

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-1119-2015
Date of decision:16.11.2015

Jagdish Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.A.S.Syan, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgment dated 29.10.2014 passed by the learned Additional Sessions Judge, Sangrur, extending the benefit of probation to the convicts-respondents, complainant has approached this Court by way of instant criminal revision petition.

Briefly put, facts of the case, which are necessary for disposal of the present case and as recorded by the learned trial Court in para 2 of its judgment, are that the criminal law was swung into motion pursuant to the statement, suffered by complainant Jagdish Singh (petitioner herein) to the effect that he has two elder brothers Sukhdev Singh and Baldev Singh. They all were residing separately. Their father passed away. Their mother Gurdial Kaur filed a case regarding maintenance against them. On 23.9.2008, after attending the court, he came to home. After eating meal, he

along with his family members went to bed. At about 10.00 PM, his brothers Sukhdev Singh and Baldev Singh along with Gurprit singh, Harprit Singh sons of Sukhdev Singh, Jaswant Singh, Kulwant Singh and Sukhwant Singh sons of Baldev Singh came to his house in drunkard condition, started breaking open the lock and exhorted to teach a lesson for filing a case against them. After scaling over the wall, they pelted brick bats upon them, out of which one was struck on the back of his left shoulder. Being scared, he along with his family members went inside a room and locked the same. The accused persons armed with Soties, started breaking open the door and abusing them. He called Sarpanch of village to the spot on telephone, who came there. He pacified the accused persons and they went away from the spot. Thereafter, he along with his friend was going on his motorcycle to Ahmadgarh for medical treatment on the same day. When they reached near the bridge of canal in the area of Jandali, Sukhdev Singh, Gurprit Singh and Jaswant Singh armed with Soties on their motorcycle came through them, Sukhdev Singh gave Soti blow on the above side of his right wrist, as a result of which they fell down. Gurprit Singh gave blow with the handle of tap on his right buttock. Jaswant Singh gave two Soti blows on his right arm. Sukhdev Singh gave Soti blow on the left side of his head. Gurprit Singh gave a blow with his weapon on his right knee. They raised hue and cry. On seeing the people, the accused persons ran away from the spot along with their respective weapons. His friend got him admitted in Civil Hospital Ahmadgarh. Apple of discord was that the accused persons were suspecting on him regarding the case, instituted by their mother. On the basis of above statement of complainant, FIR was registered. Site plan of the witnesses were recorded.

After completion of investigation, report under Section 173(2) of the Code of Criminal Procedure ('Cr.P.C.' for short), having been presented, copies thereof along with documents attached therewith, were supplied to the accused, as envisaged under Section 207 Cr.P.C. A prima facie case was found and accordingly, the accused were charge-sheeted for the offences punishable under Sections 148, 452, 323, 341, 506 and 149 of the Indian Penal Code 'IPC' for short). They pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as eight witnesses, besides producing on record other relevant documentary evidence. On conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material brought on record, was put to the accused. They denied all the allegations levelled by the prosecution, alleged false implication and pleaded complete innocence. Opting for leading defence evidence, accused examined Nirmal Singh as DW-1.

After hearing learned counsel for both the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has proved its case, bringing home guilt against the accused. Accordingly, the accused were convicted of the charges framed under Sections 323, 452, 506, 341, 148 and 149 IPC vide judgment of conviction dated 5.8.2014. Consequently, the convicts were awarded the sentence vide order of sentence of even date i.e.5.8.2014 and relevant part thereof reads as under:-

<i>Sr. No.</i>	<i>Name of convict</i>	<i>Under Section (IPC)</i>	<i>Sentence</i>
1	Sukhdev Singh	148	To undergo rigorous imprisonment for three months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		323/149	To undergo rigorous imprisonment for three months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		452/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		341/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		506/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
2	Baldev Singh	148	To undergo rigorous imprisonment for three months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.

<i>Sr. No.</i>	<i>Name of convict</i>	<i>Under Section (IPC)</i>	<i>Sentence</i>
		323/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		452/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		341/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		506/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
3	Harpreet Singh	148	To undergo rigorous imprisonment for three months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		323/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.

<i>Sr. No.</i>	<i>Name of convict</i>	<i>Under Section (IPC)</i>	<i>Sentence</i>
		452/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		341/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		506/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
4	Jaswant Singh	148	To undergo rigorous imprisonment for three months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		323/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		452/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.

<i>Sr. No.</i>	<i>Name of convict</i>	<i>Under Section (IPC)</i>	<i>Sentence</i>
		341/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		506/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
5	Kulwant Singh	148	To undergo rigorous imprisonment for three months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		323/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		452/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		341/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		506/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.

<i>Sr. No.</i>	<i>Name of convict</i>	<i>Under Section (IPC)</i>	<i>Sentence</i>
6	Sukhwant Singh	148 IPC	To undergo rigorous imprisonment for three months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		323/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		452/149	To undergo rigorous imprisonment for six months and to pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		341/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.
		506/149	To pay fine of Rs.100/-. In default thereof, he will further undergo rigorous imprisonment for ten days.

All the sentences were ordered to run concurrently.

The above-said judgment of conviction and order of sentence were challenged by the accused by way of appeal, wherein the learned Additional Sessions Judge upheld the conviction of the convicts, however, order of sentence was modified, extending the benefit of probation to the convicts vide judgment dated 29.10.2014. Hence this criminal revision

petition, at the instance of the complaint.

Learned counsel for the petitioner submits that the convicts-respondents were not entitled for the benefit of probation under the provisions of the Probation of Offenders Act, 1958. However, since the learned first appellate court misdirected itself, while not appreciating the true facts of the case as well as the nature of offences committed by the convicts, the impugned judgment has resulted in miscarriage of justice and the same is liable to be set aside. He prays for setting aside the impugned judgment, by allowing the instant petition.

Having heard the learned counsel for the petitioner and going through the record of the case, this Court is of the considered opinion that keeping in view the peculiar fact situation obtaining in the present case, instant one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned judgment would show that the learned first appellate court has discussed, considered and appreciated each and every relevant aspect of the matter, before arriving at its judicious conclusion. Oral as well as documentary evidence available on record were appreciated in the correct perspective. Having said that, this Court feels no hesitation to conclude that the learned first appellate court committed no error of law, while extending the benefit of probation to the convicts-respondents and the impugned judgment deserves to be upheld.

The learned Additional Sessions Judge recorded cogent reasons, while upholding the conviction of the respondents and granting

them the benefit of probation, because of which, the impugned judgment has not been found to be suffering from any patent illegality. It is the settled proposition of law that this Court has no jurisdiction to re-appreciate the evidence, until and unless the impugned judgment is found manifestly wrong and grossly as well as palpably unjust.

The Hon'ble Supreme Court, about four decades ago, in its judgment in the case of **Duli Chand Vs. Delhi Administration, 1975 CriLJ 1732**, held that the jurisdiction of the High Court in a criminal revision is severely restricted and it cannot embark upon re-appreciation of evidence. The above-said view taken by this Court also finds support from two judgments of this Court in **Ram Niwas Vs. State of Haryana, 1996 (3) CRR-281-2014 (O&M) RCR (CrI.) 374** and **Sukhdev Kumar Vs. State of Punjab and another, 2012 (3) RCR (CrI.) 158**.

The relevant observations made by this Court in paras 11 & 12 of **Sukhdev Kumar's** case (supra), which can be gainfully followed in the present case, read as under: -

“After considering the above part of the judgment keeping in view the given fact situation of the case, I have no hesitation to conclude that no illegality has been committed by the learned Additional Sessions Judge, Jalandhar, while granting the probation to the respondent Vijay Kumar. The view taken by this court also finds support from the judgments rendered in **Dalbir Singh Vs. State of Haryana, AIR 2000 SC 1677**, **State of Punjab Vs. Kuldip Singh and others, 2007(2) RCR (CrI.) 670 (DB)** and **Hanuman Vs. State of Haryana, 2007 (3) RCR (CrI.) 488**.

The ratio of the judgments, noted above, is that if the court forms the opinion that it is just and expedient to release the offender on probation for his good conduct regard being had to the circumstances of the case and the nature of the offence, the offender can be released on probation, it being a beneficial piece of legislation. In the present case, the occurrence took place on a very petty issue with any conspiracy for committing the offence. Further, the object of the statute is to give a chance to the offender for reforming so that he may become a useful and responsible citizen. In fact, release of probationer on bond with or without sureties on probation of good conduct is, in nature, a preventive measure which gives to the offender an opportunity of reformation within the community itself.”

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record of the case, so as to convince this Court to take a different view than the one taken by learned Additional Sessions Judge. The learned Appellate Court has been found factually correct and legally justified, in upholding the judgment of trial Court. In this view of the matter, it can be safely concluded that learned Additional Sessions Judge was well within his jurisdiction, while passing the impugned judgment and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that the present petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, instant criminal revision petition stands dismissed, however, with no order as to costs.

16.11.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE