

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

CRR No.2774 of 2016.
Decided on:-24.08.2016.

Kuldeep Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA, J.

Petitioner Kuldeep Singh son of Banta Singh, resident of village Lakhan Khurd, District Kapurthala (now confined in Central Jail, Jalandhar at Kapurthala) has filed the present revision petition against the judgment dated 6.6.2016 passed by learned Sessions Judge, Kapurthala whereby his appeal against the judgment of conviction and order of sentence dated 8.2.2016 passed by learned Additional Chief Judicial Magistrate, Kapurthala was disposed of with certain modifications in judgment of conviction and order of sentence.

Vide judgment dated 8.2.2016, learned Magistrate has held the petitioner and his co-accused Harnam Kaur, Meet Kaur and Jassa Singh guilty for committing offence under Section 323 IPC. Besides this, the

petitioner was also held guilty for commission of offence under Section 325 IPC. Vide separate order of even date, learned Magistrate had sentenced the petitioner and his co-accused to undergo rigorous imprisonment for three months each for commission of offence under Section 323 IPC. The petitioner was also sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- under Section 325 IPC. In case of non-payment of fine, the petitioner was required to further undergo rigorous imprisonment for a period of one month. However, it was ordered that both the sentences awarded to the petitioner shall run concurrently. The fine was paid by the petitioner before the trial Court.

Briefly stated, case of the prosecution is that on 5.9.2010, complainant Massa Singh son of Banta Singh, resident of village Lakhan Khurd suffered a statement before the police that he is a labourer and on that day, he was present in his house. Accused Kuldeep Singh was quarreling with Gurmeet Singh i.e. son of the complainant in the street. When the complainant along with his wife Sumittar Kaur came in the street to save their son, accused Jassa Singh, Harnam Kaur and Meet Kaur, all residents of Lakhan Khurd also came there. It was at about 1.30 p.m. accused Harnam Kaur and Meet Kaur started abusing and they grappled with Sumittar Kaur, whereas accused Jassa Singh caught hold of Gurmeet Singh from his throat and manhandled him. In the meantime, accused Kuldeep Singh started hurling brickbats towards the complainant party. One brick hit on the left side of the nose of complainant and he fell down on the ground. Accused

Jassa Singh also inflicted a blow of brick-bat on the back of complainant. The complainant raised hue and cry. A large number of people had also reached at the spot upon which the accused fled away from the place of occurrence. The complainant and his son Gurmeet Singh were taken to the hospital for treatment.

On the basis of aforesaid statement, FIR No.82 dated 11.9.2010 under Sections 323 and 325 read with Section 34 IPC was registered against the petitioner and other co-accused at Police Station Sadar Kapurthala and investigation was conducted. On completion of investigation, Challan was presented in the Court against petitioner-accused Kuldeep Singh, whereas the other co-accused were found to be innocent during investigation. The trial Court supplied copy of Challan to the petitioner free of cost as provided under Section 207 Cr.PC. Finding a prima-facie case against the petitioner, the trial Court framed charge against him under Sections 323 and 325 IPC to which he did not plead guilty and claimed trial.

Thereafter, statement of complainant Massa Singh (PW1) was recorded and an application under Section 319 of Cr.PC was moved by the prosecution to summon the other co-accused in this case. Said application was allowed vide order dated 12.09.2014 by the trial court. Accordingly, co-accused Meet Kaur, Harnam Kaur and Jassa Singh were summoned as additional accused to face trial. Amended charge was framed against all the four accused under Sections 323 and 325 of IPC to which they did not pleaded guilty and claimed trial.

In order to prove its case, the prosecution has examined as many as 5 witnesses and then closed its evidence. Thereafter, the statements of accused under Section 313 Cr.PC were recorded wherein they denied all the allegations levelled against them and pleaded their false implication. The accused also examined Kartar Singh as DW1 and closed their defence evidence.

The trial Court vide judgment and order dated 8.2.2016 convicted and sentenced the petitioner and other co-accused in the manner as referred above.

