

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

**Criminal Revision No. 2747 of 2015
Date of Decision: 10.09.2015**

Raj Kumar

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Veneet Sharma, Advocate
for the petitioner(s).

HARI PAL VERMA J.(Oral)

Petitioner-Raj Kumar son of Puran Chand, resident of House No.1217, Gali No.2, Dhapai Road, Guru Nanak Pura, Amritsar has filed the present revision petition against the judgment dated 5.5.2015 passed by learned Additional Sessions Judge, Amritsar, whereby the judgment of conviction dated 30.1.2013 passed by learned Judicial Magistrate Ist Class, Amritsar against the private respondents-accused under Section 452 IPC has been set aside and they have been granted the benefit of probation for offence under Sections 323, 506 IPC.

Briefly stated, the respondents-accused were sent for trial under Sections 323, 341, 294, 506, 283 and 34 IPC by the SHO, Police Station, Islamabad, Amritsar. The complainant had lodged the FIR No.57/2008 under Sections 323, 341, 294, 506, 283 and 34 IPC to the effect that he is resident of House No.1217, Gali No.2, Dhapai Road, Guru Nanakpura, Amritsar and in front of his shop, he is having another plot, which is four cornered by wall and is also having a gate. The said plot is also within Street No.2, Guru Nanakpura, Amritsar. On 3.3.2008, in the evening, the complainant was getting the flooring of the said plot done and it was around 6.30 P.M. when the labourers had left and the complainant was sitting in the said plot and was talking with his wife. At that time, Jasbir Singh armed with slugger, Kala and Sunny armed with rods, all sons of Manmohan Singh r/o Street No.2, Guru Nanak Pura, Amritsar, were accompanied by two unidentified persons, who were also armed with sticks, raised *lalkara* and forcibly entered into the plot of the complainant by forcibly opening the gate of the plot. Jasbir Singh hit on the head of the complainant with his slugger and Kala and Sunny gave fist blows while their mother Kawaljit Kaur along with aforesaid unidentified persons was encouraging them. However, when the wife of the complainant raised an alarm, the brother-in-law of the complainant Uttam Singh, who was passing by on his auto-rickshaw, came there along with other nearby respectables. Seeing the aforesaid persons, the accused took to their heels along with their

weapons. The reason for the incident was reported to be a heap of sand lying in the street in front of the plot of the complainant which was laid by the accused. Initially, no formal complaint was made by the complainant to the police and the respectables of the locality intervened to effect a compromise between the parties, but to no avail. It is, thereafter, the complainant reported the matter to the police on 19.3.2008 and a formal FIR was registered.

The trial Court vide judgment dated 30.1.2013 held the accused Surinder Singh, Jasbir Singh, Parminder Singh and Kawaljit Kaur guilty for offence punishable under Section 452, 323 read with Sections 34 and 506 IPC and sentenced them as under:-

Sr. No.	Name of Accused	Under Section	Sentence
1	Surinder Singh	452 IPC	To undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo Simple Imprisonment for a period of 10 days.
		323 r/w 34 IPC	To undergo Rigorous Imprisonment for a period of one year.
		506 IPC	Rigorous Imprisonment for One year

Sr. No.	Name of Accused	Under Section	Sentence
2	Jasbir Singh	452 IPC 323 r/w 34 IPC 506 IPC	To undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo Simple Imprisonment for a period of 10 days. To undergo Rigorous Imprisonment for a period of one year. Rigorous Imprisonment for One year
3.	Parminder Singh	452 IPC 323 r/w 34 IPC 506 IPC	To undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo Simple Imprisonment for a period of 10 days. To undergo Rigorous Imprisonment for a period of one year. Rigorous Imprisonment for One year
4.	Kawaljit Kaur	452 IPC 323 r/w 34 IPC 506 IPC	To undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo Simple Imprisonment for a period of 10 days. To undergo Rigorous Imprisonment for a period of one year. Rigorous Imprisonment for One year

Against the aforesaid judgment of conviction and sentence dated 30.1.2013, the petitioners preferred an appeal, whereupon, learned Additional Sessions Judge, Amritsar, vide

judgment dated 5.5.2015 held that the accused have been rightly convicted for offence under Section 323 and 506 IPC. However, learned lower Appellate Court ordered the release of the respondents-accused, on probation, on good conduct, for these offences. As regards the conviction of the accused for offence under Section 452 IPC by learned trial Court, the lower Appellate Court held that the occurrence has taken place on a plot and not in any house, therefore, no offence under Section 452 IPC is made out. There was no evidence that the plot was being used for residential purpose or for storage of property or as a place of worship. Thus, it was held the prosecution has failed to prove the charge against the accused for the offence under Section 452 IPC. Accordingly, the lower Appellate Court set aside the conviction of the respondents-accused for offence under Section 452 IPC and instead, the same has been altered to one under Section 447 IPC.

For the facility of reference, Sections 447 and 452 IPC are reproduced hereunder:-

“447. Punishment for criminal trespass.—Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.

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452. House-trespass after preparation for hurt, assault or wrongful restraint.—Whoever commits house-trespass, having made preparation for causing

hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Learned counsel for the petitioner has argued that the Appellate Court has wrongly set aside the conviction for offence under Section 452 IPC and has also wrongly granted the benefit of probation to the respondents-accused. He submitted that the occurrence has taken place in the house and not on the plot. Therefore, the observation of learned Additional Sessions Judge that occurrence has taken place on the plot is contrary to record. He refers to cross-examination of the complainant, wherein, he has stated that the occurrence has taken place in house.

I have heard learned counsel for the petitioner.

The very opening part of the FIR suggests that the allegation against the respondents-accused are that they forcibly entered into the plot of the complainant by forcibly opening the gate of the plot, whereas during cross-examination, to the suggestion made to the complainant, he has stated that the occurrence has taken place in the house and not in plot, is contrary to his own statement when the FIR was lodged. Thus, the contention of learned counsel for the petitioner that the occurrence has taken place in house is contrary to his own initial version in the FIR. Since the

respondents/accused are not the previous offenders or involved in any other criminal activity, the sentence awarded to the accused-respondents has rightly been suspended and they have rightly been ordered to be released, on probation, on their furnishing probation bonds in the sum of Rs.5,000/- with one surety in the like amount for one year, with an undertaking to maintain peace and be of good behaviour and to appear before the trial Court to receive the sentence during the period of one year, as and when called upon to do so.

Therefore, I find no illegality in the judgment passed by lower Appellate Court.

Accordingly, the revision petition is dismissed.

September 10, 2015
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(HARI PAL VERMA)
JUDGE