

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-281-2014 (O&M)
Date of decision: 18.08.2015

Shamsher Singh

... Petitioner

Vs.

Parveen and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Jasbir Mor, Advocate
for the petitioner.

Mr. Tapan Yadav, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition, at the instance of complainant, is directed against the impugned judgment dated 21.09.2010 passed by learned Additional Sessions Judge, Jind, dismissing the appeal filed by the State, thereby upholding the judgment of conviction dated 06.03.2009 and the order of sentence dated 09.03.2009, whereby after their conviction, the accused were granted the benefit of probation.

Brief facts of the case, as noticed by learned trial Court in para 2 of its judgment of conviction, are that on 07.04.2004 at about 10.30 AM in the area of Defence Colony Jind, the accused persons along with another

unidentified person, while armed with weapons, forcibly entered into the house of complainant Bijender Singh and in furtherance of their common intention, they voluntarily caused multiple injuries on the person of Shamsher Singh (the cousin brother of complainant), who along with complainant Bijender Singh was ready to go to the office of District Education Officer for some work at that time. It was alleged that all the accused persons suddenly attacked upon Shamsher Singh and started causing injuries with their respective weapons. When complainant Bijender Singh and his brother Krishan intervened in order to rescue Shamsher Singh, all the accused persons fled away from the spot on their motorcycles while firing in the air from a pistol. Thereafter, the injured was shifted to General Hospital, Jind for medical treatment. The complainant reported the matter to police vide statement Ex.PW2/A and on that basis ruqa Ex.PW4/A was sent to the police station. Upon which, formal FIR Ex.PW4/B was registered against the accused. The accused were formally arrested. Rough site plan of the place of occurrence Ex.PW4/D was prepared. The statements of witnesses under Section 161 of the Code of Criminal Procedure ('Cr.P.C.' for short) were recorded. After completion of necessary investigations, challan was prepared and put forward to the Court.

The police report under Section 173 (2) Cr.P.C. having been presented, copy thereof along with documents attached therewith, was supplied to the accused, as envisaged under Section 207 Cr.P.C. Finding a prima facie case, the accused were charge-sheeted, to which they pleaded not guilty and claimed trial. In order to prove its case, prosecution examined as many as five PWs, besides producing other relevant documentary evidence on

record.

On closure of prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material available on record was put to the accused. They denied all the allegations, alleged false implication and pleaded complete innocence. However, accused did not produce any evidence in their defence.

After hearing the 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 the guilt against the accused. Accordingly, the accused were held guilty and convicted for the offences punishable under Sections 323/324/452 of Indian Penal Code ('IPC' for short) read with Section 34 IPC, whereas all of them were acquitted of the charges framed against them for the offence under Section 325 IPC, vide judgment of conviction dated 06.03.2009. Accordingly, the convicts were sentenced. Further, they were released on probation under the provisions of Probation of Offenders Act, vide impugned order of sentence dated 09.03.2009. Feeling aggrieved, State of Haryana filed its appeal which came to be dismissed by the learned Additional Sessions Judge, vide impugned judgment dated 21.09.2010. Hence this criminal revision petition, at the hands of complainant.

Notice of motion was issued. Vide separate application bearing CRM-2628-2014, petitioner sought condonation of delay of 1165 days in filing the revision petition. Notice of the said application was issued and after hearing learned counsel for the parties, it has been allowed, vide a separate order.

Learned counsel for the petitioner submits that although the learned trial Court rightly recorded the conviction of the accused-respondents and awarded sentence to them accordingly, yet committed a serious illegality, while granting them the benefit of the provisions of Probation of Offenders Act, to which the respondents were not entitled. Similarly, learned Additional Sessions Judge fell in serious error of law, while dismissing the appeal filed by the State. He prays for setting aside the impugned order of sentence passed by the learned trial Court to the extent it granted the benefit of Probation of Offenders Act to the accused-respondents and also the impugned judgment passed by the learned Additional Sessions Judge, by allowing the present petition.

Having heard the learned counsel for the petitioner 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 in the given fact situation of the instant case, present 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, for the following more than one reasons.

A bare perusal of the impugned order of sentence passed by the learned trial Court as well as the impugned judgment passed by the learned Additional Sessions Judge leaves no room for doubt that both the learned Courts have discussed each and every relevant aspect of the matter in detail, besides appreciating the evidence available on record, in the correct perspective, before arriving at their judicious conclusions. Both the learned Courts have recorded cogent reasons in support of the impugned judgments.

Since the impugned order of sentence granting the benefit of probation to the convicts-respondents passed by the learned trial Court as well as the impugned judgment passed by the learned Additional Sessions Judge have not been found suffering from any patent illegality, the same deserve to be upheld.

It was not the pleaded or argued case on behalf of the petitioner before this Court that either of the learned Courts have exceeded their jurisdiction, while passing the impugned order of sentence and the appellate judgment. It is so said because neither it is permissible for this Court nor it is in the interest of justice to interfere against a judgment of acquittal, in its revisional jurisdiction unless this Court is satisfied that it is necessary to do so to prevent an otherwise irreparable injustice.

The mere fact that this Court, while sitting as a Court of appeal, might have come to a different conclusion than the one arrived at by both the learned Courts below, is also not a sufficient ground for interference in revision. Whenever there is a concurrent finding of facts recorded by the two Courts, this Court, as a general rule, will not go into the evidence save in exceptional cases or where the impugned judgment on facts is manifestly wrong and grossly as well as palpably unjust. The Hon'ble Supreme Court, 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 abovesaid view taken by this Court also finds support from two judgments of this Court in **Ram Niwas Vs. State of Haryana, 1996 (3)**

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.”

Reverting back to the facts of the present case, 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 both the learned Courts below. In this view of the matter, it can be safely concluded that the both the learned Courts did not commit any error of law and the impugned order passed by the learned trial Court as well as the impugned judgment passed by the learned Additional Sessions Judge deserve 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 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 abovesaid observations made, instant criminal revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

18.08.2015
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