

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRR-4-2015

Date of decision : 13.02.2015

Paramjit Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms.Ishma Randhawa, Advocate
for the petitioner.

Mr.Ankur Jain, AAG, Punjab.

REKHA MITTAL, J.

The present petition lays challenge to the judgment dated 03.11.2014 passed by the Additional Sessions Judge, Tarn Taran whereby the appeal preferred by the petitioner against his conviction and sentence for offence punishable under Section 325 of the Indian Penal Code (in short 'IPC') was dismissed qua conviction but the substantive sentence was reduced to 7 months.

Counsel for the petitioner would submit that even though findings recorded by the Courts below in regard to conviction of the petitioner for offence punishable under Section 325 IPC are not well founded but she does not assail the findings on merits and the petitioner may be heard only on quantum of sentence.

Counsel would argue that neither the trial Court nor the Court in appeal has recorded any reason to deny benefit of probation to the petitioner in the light of facts, attending circumstances, character and

antecedents of the petitioner. It is further argued that the petitioner has suffered trauma of criminal proceedings for the past more than 7 years and actual custody for a period of more than 3 months since his appeal was disposed of by the Additional Sessions Judge on 03.11.2014. It is prayed that order of sentence may be set aside and the petitioner may be released on probation in view of relevant provisions of law.

Counsel for the State of Punjab has supported the judgments passed by the Courts below with the submissions that the appellate Court has already reduced the sentence.

I have heard counsel for the parties and perused the records.

The petitioner has been charged for causing injuries to his brother Surjit Singh with blunt weapon and as per the allegations, the victim sustained 3 injuries; one each on his head, forehead, upper portion of left leg. Indisputably, neither the doctor who conducted medico legal examination of the injured nor the doctor who prepared X-ray report was examined depriving the petitioner of his right to assail medical evidence that has been relied upon by the Courts below to hold the petitioner guilty of committing offence punishable under Section 325 IPC. This apart, the criminal proceedings were initiated against the petitioner with the lodging of FIR in July 2007 meaning thereby that the petitioner has suffered pangs of criminal proceedings for the past about 8 years. There is nothing on record to suggest that any other criminal case was registered against the petitioner much less pending. The petitioner has already suffered custody for a period of more than 3 months as he was sent to custody as soon as his appeal was dismissed by the Additional Sessions Judge, Tarn Taran. Neither

the trial Court nor the appellate Court adverted to an important aspect of the matter as to why the petitioner should be deprived of the benefit of probation or the circumstances under which he is liable to be sentenced at first instance and send to custody.

As the prosecution failed to prove that one of the injuries sustained by Surjit Singh was grievous in nature, the offence proved against the petitioner, at best, is the one punishable under Section 323 IPC. The courts below have committed a gross error by ignoring the provisions in law and its judicial duty to advert to the question of entitlement of the petitioner to be released on probation.

Keeping in view gamut of facts and circumstances discussed hereinbefore, the petition is partly allowed, the order of sentence passed by the appellate Court is set aside and the petitioner is ordered to be released on probation on executing bond in the sum of Rs.10,000/- with one surety in the like amount to satisfaction of the trial Court. The petitioner shall furnish an undertaking to keep peace and maintain good behaviour for one year and to appear and receive sentence as and when called upon to do so during the aforesaid period. The probation bonds shall be furnished within a period of 2 months. The amount of fine deposited by the petitioner shall be adjusted towards cost of litigation.

The petition stand disposed of with modification in the aforesaid terms.

(REKHA MITTAL)
JUDGE

February 13, 2015.

DK