

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 2245 of 2009

Date of decision : June 06, 2016

Janak Raj and another

....Petitioners

versus

State of Haryana

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. PS Goraya, Advocate, for the petitioners
Mr. Munish Sharma, AAG, Haryana, for the respondent

Fateh Deep Singh, J. (Oral)

Revision petitioners Janak Raj and Milikhi Ram were tried in case registered by way of FIR No. 38 dated 10.2.2004 under sections 457, 380 IPC pertaining to Police Station Shahbad. The allegations were levelled by complainant Jasbir Singh through his application Ex. PW2/A alleging that during the intervening night of 5.2.2004, he had gone to see performance in his village at Harijan Dharamshala and when he returned back during the early morning at about 1.15 AM, he discovered that the lock of his house was broken and articles consisting of television, gas cylinder, one iron box, one suit case along with three shirts, three pants,

nine ladies suits, six meter cloth, six dupattas, one coat, bridal scarf and one Gadwi (pot) and other house-holds, utensils were stolen and suspected the role of the accused in the commission of the same leading to the registration of FIR Ex. PW2/C after ASI Tek Singh made his endorsement Ex. PW2/B. On 10.2.2004, the accused were rounded and while in police custody, Milkhi Ram made his confessional statement Ex. PA whereas accused Janak Raj has made his confessional statement Ex. PB admitting their guilt and on the basis of the same, Janak Raj got recovered gas cylinder, iron box, two shirts, one pant, bridal scarf, four ladies suits, one sari and three dupattas from his house whereas Milkhi Ram on the basis of his disclosure statement Ex. PA got recovered the remaining articles which were taken into police possession. The prosecution examined HC Krishan Lal PW1, ASI Tegh Singh PW2 and complainant Jasbir Singh PW3 and proved articles Ex. P1 to Ex. P28 and documents Ex. PA to Ex. PF.

The court of learned Judicial Magistrate Ist Class, Kurukshetra through judgment dated 22.1.2008 held both the accused guilty for commission of offence under section 411 IPC and were sentenced to undergo RI for six months. The convicts had impugned the same and the court of learned Additional Sessions Judge, Kurukshetra vide judgment dated 17.8.2009 dismissed the appeal upholding judgment of conviction. That is how they are before this Court in this revision.

Mr. PBS Goraya, counsel for the revisionists at the very out set of his submissions has made a compassionate appeal that since the

complainant and accused belong to the same area and that it was on account of political rivalry, the case has been got registered and sought to seek the concession of probation. Though on behalf of the State, the prayer has sought to be challenged on the grounds that being case of theft, the petitioners were not entitled to any such relief.

Appreciating the averments, the petitioners have been found guilty for commission of offence under section 411 of the IPC for having retained in their conscious possession articles subject matter of theft. Though by virtue of Ist Schedule of the Code of Criminal Procedure (in short, Cr.P.C.) prescribes sentence of imprisonment upto three years with a fine or both and that by virtue of section 320 Cr.P.C., it lays down that the offence is compoundable at the behest of owner of the property so stolen. Though counsel for the revisionists-petitioners could not bring forth before this Court any element of such a compromise oral or writing. However, having regard to the fact that the petitioners have been sentenced to undergo RI for six months and as has been accepted by the State who has placed on record custody certificate both the petitioners have undergone incarceration of one month and nine days together with the fact that the petitioners have been facing arduous trial on these allegations since the year 2004 and thus have undergone trauma of this trial and subsequent conviction, for more than 12 years. More-so, the offences are not of heinous nature. The learned courts below have failed to spell out as to the reasons why they did not feel it appropriate to exercise powers under section 360 Cr.P.C. and thus grant

them the benefit of probation. Apparently, there has been non-compliance of the mandate of section 361 Cr.P.C. by the courts below as no such reason is forth coming in the impugned judgments. It needs to be reiterated here that the provisions of the exercise of powers under section 360 Cr.P.C. read with Probation of Offenders Act, 1958 have been enshrined with definite purpose to achieve a well defined object for the betterment of the first time offender who have not been held guilty for any heinous or serious crime. Thus, in commensuration with the **“Reformative Theory of Criminal Jurisprudence”** so as to prevent them from following Path of Crime with an ulterior object to bring them back to the main stream and thus, to ensure that they follow the path of rectitude. These powers needs to be exercised. The State counsel squarely accepts that the petitioners are first offenders and there is no criminal case against them as on date nor have committed any such act which is detrimental to the exercise of powers under section 360 Cr.P.C. Thus, in the totality of the same and the fact that petitioners have already suffered a lot and at the time of their commission of offence were young persons and by now must have entered into middle age with family to support. Thus, in view of this special circumstances upholding the consecutive findings of the courts below, this Court deems it imperative to give them benefit of probation. Accordingly, the petitioners are ordered to be released on probation of good conduct on furnishing probation bond to the satisfaction of learned trial Magistrate in the sum of Rs 20,000/- with one similar surety undertaking to appear and receive

sentence whenever called upon during the period of one year and in the meantime to keep peace and be of good behaviour. If probation bonds are not furnished within two months, the instant revision petition shall be deemed to have been dismissed.

With modification in sentence as aforesaid, the revision petition stands disposed off accordingly.

June 06, 2016

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**(Fateh Deep Singh)
Judge**

Whether referred to the Reporter ? Yes/No