

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

CRR No.937 of 2010

Date of Decision: June 09, 2016

Mahender

...Petitioner

Versus

State of Haryana

...Respondent

CRR No.1934 of 2010

Subhash

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. B.S. Saroha, Advocate
for the petitioner (In CRR No.937 of 2010).

Mr. Sukhdeep Parmar, Advocate
for the petitioner (In CRR No.1934 of 2010)

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

Since in both these revision petitions there are common

questions of law and facts involved having arisen out of the same very FIR and judgment of conviction, thus, for the sake of brevity are being taken up and decided together.

Learned Additional Chief Judicial Magistrate, Panipat through judgment dated 11.6.2009 passed in case bearing FIR No.183 dated 14.12.2000 under Sections 323,324,34 IPC, Police Station Sadar, Panipat had held petitioners Mahender and Subhash guilty for commission of offences under Sections 323, 324 IPC and sentenced them to undergo maximum rigorous imprisonment for 01 year. The same was challenged by way of an appeal by the convicts and the Court of learned Additional Sessions Judge, Panipat through judgment dated 15.2.2010 has upheld the findings of the trial Court and dismissed the appeal of the appellants Mahender and Subhash-present petitioners. It is against these findings the petitioners have come up in this revisions.

Heard learned counsel for the parties.

The allegations against the convicts-petitioners are that on 14.12.2000 around 7.30 p.m. complainant injured Des Raj was returning to his house in the area of village Rajapur and near the *choupal* of the village where he was assaulted by the accused and at that time Mahender was armed with sword who gave blow of the same on the right side of the head of the complainant, whereas, petitioner-Subhash had given a blow of iron pipe on the lower right leg of the complainant leading to the registration of the present case. Upon investigations four accused were put to trial out of which the present petitioners are one who stood convicted. The prosecution at the trial examined PW1 Dr. Y.P. Singhmer, PW2 ASI

Sultan Singh, PW3 complainant-Des Raj, PW4 ASI Ramesh Kumar and PW5 Satpal. The accused has denied the allegations in his stand under Section 313 Cr.P.C. but did not lead any evidence in defence and that is how after repeated conviction by the two Courts below are before this Court in these separate revision petitions.

Learned counsel for the petitioners at the very onset of their submissions have made a lone prayer that the petitioners have been convicted for commission of offences under Sections 323,324 IPC and have already suffered rigour of trial and conviction for so many years and that they do not have any previous history of crime and, therefore, needs to be shown compassion and has prayed for grant of probation. Though, State has not opposed the fact that for the last more than 16 years the petitioners have undergone this trauma but has sought to oppose the grant of probation.

Appreciating the submissions of the two sides, admittedly, the petitioners have been convicted for committing an offence under Sections 323,324 IPC. The offence under Section 323 is bailable and the prescribed sentence is imprisonment for 01 year or fine or both, whereas, Section 324 IPC now prescribes imprisonment up to 3 years and is non-bailable offence. By virtue of Act of 2005 when at the time of this occurrence it was a bailable offence. The petitioners at the time of alleged commission of offence were young persons and have suffered rigour and trauma of trial as well as conviction for more than 16 years and it would certainly had its own telling effects on the mental and physical well being of the petitioners. Admittedly, as has been argued on behalf of the State the petitioners are first convicts and there is no history of any crime against

them. The offences for which they have been convicted are not of heinous nature. More so, it is a pure simpliciter fight between the villagers over a petty issue and, thus, in the light of the previous clean record of the petitioners who have not been hauled up for any other crime and, thus, are first offenders and it would be travesty of justice to send them behind the bars when they have already undergone incarceration for a period of more than 08 months. If sent to prison would certainly force them to adopt a path of crime as they are likely to mix up with hardened criminals and, therefore, could be another source of distress for the society. Commensurate with the 'Reformative Theory' of the 'Criminal Jurisprudence' and to ensure that the petitioners do not go off the path of rectitude and that they have already undergone trauma of trial and conviction and their family too must have undergone adverse impact of this. Moreover, neither trial Court much less first Appellate Court has given reasons as to denial of concession of probation as per requirements of Section 361 Cr.P.C. The provisions of Section 360 read with Probation of Offenders Act, 1958 have been enacted with the purpose for the betterment of first offenders as a social benevolence and to ensure that they join the main stream of the society and do not become wayward.

Thus, keeping in view the ends of justice the judgment of conviction is modified, whereby, the petitioners are allowed concession of probation in terms of Section 4 of the Probation of Offenders Act, 1958 for a period of one year on their entering into a bond in the sum of ₹25,000/- each with one surety each of the like amount to the satisfaction of the trial Court undertaking therein that they shall keep peace and maintain good

behaviour and shall appear and receive sentence as and when called upon to do so during the said period .

In the light of the same, both these revision petitions stand disposed off.

(FATEH DEEP SINGH)
JUDGE

June 09, 2016
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