge, Panchkula whereby appeal filed by the petitioner for modification of the judgment dated 21.3.2013 passed by Chief Judicial Magistrate, Panchkula, and enhancement of punishment, has been dismissed.

In brief, the facts relevant for disposal of instant revision are to the effect that on a complaint dated 26.1.2010 by Bachan Singh son of Dhyan Singh DDR No. 10 dated 26.1.2010 was recorded. It was stated in the complaint that the complainant had been residing at House No. 527, Sector-6, Panchkula along with his family comprised of his wife Smt. Bholi Devi, sons Anil, Vivek, Chander Parkash and Dhan Parkash and their respective families. That on that day, at about 8.30 a.m., the complainant was present outside his house in the gali. The car his adjoining neighbour,

Sumit Joshi, residing in H. No. 528, Sector 6 Panchkula, was parked outside

his house in the middle of the road. Some persons asked Sumit Joshi, who was also standing outside his house in the gali, to remove his car but Sumit Joshi did not pay any heed and asked that fellow to get the car of the owner of H. No. 527 removed from the road, whereas, the car of the complainant Bachan Singh, who was the owner of House No. 527, Sector 6, Panchkula, was duly parked beside the road. Sumit Joshi hurled abusive language against the complainant. He brought/snatched a lathi from his house and started assaulting the complainant. The complainant raised alarm which attracted his wife, Bholi Devi and sons, Chander Parkash and Vivek. When they tried to rescue the complainant, Sumit Joshi inflicted a brick blow in the head of the complainant, whereas, his wife Nidhi Joshi had given a bite on the little finger of the right hand of Chander Parkash, due to which injuries were sustained by Chander Parkash. Smt. Bholi Devi was also physically assaulted by Sumit Joshi and his wife Nidhi Joshi. The injured were rescued and were shifted to the hospital. On the basis of DDR No. 10 dated 26.1.2010 coupled with the MLRs of Bachan Singh and his family members an FIR was registered. The accused were formally arrested as they were on anticipatory bail. Statements of the witnesses as envisaged under Section 161 Cr.P.C. were recorded. After completion of investigation, challan was presented before the Court.

On finding a prima facie case, charges under Sections 323 and 506 read with Section 34 of the Indian Penal Code were framed by the trial Court, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant-Bachan Singh as PW 1, Amit Parkash as PW 2, Chander Parkash as PW 3, ASI Zile Singh as PW 4. Statements of accused under Section 313 Cr.P.C.

were recorded. All the incriminating evidence appearing against the accused was put to them. They denied the same and pleaded false implication. However, the accused did not lead any evidence in their defence. The trial Court, vide judgment of conviction dated 20.03.2013, convicted accused-Sumit Joshi and Nidhi Joshi for the commission of offences punishable under Sections 323 and 506 read with Section 34 of the Indian Penal Code and vide order dated 21.03.2013, both the accused have been released on probation while directing them to pay compensation of ₹ 2000/- each to the complainant-appellant.

Against that, petitioner-complainant-Bachan Singh preferred appeal before learned Addl. Sessions Judge, Panchkula, who dismissed the same as not maintainable.

Hence, this criminal revision.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner vehemently contended that the appellate Court has erred in law in dismissing the appeal being non-maintainable as he sought modification of the judgment dated 21.3.2013 vide which respondents No. 2 & 3 had been released on probation and furthermore for enhancement of their punishment. The injuries inflicted on the person of the complainant are supported with the medical evidence. Learned counsel further contended that respondents no.2 & 3 had caused injuries to complainant, therefore, they are not entitled for the benefit of probation.

It is pertinent to mention that since respondents no.2 & 3 have not filed any appeal against the impugned judgment, therefore, the judgment

of conviction has attained finality. Before proceeding further with the present revision, it would be apposite to reproduce relevant provisions.

Section 360 (1) of the Code of Criminal Procedure, 1973 reads as under:-

“Order to release on probation of good conduct or after admonition.- (1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).”

Section 4 (1) of the Probation of Offenders Act, 1958 reads as

under:

“Power of court to release certain offenders on probation of good conduct.-When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.”

The above provisions make it clear that benefit of probation is to be extended to the person convicted if the offence is not punishable with death or imprisonment for life. In **Joginder Singh vs. State of Punjab**, 1980 Criminal Law Journal 1218, a Full Bench of this Court has held that prescription of minimum sentence is no bar for attracting the provisions of the Probation of Offenders Act, 1958 or Sections 360 and 361 of the Code of Criminal Procedure, 1973. The Probation of Offenders Act is one of the big departures from the ordinary rule of penology. It was promulgated with a view to provide benefit of probation to the first offenders who are convicted of an offence not punishable with imprisonment of life or death. It is the result of the recognition of the doctrine that object of criminal law is more to reform the individual offender than to punish him.

Admittedly, respondents no.2 & 3 are not the previous convicts and there is nothing on the file that they have indulged in anti-social activities. The dispute arose on a very petty issue and respondents no.2 & 3 had suffered the agony of trial for three years. No bad antecedent of respondents no.2 & 3 have been brought on record by the petitioner in order to dub them as habitual offender. The trial Court has rightly released respondents no.2 & 3 on probation on furnishing their personal bonds in the sum of ₹ 15,000/- each with one surety in the like amount for the period of one year and they had been directed to pay compensation of ₹ 2,000/- each to the complainant-injured. Moreover, the probation period has already expired and nothing adverse against respondents no.2 & 3 during the said period has been brought to the notice of the Court. No useful purpose would be achieved by sending respondents no.2 & 2 behind bars, at this stage.

In view of above, no ground is made out to interfere with the impugned judgment.

Dismissed.

(PARAMJEET SINGH)
JUDGE

09.04.2015
'SP'