

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Revision No.1289 of 2015
Date of Decision : 30.4.2015

Pardeep and othersPetitioners

Vs.

State of HaryanaRespondent

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. Sanjay Vashisht, Advocate for the petitioners.
Mr. M.K.Sangwan, DAG, Haryana.

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

RAMESHWAR SINGH MALIK, J

The present criminal revision petition is directed against the judgement dated 25.3.2015 passed by the learned Additional Sessions Judge, Bhiwani, whereby conviction and sentence of the petitioners, as recorded by the learned JMIC, Bhiwani, vide its judgement of conviction dated 21.2.2012 and order of sentence dated 23.2.2012 was upheld, dismissing the appeal of the petitioners.

Briefly stated, the facts of the prosecution case are that on 6.5.2006, one telephone was received from Incharge Police Post, General Hospital, regarding admission of Anil son of Dhan Singh and Vikas son of Surender Sharma, residents of Bhiwani, SI Vikram Singh reached General Hospital, Bhiwani and obtained the Ruqqa along with MLRs of Anil and Vikas. After seeking opinion of the doctor, he recorded the statement of complainant/injured

Anil to the effect that he hails from Halu Bazar Jawahar Chowk, Bhiwani and he is running a shop of Goldsmith. He along with his brother Raj Kumar has also installed a Dharamkanta in the name of Balaji Dharamkanta in Tosham at Siwani Road, Tosham. Yesterday, he along with Vikas son of Surender Sharma resident of Bichla Bazar, Bhiwani went to their Dharamkanta and at about 11.00/11.30 PM, he alongwith his brother Raj Kumar and Vikas were sitting there. In the meantime, his relative Ramesh son of Kanwar Singh Jat, resident of Tosham came there in a drunken condition and hurled abuses to which complainant raised objection; but he kept on abusing him and went away. After some time, he came back armed with Binda and started beating him. Due to this, complainant received injuries on his head and ear. His brother Sanjay also came there armed with Binda and gave a Binda blow on his left hand and when Vikas tried to rescue him, Ashok i.e. brother of Ramesh gave a Binda blow on his right hand also. Sanjay also caused injuries on the head and ear of Vikas with Binda. In the meantime, Tinny brother of Ramesh also came there who was armed with an Iron Rod and gave Iron Rod blow on his back and stomach. Ashok and Rajesh also caused injuries on the foot and back of Vikas with bricks and Binda. When they raised alarm, on hearing the same Vicky son of Mahender, resident of Bhiwani, his brother Raj Kumar and some other persons came there and rescued them. In this quarrel ₹ 1000/- 1200/- and one gold chain fell down and efforts were made to trace out, but the same could not be traced. The motive behind the occurrence was that he gave ₹ 35,000/- to Ramesh and on demand he started quarreling with them. Thereafter, his brother Raj Kumar shifted them to General Hospital, Bhiwani. Action was prayed to be taken against the accused persons.

On this, formal FIR under Sections 323, 325 and 452/324 of the

Indian Penal Code was registered. Rough site plan was prepared. Statements of witnesses under Section 161 Cr.P.C. were recorded. Accused were arrested and after completion of all usual formalities of investigation, challan under Section 173 Cr.P.C. was presented in court for putting the accused to trial.

The report under Section 173 Cr.P.C., having been presented in the court, copies thereof alongwith attached documents were supplied to the accused, as required under Section 207 Cr.P.C. On finding a prima facie case against the accused, the learned trial court charge sheeted the accused for commission of offences punishable under Sections 452, 323 and 325 read with Section 34 of the Indian Penal Code ('IPC' for short), vide order dated 29.1.2008. Accused pleaded not guilty and claimed trial.

In order to substantiate the allegations levelled against the accused, the prosecution produced its evidence. S.I. Jai Pal appeared as PW-1, SI Vikram Singh as PW-2, Anil Kumar complainant-injured as PW-3, Vikas injured-eye witness as PW-4, Dr. Dara Singh as PW-5, ASI Satbir Singh as PW-6, Dr. Anil Sharma as PW-7, Raj Kumar, eye witness as PW-8 and Sube Singh retired Inspector as PW-9. Besides producing these 9 PWs, prosecution also brought on record the documentary evidence.

The prosecution evidence having been closed, statements of accused under Section 313 Cr.P.C., were recorded by the learned trial court, putting all the incriminating material, brought on record by the prosecution against the accused. The accused pleaded false implication and expressed their willingness to lead the defence evidence. However, no defence evidence was produced by the accused.

After hearing the learned counsel for the parties and going through the evidence brought on the record, the learned trial court came to the

conclusion that the prosecution has successfully proved its case bringing home the guilt against the accused. Accordingly, the accused were held guilty and were convicted for the offences punishable under Sections 323 and 452 read with Section 34 IPC, vide its impugned judgement of conviction dated 21.2.2012. The convicts were heard on the quantum of sentence and they were awarded the sentence to undergo R.I. for two years and a fine of ₹ 2000/- each for the offence under Section 452 read with Section 34 IPC. In default of payment of fine, the accused were ordered to further undergo simple imprisonment for a period of one month. The convicts were also sentenced to undergo R.I. for a period of six months for the offence under Section 323 read with Section 34 IPC. Both the sentences were ordered to run concurrently. Fine was paid by the convicts as recorded by the learned trial court in its order of sentence dated 23.2.2012.

