

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

**Criminal Revision No.3994 of 2015
Date of decision: 03.03.2016**

Rakesh

..Petitioner

Versus

Ramesh and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. J.P. Sharma, Advocate
for the petitioner.

Daya Chaudhary, J.

This revision petition has been filed to challenge impugned judgment dated 14.07.2015 passed by the Sessions Judge, Narnaul and order of sentence dated 23.09.2014 passed by the Judicial Magistrate Ist Class, Mahendergarh, whereby, accused-respondents No.1 to 4 were granted benefit of probation.

Briefly the facts of the case are that FIR No.161 dated 24.07.2009 was registered under Sections 294, 323, 354, 506 read with Section 34 of Indian Penal Code (for short 'IPC') at Police Station Kanina against accused-respondents No.1 to 4. They faced trial before Judicial Magistrate Ist Class, Mahendergarh and were convicted for offence punishable under Section 323/34 IPC vide judgment dated 22.09.2014 and keeping in view the nature of offence,

and that the convicts are not hardened criminals, they were released on probation vide order dated 23.09.2014.

Aggrieved by the aforesaid order of sentence dated 23.09.2014, the petitioner, who is complainant, filed appeal before the Sessions Judge, Narnaul, which was also dismissed on 14.07.2015. Hence the present revision petition.

Learned counsel for the petitioner submits that the benefit of probation has been granted to respondents No.1 to 4 against law and facts and neither any compensation has been awarded to the complainant nor any justice has been done in spite of facing litigation for the last more than six years. Learned counsel also submits that the trial Court while granting probation did not call any report of the Probation Officer whereas the same is mandatory and without calling any report, respondents No.1 to 4 have been released on probation. At the end, learned counsel for the petitioner submits that respondents No.1 to 4 be punished for the maximum sentence as prescribed under Section 323/34 IPC and the petitioner be granted compensation as this Court deems reasonable.

Heard arguments of learned counsel for the petitioner and have also perused the impugned orders.

The factum of facing trial as well as conviction is not disputed and the same has further been upheld by the lower Appellate Court. The only dispute is with regard to release of respondents No.1 to 4 on probation. The trial Court after hearing the arguments has

released respondents No.1 to 4 on probation in view of the provisions of Section 4 of the Probation of Offenders Act, 1958 (for short 'the Act 1958') and Section 360 of the Code of Criminal Procedure. It has also been mentioned that there is no material on record to show that the convicts are hardened criminals and offence under Section 323 IPC is grievous in nature. By considering the nature of offence and past conduct of respondents No.1 to 4, they have been released on probation.

Similarly, the Appellate Court also upheld the order of sentence passed by the trial Court by recording a finding that there is nothing on record to show that after passing the order of probation, they have misused the concession of probation for a period of six months, which had already expired. It has also been mentioned that earlier the matter was compromised between the parties, which is evident from affidavit (Ex.DW3/A) of one Satyavir, who appeared as defence witness and the written compromise was exhibited as Ex.DW1/A. Said compromise was effected before Panchayat and was signed by Suresh, injured-Satyavir and the accused persons.

On perusal of impugned orders passed by both the Courts below, it appears that there is no material on record to show that the accused persons were previous convicts. The benefit of probation has been granted by taking into consideration the antecedents of the convicts and the circumstances of the case particularly that earlier no case was there against them and they are not having any criminal

background.

Section 4 of the Act 1958 empowers the Court to release the convict, on entering into a bond with or without sureties, on probation when he is found guilty of committing of any offence, not punishable with death or imprisonment for life. Relevant portion of Section 4 of the Act 1958 is reproduced as under : -

"Section 4 - Power of Court to release certain offenders on probation of good conduct - (1)

When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour."

For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the

offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Act 1958, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Act 1958 vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court comes to a conclusion by considering the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be given to the accused. This power can be exercised by the Court even at the appellate stage also.

In the present case, the benefit of probation has been granted by the trial Court by considering the nature of offence and character of the convicts.

Accordingly, by considering the facts and circumstances of the case, no interference is required by this Court and the revision petition being devoid of any merit is, hereby, dismissed.

03.03.2016
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(DAYA CHAUDHARY)
JUDGE