

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-4038-2014 (O&M)

Date of Decision: January 22, 2015

Krishan Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Ram Darshan Yadav, Advocate,
for the petitioner.

Mr. Gurdas Singh, DAG, Haryana,
for the respondent.

NARESH KUMAR SANGHI, J. (Oral)

1. Challenge in this criminal revision petition is to the judgment dated 3.12.2014, passed by learned Sessions Judge, Bhiwani, whereby the appeal filed by the petitioner, Krishan Kumar, son of Dharam Singh, resident of Dhani Phogat, Police Station, Sadar, Dadri, District Bhiwani, challenging his conviction and sentence for the offences punishable under Sections 186, 353 and 506, IPC, recorded by the learned Sub-Divisional Judicial Magistrate, Charkhi Dadri, was dismissed.

2. Learned counsel at the very outset submits that in view of the concurrent findings of both the Courts below, he does not want to challenge the conviction of the petitioner. However, he submits that in view of the totality of the facts and circumstances of the case, the courts below should have extended the benefit of probation to the petitioner.

3. Learned counsel for the State submits that out of the maximum awarded sentence of one year, the petitioner has suffered one month and nineteen days sentence only and, as such, it is not a fit case where the benefit of probation can be extended to him. However, he fairly concedes that the petitioner is neither required nor involved in any other case. He further concedes that during trial and pendency of the appeal, the petitioner was on bail, but he did not misuse the said concession.

4. I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

5. Though the learned counsel for the petitioner has proposed not to challenge the conviction of the petitioner, but to satisfy the conscience of this Court, the Trial Court record has been re-appraised.

6. As per the allegations, the complainant presented a written complaint before the police alleging that on 18.6.2010, he was on duty at the Examination Centre; a candidate having Roll No. 552205 was ousted from appearing in the examination by the Chief Invigilator (Centre Superintendent) since he was not retaining the roll number slip; after 45 minutes, the said candidate alongwith a private person (petitioner) came to the Examination Centre and pressurized the invigilators to allow the said candidate to take the exam; when the complainant tried to make him (petitioner) understand, then he (complainant) was mishandled by the petitioner; and that the other invigilators and the officials, who were connected with the examination, also assembled at the spot and in their presence the petitioner threatened the complainant to cause his death.

7. On the basis of the said complaint, FIR No. 126, dated 21.6.2010, for the offences punishable under Sections 186, 353 and 506, IPC, was registered at Police Station, City, Dadri, District Bhiwani. The investigation was conducted by ESI Desh Raj, who visited the spot and prepared the rough site plan. The statements of the witnesses were recorded. The petitioner was arrested on 19.10.2010. After completion of the investigation, the charge-sheet (report under Section 173, Cr.P.C.) was prepared and submitted before learned Area Judicial

Magistrate. After supplying the copy of the charge-sheet, charges for the offences punishable under Sections 186, 353 and 506, IPC, were framed against the petitioner to which he pleaded not guilty and claimed trial.

8. In order to substantiate its allegations, the prosecution examined Inder Singh, Associate Professor as PW-1; Budh Dev, Associate Professor as PW-2; Rakesh Kumar, Clerk, as PW-3; Inspector Dilbag Singh as PW-4; Sushil Kumar Bansal, Associate Professor as PW-5; and SI Desh Raj as PW-6. Thereafter, the evidence of prosecution was closed by learned Assistant Public Prosecutor for the State.

9. The statement of the petitioner under Section 313, Cr.P.C., was recorded in which he denied all the prosecution allegations and pleaded innocence and false implication in this case. In defence, he examined Mukesh Kumar as DW-1.

10. After hearing learned counsel for the parties, the learned Trial Court held the petitioner guilty for the offences punishable under Sections 186, 353 and 506, IPC, and ordered him to undergo the following sentences:

Under Section	Sentence (R.I.)	Fine (in Rs.)	In Default
186, IPC	3 months	500/-	S.I. 15 days
353, IPC	1 year	1,000/-	S.I. 3 months
506, IPC	3 months	500/-	S.I. 15 days

All the substantive sentences were ordered to run concurrently.

11. Dissatisfied with the judgment of conviction and the order of sentence, the petitioner preferred an appeal before the Court of Session at Bhiwani, which was dismissed by learned Sessions Judge, Bhiwani, vide his judgment dated 3.12.2014, which is under challenge before this Court.

12. After perusing the material available on record, this Court is satisfied that both the Courts below have rightly held the petitioner guilty for the offences punishable under Sections 186, 353 and 506, IPC, therefore, the learned counsel for the petitioner has correctly proposed not to challenge the conviction of the petitioner. However, this Court finds force in the submission of the learned counsel for the petitioner when he argued that the petitioner can be extended the benefit of probation. The relevant consideration for releasing the petitioner on probation in the present case are:-

- (i) All the offences for which the petitioner was convicted, were triable by learned Judicial Magistrate Ist Class;
- (ii) The petitioner is a first offender;

- (iii) The alleged incident was of the year 2010 and thereafter the petitioner did not commit any other offence;
- (iv) The petitioner remained on bail during the trial and appeal but he did not misuse the said concession;
- (v) The petitioner has already suffered incarceration for one month and nineteen days;
- (vi) The offences for which the petitioner has been convicted and sentenced were not committed in a pre-planned manner. The petitioner had gone alongwith his brother-in-law (brother of his wife) so that he might take examination of Bachelor of Education and during that course hot words were exchanged with the invigilators;
- (vii) The petitioner is father of two young children and the sole bread winner for them. His family is fully dependent on his agricultural income and there is no one to look after his fields; and
- (viii) He is a young man and wants to join the main stream of life.

13. Keeping in view the totality of the circumstances of the case, the present revision petition is partly allowed. The

impugned order of sentence is modified and the petitioner, Krishan Kumar, son of Dharam Singh, resident of Dhani Phogat, Police Station, Sadar, Dadri, District Bhiwani, is ordered to be released on probation for a period of two years from the date he furnishes the necessary bonds to the satisfaction of the learned Trial Court with an undertaking that he shall undergo remaining part of his substantive sentences if called for to do so by a Court of competent jurisdiction during the period of his probation, if he violates the terms and conditions of the bonds to be furnished by him.

14. During the period of probation, the petitioner shall not commit any other offence and be of good behaviour. The petitioner has agreed to pay a sum of Rs. 20,000/- as compensation to the complainant. The said amount shall be deposited with the learned Trial Court within one month of passing of this order. On deposit of the said amount of Rs. 20,000/-, learned Trial Court shall issue a notice to the complainant to move an application for withdrawal of the said amount as per norms. In case the petitioner does not comply with the order with regard to payment of compensation, then the order of sentence passed by the learned Trial Court shall enure. The amount of fine imposed by the learned Court below shall be converted into costs of litigation.

15. The petitioner be set at liberty at once subject to above conditions, if not required to be in custody in any other case.

January 22, 2015
Pkapoor

(NARESH KUMAR SANGHI)
JUDGE