Dissatisfied, convicts as well as the complainant filed their respective appeals. The appeal filed by the complainant for enhancement of sentence as well as the appeal filed by the convicts against the conviction and sentence were dismissed, vide common judgement dated 25.3.2015. Feeling aggrieved against the above said impugned judgements and order of sentence, petitioners have approached this court by way of instant criminal revision petition.

Learned counsel for the petitioners, at the very outset, submits that he does not intend to press this revision petition on merits. He submits that since all the five petitioners are real brothers and first offenders, occurrence having taken place amongst the close relatives, the petitioners may be considered for granting the benefit of probation under the relevant provisions of Probation of Offenders Act, 1958 ('Act of 1958' for short). Accordingly, notice of motion

was issued to this limited extent, considering the present petition for granting the benefit of probation to the petitioners.

Learned counsel for the petitioners, while highlighting the mitigating circumstances in favour of the petitioners, submits that the petitioners were first offenders. They had never been found involved in any other case at any point of time. All the five petitioners are real brothers. Their age was between 19 to 30 years. The alleged occurrence shown to have taken place by the prosecution at the weighbridge (Dharamkanta) of the complainant. The complainant and the petitioners were close relatives. He further submits that the petitioners are facing the agony of criminal trial for quite some long time i.e. about 9 years. He also submits that as per the case set up by the prosecution, offence under Section 452 IPC was not at all made out against the petitioners, because there was not even an allegation against the petitioners that they entered into any house owned by the complainant and, as a matter of fact, there was no house owned by the complainant at the place of occurrence. In view of the totality of facts and circumstances of the case, learned counsel for the petitioners submits that the petitioners are entitled for granting the benefit of probation under Section 4 of the Act of 1958. He prays for allowing the present criminal revision petition.

On the other hand, learned counsel for the State submits that the manner in which the petitioners committed the offences, they have been rightly convicted and sentenced. They were not entitled for granting the benefit of probation under the Act of 1958. He prays for dismissal of the revision petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered

opinion that it is just and expedient to grant the benefit of probation to the petitioners, they being the first offenders. To say so, reasons are more than one, which are being recorded hereinafter.

So far as the factual aspect of the matter is concerned, the same has gone undisputed on record. The mitigating circumstances highlighted by the learned counsel for the petitioners, could also not be controverted by learned counsel for the State and rightly so, because it was a matter of record. The petitioners are real brothers. Their age at the time of occurrence was between 19 to 30 years as recorded by the learned trial court in its impugned judgement. The petitioners have not been found involved in any other criminal case. The complainant party was not stranger, but closely related with the accused.

The cause of occurrence, as disclosed by the complainant, was that one of the accused-petitioners namely; Ramesh was supposed to give an amount of ₹ 30,000/- to the complainant. The allegations against the petitioners were for the offences under Section 323 and 325 read with Section 34 IPC. Although, the allegations against the petitioners were also under Section 452 IPC, yet in view of the prosecution story unfolded by the complainant, it does not show that there was even an allegation against the petitioners for commission of offence under Section 452 IPC. Having said that, this court feels no hesitation to conclude that the petitioners deserve to be released on probation of good conduct.

The above said view taken by this court also finds support from the judgement of the Hon'ble Supreme Court in **State through C.B.I. Anti Corruption Branch, Chandigarh Vs. Sanjiv Bhalla and others**, 2014 (4) RCR (Crl.) 17, judgments of this court in **State of Punjab Vs. Harinder Singh @ Raju**, 2008(2) RCR (Crl.) 294 (DB), **Sant Lal Vs. State of Haryana**, 1999 (2)

RCCR (Crl.) 563, Crl. Revision No.97 of 2002 (Mani Ram Vs. State of Punjab) decided on 30.7.2010 and Crl. Revision No.1385 of 2012 (Chander Parkash Vs. State of UT., Chandigarh) decided on 15.5.2012.

The relevant observations made by the Hon'ble Supreme Court in para 27 of its judgement in **Sanjiv Bhalla's case (supra)**, which can be gainfully followed in the present case, read as under :-

“These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift – from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act, what is imperative for the judge is to strike a fine balance between releasing a convict after admonition *(18) or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing mission must not be forgotten.

*(18) Probation of Offenders Act, 1958 3: Power of court to release certain offenders after admonition – When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code (45 of 1860), or any offence punishable with imprisonment for not more than two

years or with fine or with both, under the Indian Penal Code or any other law and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition.

Explanation – For the purposes of this section, previous conviction against a person shall include any previous order made against him under this Section or Section 4.

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as this court in the cases referred to herein above, it is unhesitatingly held that keeping in view the peculiar facts and circumstances of the present case, instant one has been found to be a fit case, in which the sentence awarded to the petitioners deserve to be set aside and petitioners be extended the concession of release on probation of good conduct.

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 it is just and expedient to extend the benefit of probation to the petitioners, they being the first offenders.

Accordingly, while upholding their conviction, order of sentence of the petitioners is set aside. The petitioners are ordered to be released on probation of good conduct, on furnishing personal bonds by each of them, in the sum of ₹ 20000/- with one surety in the like amount, to the satisfaction of learned Chief Judicial Magistrate, Bhiwani, for a period of three years, to appear and receive sentence, as and when called upon, during this period and in the meantime, to maintain peace and be of good behaviour, besides furnishing an undertaking not to commit such an offence during the period of probation. On their furnishing personal bonds and undertakings, as indicated above, petitioners are directed to be released forthwith, if they are not required in any other case.

Resultantly, with the above said observations made, present criminal revision petition stands disposed of.

30.4.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE