

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

**CRR-619-2015 (O&M)
Date of decision: 13.10.2015**

Raj Kumar

... Petitioner

Vs.

Ram Chander and ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Petitioner in person.

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 05.09.2014 passed by learned Additional Sessions Judge, whereby appeal of the petitioner was dismissed, upholding the judgment of conviction and also the order granting benefit of probation to the convicts, vide judgment and order of even date i.e. 21.10.2011 passed by learned Judicial Magistrate 1st Class, Ludhiana.

Brief facts of the case, as recorded by learned Additional Sessions Judge in para 2 of the impugned judgment, are that the complainant had filed the complaint under Sections 323, 325, 506, 452, 149 read with Section 34 of IPC on the allegations that accused Ram Chander was the

neighbour of the complainant. The accused Sukh Hari was son and Chanderwati was the wife of Ram Chander, whereas accused Ram Hit was a tenant and accused Som Nath Gupta was a relative of accused No.1. The accused used to pick up quarrels on petty matters with the complainant. On dated 12.07.1999, accused Ram Chander started digging earth in front of the house of the complainant and was putting the same in the low lying area in front of his house. It was all being done by the accused Ram Chander in order to cause wrongful damage to the house of the complainant. When the complainant inquired about the same, the accused Ram Chander threatened him with dire consequences. He also abused him and started shouting at the complainant. When the complainant had asked Ram Chander to stop removing the soil, then the accused Ram Chander along with his son, wife and Ram Hit started picking up soil. When the complainant objected to the same, the accused caught hold of him and tried to push him inside their house, but the complainant was saved due to timely intervention of the passerby. Then on dated 14.07.1999, accused Ram Chander through one Ramu and Ashok conveyed a message to the complainant that the councillor of the locality was waiting for him. The accused had instigated the councillor and told him that he (the complainant) had not supported him during the elections. Then on 17.07.1999, when the complainant was sitting in his house, over there, Raj Kumar Saini and one Ramesh Kumar were also sitting with him. The accused persons with their pre-planned common intention in order to cause hurt to the complainant entered into his house. They were armed with weapons. Accused Ram Chander was armed with lathi, Sukh Hari was armed with iron rod, Ram

Hit armed with spade, accused Som Nath Gupta armed with lathi and Chandrawati was armed with stick. They started giving merciless beatings to him. The accused Ram Chander and others inflicted the injuries on the person of the complainant. It were Sukh Hari and Som Nath, who inflicted the lathi blow and iron rod blow on the left upper arm and on the upper side of the back. Sukh Hari inflicted another iron rod blow on the left ankle. Ram Hit gave kahi blow on the left ankle. Chanderwati gave lalkara that the complainant should be done to death. She also inflicted the soti blow on the back of the complainant. The entire incident was witnessed by Raj Kumar and Ramesh Kumar. When the complainant had raised the alarm, then Raj Kumar and Ramesh Kumar rescued him from the accused. People had gathered from the Mohalla. They had seen the entire incident. The complainant had dialled No.100 and two constables had reached at the spot. Prior to that two home guards, who were called by the accused had reached at the spot. They started giving beatings to the complainant for dialling No.100. The complainant on the same day supplied the copy of the MLR, but no action had been taken by the police, rather the police had been delaying the matter on false promises. The complainant was arrested in a case under Section 107 and 151 of Cr.P.C. As no action had been taken by the police, hence, the complaint was filed.

Complainant led his preliminary evidence and thereafter, accused were summoned under Sections 323, 325, 506, 452 read with Section 34/149 of the Indian Penal Code ('IPC' for short). All the accused except accused Ram Hit appeared whereas Ram Hit was declared proclaimed offender. Documents were supplied to the accused. Complainant produced his pre-

charge evidence and thereafter, finding a prima facie case, accused were charge-sheeted for the offences punishable under Section 323, 452 and 506 read with Section 149 IPC. Accused pleaded not guilty and claimed trial.

Complainant, with a view to prove his case, produced his post-charge evidence. After conclusion of the evidence of complainant, statements of the accused were recorded under Section 313 of the Code of Criminal Procedure ('Cr.P.C.' for short). All the incriminating material brought on record, was put to the accused. They denied the allegations, alleged false implication and pleaded complete innocence. Accused produced DW1 Pardeep Kumar in their defence evidence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the complainant has partly proved his case only qua the offence under Section 323 IPC. So far as the offences under Sections 452, 506 IPC were concerned, no offence was found to be made out against the accused and they were acquitted of the offences under Sections 452 & 506 IPC. Accordingly, accused were held guilty for the offence punishable under Section 323 IPC and they were convicted for the same vide judgment of conviction dated 21.10.2011. However, after hearing the parties on the question of sentence, learned trial Court extended the benefit of probation of good conduct to the convicts vide his impugned order dated 21.10.2011.

Feeling aggrieved, complainant filed his appeal against the acquittal of the respondents for the offences punishable under Section 452, 506 IPC as well as against the order granting benefit of probation, however,

said appeal of the petitioner also came to be dismissed by learned Additional Sessions Judge, vide impugned judgment dated 05.09.2014. Hence this criminal revision petition by the complainant.

Complainant, while appearing in person, submitted that the learned trial Court proceeded on an illegal approach, while acquitting the respondents for the offences under Section 452, 506 IPC. He brought cogent and convincing evidence on record which was sufficient to record conviction of the respondents for the offences under Sections 452, 506 IPC also. However, since learned Courts below failed to appreciate the evidence in the correct perspective, the impugned judgments have resulted in miscarriage of justice. Assailing the order granting benefit of probation to the respondents, petitioner submits that the respondents were not entitled for the benefit of probation because of gravity of offences committed by them. He prays for conviction of the respondents for the offences under Sections 452, 506 IPC as well as for withdrawing the benefit of probation, by allowing the present petition.

After hearing the petitioner in person at considerable length, going through the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that instant 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. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of both the impugned judgments as well as order passed by the learned trial Court, extending the benefit of

probation to the respondents-convicts, would show that the learned Courts have considered each and every relevant aspect of the matter, before arriving at their respective judicious conclusions. Learned trial Court, after appreciating the evidence available on record in the correct perspective, rightly acquitted the respondents of the charges framed against them for the offences punishable under Sections 452 and 506 IPC. The evidence led by the complainant was rightly not found sufficient to record conviction against the accused for the offences punishable under Sections 452 & 506 IPC. Learned trial Court was fully justified on the facts as well as in law to record the conviction of the respondents only for an offence under Section 323 IPC vide impugned judgment of conviction dated 21.10.2011 and the same deserves to be upheld.

Similarly, learned trial Court has not been found to have exceeded its jurisdiction, while extending the benefit of probation to the convicts-respondents vide impugned order dated 21.10.2011 and in this view of the matter, this order also deserves to be upheld.

In the appeal filed by the petitioner, learned Additional Sessions Judge again re-appreciated the entire evidence available on the record of the case, before recording cogent reasons in support his judicious conclusion, while passing the impugned judgment. Having said that, this Court feels no hesitation to conclude that since both the learned Courts below have not been found to have exceeded their jurisdiction, while passing their respective impugned judgments, the same deserve to be upheld, for this reason also.

It is the settled proposition of law that whenever two views are

possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in **Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638.**

The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been further reiterated by the Hon'ble Supreme Court in its numerous later judgments, including in the cases of **Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015).**

The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in **Upendra Pradhan's** case (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled

that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see Dhanna v. State of M.P., Mahabir Singh v. State of Haryana and Shailendra Pratap v. State of U.P.) which had not been adhered to by the High Court.

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33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.”

(Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, wherein this Court observed thus:

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal

cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.” (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be Page 16 considered and we discard the opposite view which indicates his guilt. We are

also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court's revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, "that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view." This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge."

Coming to the impugned order releasing the respondents-convicts on probation, while upholding their conviction, the said impugned order has not been found suffering from any patent illegality. Learned trial Court, before extending the benefit of probation to the respondents, took into consideration all the mitigating circumstances going in favour of the convicts. In such a situation, it can be safely concluded that the learned trial Court has rightly exercised its discretion for extending the benefit of probation of good conduct under Section 4 of the Probation of Offenders Act, in favour of the respondents-convicts and the impugned order deserves to be upheld, for this

reason as well.

During the course of hearing, petitioner could not point out any jurisdictional error or patent illegality in either of the impugned judgments passed by both the learned Courts and also the order dated 21.10.2011 passed by the learned trial Court, so as to convince this Court to take a different view than the one taken by the learned Courts below. Under these circumstances, no interference is warranted at the hands of this Court and the impugned judgments as well as the order dated 21.10.2011 deserve to be upheld.

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

13.10.2015
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