

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

CRR-182-2014

Date of decision:9.10.2015

Bishan Dass

...Petitioner

Versus

State of Haryana 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.Rajesh Bansal, Advocate for the petitioner.

Mr.Ashish Yadav, Addl. A.G., Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

Present criminal revision petition, at the instance of the complainant, is directed against the impugned judgment dated 22.10.2013 passed by the learned Additional Sessions Judge, Hisar, whereby appeal of the accused was dismissed with modification, releasing the accused-respondents on probation, upholding the judgment of conviction dated 25.10.2012.

Brief facts, as noticed by the learned Additional Sessions Judge in para 2 of his judgment, are that the present case was registered on the basis of information given by Bishan Dass (herein petitioner) to the police on 19.3.2006 at about 7.30 pm to the effect that he was going to his house on bicycle. A maruti car came from the opposite side. On seeing the car, he started walking by foot. However, the car hit his cycle, upon which accused-respondents alighted from the car and started abusing him. An altercation ensued. Accused namely Subhash (herein respondent No.3) took

out an iron rod from the car and gave its blow on the forehead of the complainant. Accused Satish (herein respondent No.2) gave a danda blow on the left wrist of the complainant. Thereafter, accused Subhash gave rod blow straightway on his face, as a result of which his tooth uprooted and fell down. Satish again gave a danda blow, which hit on the left eye of the complainant. On account of injuries suffered by the complainant, he fell down and accused ran away along with the car. Thereafter, Krishan son of Banwari came at the spot and shifted him to Civil Hospital, Hansi.

On the basis of above-said information, ruqa was sent to the police station and formal FIR was registered. Investigation was set into motion. Statements of the witnesses were recorded. Accused were arrested and after completion of all usual formalities of necessary investigation, challan under Section 173 (2) Cr.P.C was presented in the Court for trial. Requirement of Section 207 Cr.P.C. was complied with.

Finding a prima facie case, learned trial Court framed the charges against the accused for commission of offences under Sections 323, 325 and 34 IPC. The accused pleaded not guilty and claimed trial. The prosecution, with a view to prove its case, produced as many as five prosecution witnesses, besides producing on record other documentary evidence.

On closing of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. They denied the allegations, alleged false implication and claimed complete innocence. However, the accused did not lead any defence evidence.

After hearing the learned counsel for 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 the guilt against the accused. Accordingly, both the accused were convicted for the offences punishable under Sections 323 and 324 and read with Section 34 IPC, vide judgment dated 25.10.2012. Thereafter, vide order of sentence dated 31.10.2012, convicts were sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1500/- each for committing offence punishable under Section 323 IPC and in default of payment of fine, they shall further undergo simple imprisonment for a period of two months. The accused were further sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.2,000/- each for committing the offence punishable under Section 324 IPC and in default of payment of fine, they shall undergo simple imprisonment for a period of nine months. However, both the sentences were ordered to run concurrently.

Dissatisfied, the impugned judgment of conviction and order of sentence were challenged by the accused-respondents, by way of appeal, which also came to be dismissed by learned Additional Sessions Judge, however, with modification, releasing the accused-respondents on probation of good conduct, vide impugned judgment dated 22.10.2013. Hence this criminal revision petition, at the hands of complainant.

Learned counsel for the petitioner submits that the learned first appellate court committed a serious error, while granting the benefit of probation to the convicts-respondents. He further submits that since the prosecution has duly proved its case bringing home the guilt against the convicts-respondents and they were rightly convicted by the learned trial Court, they were not entitled for the benefit of probation, which has been

illegally granted to them by the learned first appellate court. He prays for setting aside the impugned judgment to the extent it has granted the benefit of probation to the convicts-respondents, by allowing the present petition.

Learned counsel for the State submits that the learned first appellate did not commit any error of law, while upholding conviction of the respondents and extending the benefit of probation to them. He prays for dismissal of the present 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 contentions raised, this Court is of the considered opinion that no interference is warranted, 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 perusal of the impugned judgment would show that the learned first appellate court did not exceed its jurisdiction, while granting the benefit of probation to the convicts-respondents. Sufficient and cogent reasons have been assigned. The learned first appellate court has not been found to have committed any error of law, while passing the impugned judgment and the same deserves to be upheld.

The above-said view taken by this Court also finds support from the following judgments:-

- 1. M.C.D. v. State of Delhi and another, 2005 (4) SCC 605;**
- 2. Ramesh Dass v. Raghu Nath and others, 2008(2) SCC (Crl.) 470;**
- 3. State through CBI, Anti Corruption Branch, Chandigarh v. Sanjiv Bhalla and another, 2014 (8) Scale 377;**

4. **Sant Lal v. State of Haryana, 1999 (2) RCR (Crl.) 563 (P&H);**
5. **Chuni Lal v. State of Haryana, 2006(1) RCR (Crl.) 844;**
6. **State of Punjab v. Harinder Singh @ Raju, 2008 (2) RCR (Crl.) 294 P&H);**
7. **CRR No.97 of 2002 (Mani Ram v. State of Punjab), decided on 30.7.2010 (P&H);**
8. **CRR No.1385 of 2012 (Chander Parkash v. State of UT Chandigarh), decided on 15.5.2012 (P&H); and**
9. **CRR No.1289 of 2015 (Pardeep and others v. State of Haryana), decided on 30.4.2015.**

The relevant observations made by the Hon'ble Supreme Court in para 27 of its judgment 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 Section 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.”

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, in the impugned judgment passed by the learned first appellate court, so as to enable this Court to interfere in the impugned judgment, while exercising its revisional jurisdiction taking a different view than the one taken by the learned first appellate court. In fact, the impugned judgment passed by the learned first appellate court has been found to be factually correct as well as legally justified and the same deserves to be upheld, for this reason also.

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 instant petition is wholly 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, the present criminal revision petition stands dismissed, however, with no order as to costs.

9.10.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE