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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 482 of 2016 (O/M)
Date of decision : 8.2.2016

Jogender Revisionist

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.K. Yadav and Mr. Punit Jain, Advocates,
for the revisionist.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J. (ORAL)

This revision is filed against the judgment dated 18.11.2015, passed by the learned Additional Sessions Judge, Bhiwani, affirming the judgment of conviction and order of sentence dated 18/19.12.2013, passed by the learned Judicial Magistrate 1st Class, Charkhi Dadri, whereby the revisionist was convicted for commission of offence punishable under Section 456 IPC and was sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 5,000/-, in default thereof, to further undergo simple imprisonment for 9 months.

The allegations against the revisionist are that on 2.7.2011, at about 10:45 PM, he entered the house of Om Parkash

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(complainant) with bad intention. When his (complainant's) daughter-in-law Anuradha raised alarm, accused scaled the boundary wall and fled away in a pick up van, parked outside the house of the complainant.

Notice of motion.

On asking of the Court, Mr. Parveen Aggarwal, Deputy Advocate General, Haryana, accepts notice on behalf of respondent-State.

I have heard the learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the revisionist has contended that the simple allegation, as alleged by the prosecution and reproduced above, would show that no offence of lurking house trespass is committed. The lurking house trespass is defined in Section 443 IPC as under :-

“Section 443. Lurking house-trespass.—Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit “lurking house-trespass.”

It is contended that it is not alleged by the prosecution that the complainant had taken precautions to conceal the house

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trespass. He had simply trespassed into the house and when alarm was raised, he scaled the boundary wall and ran away.

After going through the judgments of both the Courts below, I am of the view that in this case, there are no allegations that accused took precaution to conceal the house trespass. Therefore, he could not be convicted for commission of offence punishable under Section 456 IPC and rather liable to be convicted for commission of offence punishable under Section 451 IPC for simple house trespass with an intention to commit some offence. Accordingly, in place of Section 456 IPC, accused stands convicted under Section 451 IPC.

Learned counsel has contended that the revisionist is already in custody for the last 2 ½ months. He is the first offender. He is a young man of 29 years of age and that his wife is on family way. It is further contended that it is not alleged that the revisionist was carrying any arm or intended to cause some bodily injury to somebody. It is simple case of house trespass. Therefore, being the first offender, probation should be granted under the benefit of probation.

Keeping in view the facts and circumstances and the fact that, except the house trespass, no other crime was committed by the revisionist and also the fact that the accused is the first offender, I am of the view that the accused must be given a chance

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to reform himself. Accordingly, while convicting the accused under Section 451 IPC, the order of sentence is not passed at this stage and it is ordered that accused be released on probation for a period of one year on executing probation bond under Section 4(1) of Probation of Offenders Act, 1958, in the sum of Rs. 5,000/- to the satisfaction of the learned Judicial Magistrate 1st Class, Charkhi Dadri, with an undertaking to maintain peace and be of good behaviour, failing which, he will appear before the trial Court and accept the sentence, which may be passed against him by the trial Court. For the purpose of executing probation bond, the accused be immediately produced before the learned Illaqa Magistrate, i.e. learned Judicial Magistrate 1st Class, Charkhi Dadri.

Accordingly, the present revision is partly allowed.

(KULDIP SINGH)
JUDGE

8.2.2016
sjks