Feeling aggrieved, the petitioner and other co-accused preferred appeal against the aforesaid judgment of conviction and order of sentence before the Court of Session. Learned Sessions Judge, Kapurthala vide judgment dated 6.6.2016 disposed of the said appeal by acquitting accused Harnam Kaur, Jassa Singh and Meet Kaur of the charge levelled against them. Petitioner Kuldeep Singh was also acquitted under Section 323 IPC, but his conviction and sentence under Section 325 IPC awarded by the trial Court was maintained.

It is in the aforesaid circumstances, the present revision petition has been filed by the petitioner.

As learned counsel for the petitioner has not challenged the conviction of petitioner and confined his arguments qua the quantum of sentence only, notice of motion was issued by this Court vide order dated 8.8.2016 limited to the aforesaid extent.

Learned counsel for the petitioner has submitted that the petitioner is facing the agony of criminal proceedings since the year 2010 and as against the awarded sentence of six months under Section 325 IPC, he is in custody since 6.6.2016. As such, he is in custody for the last 2 months and 17 days and by including the remission earned by him, total custody comes to 3 months and 21 days. The petitioner is a first-time offender. He is a poor person and is only bread winner of his family. Learned counsel for the petitioner has, thus, prayed that the sentence awarded to the petitioner may be reduced to the period already undergone by him.

On the other hand, learned State counsel has argued that learned trial Court has sentenced the petitioner to undergo rigorous imprisonment for six months under Section 325 IPC and has already taken a lenient view regarding the sentence of petitioner. Thus, no interference is warranted. Custody certificate filed by learned State counsel in the Court today, is taken on record.

I have heard learned counsel for the parties and gone through the impugned judgments of the Courts below.

On the issue of quantum of sentence, this Court in the case of ***Shiv Kumar v. State of Haryana 2014(3) RCR (Criminal) 577*** has observed as under:

“5. Considering the facts that the petitioner has been quite young when the occurrence took place, there is no previous conviction to this discredit and he has already suffered imprisonment for a period of one month and 24 days, I find him

to have not crossed the age where his behaviour could not be corrected. Therefore, he appears to be entitled to be released on probation of good conduct. However, compensation in a sum of Rs.20,000/- would be just and proper to be paid by the petitioner to the victim, Sarla Devi.”

In the case of ***Sohan Lal v. State of Punjab 1979 CLJ (Criminal) 113*** where the accused was first time offender and had undergone the sentence of 3½ months, his sentence was reduced to the period already undergone by him. Similarly, in the case of ***Balwinder Singh v. State of Punjab CRR No.2874 of 2012 decided on 31.10.2012*** this Court had reduced the sentence of the accused therein under Sections 323, 328 and 326 IPC.

The custody certificate of the petitioner shows that he has never been involved in any other case except the present one and as against the awarded sentence of 6 months, he remained in custody for 3 months and 21 days including remission.

Therefore, considering the fact that the petitioner has been suffering the criminal proceedings since the year 2010 and there is no previous conviction to his discredit, coupled with the fact that he has already suffered incarceration for a period of 3 months and 21 days, I find that the petitioner has not crossed the age where his behaviour cannot be corrected. As such, this Court feels that ends of justice would be met if the conviction of the petitioner under Section 325 IPC is maintained, but the sentence awarded to him is reduced to the period already undergone by him.

Accordingly, the judgment dated 6.6.2016 passed by the appellate Court is upheld regarding conviction of petitioner under Section 325 IPC. The present revision petition is dismissed with modification in the order of sentence to the effect that the sentence awarded to the petitioner under Section 325 IPC is reduced to the period already undergone by him subject to payment of Rs.20,000/- as compensation before learned trial Court. On doing so, the petitioner shall be released from custody forthwith, if not required in any other case.

The trial Court shall disburse the said amount to the injured-complainant Massa Singh or his legal heirs, as the case may be. It is made clear that in case the petitioner fails to deposit the amount of compensation with the trial Court within a period of one month from today, the present revision petition would be liable to be dismissed in toto and the petitioner shall have to undergo rigorous imprisonment for six months under Section 325 IPC.

August 24, 2016

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes / No

Whether Reportable: Yes / No