

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

CRR-264 of 2015

Date of Decision: 03.08.2015

Smt. Bhagwan Devi

... Petitioner(s)

Versus

Ram Chander @ Rama and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the 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 ?

Present: Mr. Jatin Hans, Advocate, for the petitioner.

Paramjeet Singh, J.

Instant revision has been filed with a prayer for modification of the impugned order dated 07.02.2011 passed by Chief Judicial Magistrate, Bhiwani and order dated 30.09.2014 passed by Additional Sessions Judge, Bhiwani be set aside, as well as seeking enhancement of sentence awarded to respondents.

Brief facts of the case are to the effect that the accused Smt. Bhagwan Devi, Complainant filed a complaint against the accused (herein respondents) Ram Chander alias Rama, Shakuntla alias Baby wife of Sh. Ram Chander, Atam Parkash son of Sh. Thakar Dass, Ashok Kumar son of Sh. Atam Parkash and Sh. Maha Singh Ranga, ASI Incharge Police Post, Jain Chowk, Bhiwani under Sections 323, 500, 506, 341, 148, 149 and 120B IPC with the averments that she is a widow

lady and is aged 65 years and is resident of House No.40, Kamla Nagar, Bhiwani. The accused/respondent No.1 is a tenant in house of the complainant in a room for a monthly rent of Rs.200/- and he is not a good tenant, therefore, she has filed an ejectment petition before the learned Rent Controller, Bhiwani, which is pending consideration. The accused/respondent No.2 is the wife of accused/respondent No.1. The accused/respondent No.1 used to consume alcohol. He would call vagabond persons in his room and offered them liquor. The accused/respondent No.3 used to consume liquor with him. When the complainant raised objections, they threatened to kill her and abused her. The accused/respondent No.4 is the son of accused/respondent No.3, who is also habitual of consuming liquor. He(accused/respondent No.4) also quarrels with the complainant and her son Kishan Lal after consuming liquor and abuses them. The accused/respondents No.1 and 2 used to put cot, 'Rehri' and other items in front of the main gate of the complainant and caused obstruction regarding which Sh. Tikka Lal, husband of the complainant has filed a suit for permanent injunction against the accused/respondent No.1 in the Civil Court at Bhiwani and has got the injunction against the accused/respondent No.1. The accused/respondents No. 1 and 2 violated the injunction order of the civil Court, on which the complainant has filed application regarding contempt of Court in the Civil Court and the accused/respondent No.1 is flouting the orders of the Court and to implement the same, the police help has also been sought. On the application of the complainant, Sh. Jasbir Singh the then learned Civil Judge (Junior Division), Bhiwani had

sought report regarding obstruction from SHO, Police Station City, Bhiwani on 04.09.2013. The SHO Police Station City Bhiwani forwarded the application for compliance to Incharge Police Post Jain Chowk, where Sh. Maha Singh Ranga, ASI has been posted as Incharge and the accused/respondent No.5 Sh. Maha Singh Ranga, is also in connivance with the accused/respondents No. 1 to 4. On 14.09.2003, the complainant was at her residence. The accused/respondent No.5 came at the residence of the complainant in the official vehicle along with two policemen and abused the complainant and stated that he would drag her by catching hold of her hair, if she did not withdraw the cases filed against Ram Chander. He also stated that he would file report against her in the Court. He asked her and her son to accompany them to the police post, on which they (complainant) refused, then she was given pushes after catching hold of her hair and was thrown on the ground and all the three policemen gave leg and fist blows and slaps to her son and took him to the police post in the police vehicle. Her son was confined in the police post without any reason on 14.09.2003 and 15.09.2003 and was given beatings. On 14.09.2003, she moved an application to the S.P. against illegal confinement of her son and about the above-said occurrence, at her residence. On 15.09.2003, the accused/respondent No.5 sent Sh. Krishan Lal son of the complainant from the police post by pushing him and asked him to come again on 16.09.2003 for the reconstruction of the bathroom which got destroyed in the rain, otherwise he would be called in the police post daily and would be given beatings. On this Sh. Krishan Lal, son of the complainant moved an

application for his pre-arrest bail before the learned Sessions Judge, Bhiwani on 17.09.2003, on which the accused/respondent No.5 gave report that there is no case against Krishan Lal. The accused/respondents No. 1 to 4 in connivance with the accused/respondent No.5 threatened the complainant and directed her to get constructed the bathroom and get installed water tap (Barma). When the accused/respondents No.1 to 4 were refused to install the water-hand pump, then the accused/respondents No. 1 to 4 gave slaps and fist blows to the complainant and her son Krishan Lal and also abused them and threatened to kill them. This whole work has been done by accused/respondents No. 1 to 4 in connivance with the accused/respondent No.5. The accused/respondents No. 1 to 4 openly say that they will not let them (complainant) live in their house and if any application is filed against accused/respondents No.1 to 4, they (complainant) will be killed. An application in this regard was also given to the Deputy Commissioner in open Darbar on 29.09.2003, but no action was taken against the accused/respondents. A complaint regarding the beatings is already under consideration against the accused/respondents No. 1 to 2 and another police case is also pending consideration against the accused/respondent No.1.

Complainant to prove the allegations contained in the complaint, in pre-charge evidence stepped into the witness box as PW-1 and examined Krishan Lal as PW-2. Thereafter, complainant closed the pre-charge evidence, vide her statement dated 20.03.2009.

Finding a prima facie case, punishable under Sections 323 and 506 read with Section 34 of IPC, accused were charge sheeted vide order dated 22.04.2009 to which they pleaded not guilty and claimed trial.

In post-charge evidence, complainant stepped into the witness box as PW-1 and examined her son Kishal Lal as PW-2 for their further cross-examination and thereafter, learned counsel for the complainant closed the evidence, vide statement dated 07.07.2009

Statements of the accused were recorded under Section 313 Cr.P.C. The accused denied all the incriminating circumstances appearing against them in the prosecution evidence and claimed to be innocent.

The trial Court, analyzing the evidence on record, came to the conclusion that the prosecution has been able to bring home the charges and, accordingly, held accused-respondents guilty under Sections 323, 506 and 34 IPC and sentenced them as under:

<i>Name of Convict</i>	<i>Under Section</i>	<i>Sentence</i>
Ram Chander alias Rama	323/34 IPC	To undergo rigorous imprisonment for one year.
	506/34	To undergo rigorous imprisonment for one year.
Shakuntla alias Babby wife of Ram Chander.	323/34 IPC	To undergo rigorous imprisonment for one year.
	506/34	To undergo rigorous imprisonment for one year.

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

Learned counsel for the petitioner contended that sentence is required to be enhanced being inadequate looking at the gravity of offences committed by respondents.

I have considered the contentions of learned counsel for the petitioner.

The question that falls for consideration before me is as to whether revision filed by the complainant for enhancement of sentence is tenable. The powers of the High Court for enhancement of sentence are exhaustive under Section 401 of the Code of Criminal Procedure (in short, 'the Code'), relevant portion of which reads thus :

"401. High Court is powers of revision :

(1) In the case of any proceeding the record of which has been called for itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by S. 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by S. 392."

It is quite clear from the wording of Section 401 of the Code has conferred extensive powers on the High Court as that of Section 386 and other provisions of the Code. It appears from the wording of Section 401 that the High Court in a given case can even send for the record and examine and pass such orders as may be necessary in the interest of justice. Learned counsel for the petitioner failed to show any cogent and

convincing evidence and special grounds on the basis of which punishment should be enhanced.

Moreover, I am afraid, while exercising revisional jurisdiction, this Court cannot re-appreciate the evidence. The basic object behind Section 401 of the Code is to empower the high court to exercise the powers of an appellate court to prevent failure of justice in cases where the Code does not provide for appeal. The power, however, is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to a defect in the procedure or a manifest error on the point of law, excess of jurisdiction, abuse of power, where decision upon which the trial court relied has since been reversed or overruled when the revision is being heard. In exercising the power of revision, which is discretionary, the court should always bear in mind the limitation that under the garb of exercising its powers of revision; it cannot exercise the power of appeal in the face of statutory prohibitions. This is not a case where an important piece of evidence has been left out from consideration by the courts below while deciding the case.

In view of above, I do not find any illegality or perversity in the impugned orders.

Dismissed.

03.08.2015
Anjal

(Paramjeet Singh)
Judge