

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. S-960-SB of 2016 (O&M)
Date of decision : April 22, 2016

Sarbjit Singh

....Petitioner

versus

Jaswinder Singh @ Jassa and another

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Manish Dadwal, Advocate, for the appellant

Fateh Deep Singh, J. (Oral)

CRM-7961-2016

For the reasons mentioned in the application which is supported by an affidavit, in the interest of justice and the fact that the party should not be denied access to justice merely on hyper technicalities, delay of 20 days in filing the appeal is condoned. CRM stands disposed of.

CRA-S-960-SB-2016

The criminal case by way of FIR No. 322 dated 23.8.2004 under sections 323, 325, 326, 452, 506, 34 IPC was registered with Police Station Sadar Hoshiarpur on the complaint of Sarabjit Singh present appellant against Jaswinder Singh @ Jassa present respondent no. 1 and

Sukhwinder Singh alias Kala. It is vide judgment dated 15.6.2013, learned Additional Chief Judicial Magistrate, Hoshiarpur convicted Jaswinder Singh under sections 325, 323, 452, 506, 34 IPC and sentenced him as under:-

<i>(i) U/s 325/34 of the IPC</i>	<i>To undergo Rigorous Imprisonment for the period of two years and to pay a sum of Rs 1000/- as fine. In the event of default in making the payment of fine, he shall further undergo Rigorous Imprisonment for seven days.</i>
<i>(ii) U/s 323 of the IPC</i>	<i>To undergo Rigorous Imprisonment for the period of six months</i>
<i>(iii) U/s 452 of the IPC</i>	<i>To undergo Rigorous Imprisonment for the period of two years and to pay a sum of Rs 1000/- as fine. In the event of default in making the payment of fine, he shall further undergo Rigorous Imprisonment for one month;</i>
<i>(iv) U/s 506 of the IPC</i>	<i>To undergo Rigorous Imprisonment for the period of six months and to pay a sum of Rs 200/- as fine. In the event of default in making the payment of fine, he shall further undergo Rigorous Imprisonment for seven days.</i>

The convict challenged his conviction before the learned first appellate court and vide judgment dated 26.10.2015 the court of learned Additional Sessions Judge though dismissed the appeal but modified the judgment and thereby releasing the appellant on probation. It is these findings which have been assailed by complaint Sarbjit Singh before the Court in this appeal.

Heard Sh. Manish Dadwal, counsel for the appellant and perused the record.

Admittedly, the convict has been convicted for offences under sections 325, 323, 452, 506, read with section 34 IPC and the only attribution to him is for having given simple injuries punishable under

section 323 IPC and thus has been awarded maximum sentence of RI for two years with fine. As has been submitted the learned trial court did not exercise its powers under section 360 Cr.P.C. nor had enumerated the reasons for declining the benefit of probation. The learned first appellate court, however, appreciated the evidence and the law and had come to justifying conclusion that there is no merit in the appeal and dismissed the same. It is contended that the Appellate Court has itself exercised the powers under section 360 Cr.P.C. by releasing the the appellant on probation on furnishing probation bonds in the sum of Rs 15,000/- with one surety in the like amount, for the period of one year. It is fairly conceded at the bar by Mr. Dadwal that there is no evidence on the record to show that respondent no. 1 was previous convict or had in any manner misused the concession of probation. The provisions of section 360 Cr.P.C. and the Probation of Offenders Act, 1958 have been legislated with a definite motive and purpose and to ensure that in deserving cases persons who do not have shady past or are not guilty of commission of offences which are of heinous nature are brought back to the main stream or do not take the path of crime and are rather brought back to the path of rectitude. Thus, fully commensurate with the *“reformative theory of criminal jurisprudence.”*

The court below vide impugned findings has considered adequately the fact that the then appellant had undergone the travails of trial for almost 10 years and there is nothing on the record that he ever indulged in any other crime together with the nature of offences for which he has

been convicted and thus, has rightly exercised its powers by virtue of section 360 Cr.P.C. read with section 361 Cr.P.C. Thus the court below has rightly with a view to reform the convict had exercised its powers to extend the benefit of probation. Thus, there is evidently no illegality or perversity in the impugned findings of the court below. The appeal being hopelessly without merit stands dismissed in limine.

April 22, 2016
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(Fateh Deep Singh)
Judge