

259 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 1017 of 2014 (O&M)
DECIDED ON: FEBRUARY 11, 2016

AMANDEEP SINGH

....PETITIONER

VERSUS

AJIT LAL AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Navjinder Singh Sidhu, Advocate
for the petitioner.

Mr. Dinesh Mahajan, Advocate
for respondent No.2.

JASPAL SINGH, J

Challenge in this revision petition is to the judgment and quantum dated January 28, 2014 passed by learned Additional Sessions Judge, Gurdaspur in CRA No. 62 dated September 15, 2012 whereby the judgment and quantum dated August 07, 2012 passed by learned JMJC, Gurdaspur has been upheld vide which respondents were held guilty for commission of offence punishable under Section 341 and 506 IPC and granted the concession of probation.

While assailing the impugned judgment and quantum passed by both

the courts below, it has been submitted by learned counsel for the petitioner that the same are absolutely against the evidence available on file. Both the courts below have failed to take into consideration the fact that the prosecution has placed on record report dated May 21, 2009, which clearly depicts the use of gun in the occurrence. In the said report, it has been categorically mentioned that gun No. 13975-85 had been used for firing and so far as recovery of cartridges contained in parcel 'A' sent for examination is concerned, it has been mentioned that those cartridges had been fired from .12 bore SBBL gun No. 13975085. Thus, both the courts below have gravely erred in not convicting the respondents under Section 27 of Arms Act, 1959. Thus, the judgment and quantum as well as the acquittal of respondents under Section 27 of Arms Act are concerned, the same are liable to be set aside.

3. Learned counsel for the petitioner further contends that both the courts below have also miserably failed to appreciate that while extending benefit of probation, the discretion of the court has to be exercised having regard to the circumstances, in which, the crime was committed, the age, character and antecedents of the offender. The offender can only be released on probation of good conduct when the Court forms an opinion, having considered the circumstances of the case, the nature of offence, the character of the offender, in a particular case. He further submits that respondent No.2 has already been convicted by learned trial Court vide order dated October 19, 2010 in FIR No. 32 dated June 25, 2004 under Section 326, 324 and 506 IPC registered at Police Station Purana Shalla and appeal preferred by him against the afore-said judgment has also been dismissed by lower Appellate Court vide

judgment dated October 24, 2013. Moreover, father of respondent No.2 has also been convicted in the afore-said FIR. These facts clearly reflect that they are habitual offenders, which dis-entitle them from the benefit of probation. Moreover, it is mandatory on the part of the Court to call for a report from the probation officer but both the courts below have failed to do so. Thus, the impugned judgment and quantum passed by both the courts below are legally unsustainable and are liable to be set aside.

4. On the other hand learned counsel for respondent No.2 has supported the impugned judgment and quantum passed by both the courts below while submitting that calling of report from a Probationary Officer is not mandatory and in case any such report is called by the Court, the Court is not bound by the same. Thus, impugned judgment and quantum and granting the benefit of probation by both the courts below is fully justified and as such the finding in this regard deserves not to be disturbed.

5. This court has minutely scanned the impugned judgment and quantum passed by both the courts below and has bestowed due consideration to the rival submissions made by learned counsel for the parties.

6. At the very outset, it would be pertinent to mention that respondents have been convicted under Section 341 and 506 IPC by learned Magistrate vide impugned judgment of conviction and quantum dated August 07, 2012, which has been upheld by lower Appellate Court vide judgment dated January 28, 2014. Petitioner did not opt to challenge the judgment dated August 07, 2012 either before lower Appellate Court or before this Court. Through the instant petition, he has only challenged the order dated August 07, 2012 vide which

respondents were released on probation. Without challenging the validity of impugned judgment, revisionist cannot take a plea that the accused were wrongly not held guilty either under Section 336 IPC or under Section 27 of Arms Act. Though during the course of arguments, learned counsel for the petitioner has challenged the acquittal of respondents under Section 336 IPC and Section 27 of Arms Act. But since the same have not been challenged before lower Appellate Court, the same also cannot be challenged through the instant petition before this Court. Similarly, no value can be attached to any of the report rendered by FSL with regard to the use of gun. Thus, it can be safely concluded that challenge in this revision petition is only to the quantum of sentence and the release of respondents on probation.

7. Admittedly, no report has been called by learned Magistrate before granting the benefit of probation but that does not mean that in the absence of report of a probationary officer, Magistrate has no jurisdiction to release the offender on probation. The non-calling of report may be a mere irregularity especially in the circumstances that Magistrate is not bound by the report of a probationary officer. Thus, this court is of the considered view that impugned order passed by learned Magistrate granting the benefit of probation and upheld by lower Appellate Court is fully justified. Similarly, there is nothing to interfere with the acquittal of the respondent under Section 27 of Arms Act, by the lower Appellate Court.

8. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such the same is dismissed.

FEBRUARY 11, 2016
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(JASPAL SINGH)
JUDGE