

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

**CRR No.2156 of 2016 (O&M)
Date of Decision: July 08, 2016**

Ram Kishan and another

...Petitioners

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gurbir Singh Sidhu, Advocate
for the petitioners.

Mr.D.R.Singla, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioners Ram Kishan and Suresh Devi against respondent State of Haryana, challenging the impugned judgment of conviction and order of sentence dated 23.02.2015 passed by learned Judicial Magistrate Ist Class, Hisar, vide which the petitioners were convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of 10 days under Section 427 read with Section 34 IPC and to further undergo rigorous imprisonment for a period of three months under Section 447 IPC and also challenging the judgment dated 21.05.2016 passed by learned Addl. Sessions Judge, Hisar, vide which appeal filed by petitioners was

dismissed. Both the sentences were ordered to run concurrently.

At the time of preliminary hearing, learned counsel for the petitioners did not dispute the concurrent findings of the Courts below regarding conviction and only contended on the point of reduction of sentence.

Notice of motion was issued only qua quantum of sentence.

Learned State counsel appeared and contested the petition.

From the record, I find that the challan was presented against petitioners in case FIR No.654 dated 07.11.2009 under Sections 427, 447, 380, 506 and 34 IPC. The brief facts of the case as noted down in the judgment passed by learned JMIC, Hisar, are as under:-

“2. Briefly stated, the present criminal case has been registered by the police on receiving a type written complaint Ex.P/1 from the learned Court of Illaqa Magistrate vide order dated 31.10.2009 passed under Section 156(3) Cr.P.C. Thereafter, a formal FIR Ex.PW6/C was registered under Sections 447/427/506/34 Indian Penal Code against the present accused.

The complainant-Rambhaj stated that his son and daughter-in-law are owing a house at Patel Nagar, Hisar. The house consists of two portions i.e. the ground floor portion and first floor portion. The accused are the tenants of ground floor portion whereas the complainant was owing and possessing the first floor portion. There was a separate entrance of the first floor from the main street and there was a cemented partition wall between the two doors i.e. the door for entering ground floor and the door for assessing the first floor through the stairs. On 10.04.2009, the complainant had gone to Chandigarh for his personal work and returned from there on 15.04.2009. When the complainant along with his son visited the disputed house, he found that the accused persons had destructed the cemented partition wall and had illegally occupied the first floor portion by breaking open the lock. The accused had further stolen the complainant's goods i.e. Chair, Table, Bench and door. When the complainant raised his objection, the accused abused him and threatened the complainant and his son to kill. The complainant called the photographer and got the photographs of the spot done. Thereafter, the complainant moved the applications to the police authorities on the very same day. On 17.04.2009, the

accused were stated to have made an extra judicial confession before the complainant and one Ram Parkash by admitting their entire guilt.

3. On the basis of these allegations, the matter was investigated and the final report under Section 173(2) Cr.P.C. was filed against the accused for trying them under Sections 427/447/380/506 read with Section 34 IPC.”

Learned JMIC, Hisar, after appreciating the evidence, convicted and sentenced the petitioners as stated above. An appeal was filed by the petitioners and the same was dismissed by learned Addl. Sessions Judge, Hisar vide judgment dated 21.05.2016.

Aggrieved from the above-said judgments, present revision petition has been filed.

Learned counsel for the petitioners argued that petitioner are first offender, poor persons and they are suffering from the criminal proceedings for the last more than 7 years and have already undergone actual sentence of 1 month and 14 days out of the total sentence.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

Keeping in view the facts and circumstances of the present case and in view of the fact that petitioners are first offender and are suffering from long protracted criminal proceedings since 2009 i.e. for the last about 7 years and in view of the fact the petitioners have already undergone imprisonment of 1 month and 14 days out of the total sentence, the sentence imposed upon the petitioners is reduced to the sentence already undergone by them. However, the sentence of fine and in default thereof, will remain the same.

Therefore, the present revision petition stands partly allowed.

Petitioners Ram Kishan and Suresh Devi, who are in custody, be released forthwith if their custody is not required in connection with any other case, subject to payment of fine, if already not paid.

July 08, 2016
Vgulati

(INDERJIT SINGH)
JUDGE