

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

**CRR No.747 of 2013 (O&M)
Date of Decision: August 02, 2017**

Hasmat Khan

...Petitioner

VERSUS

Israil and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jamshed Ahmed, Advocate
for the petitioner.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Hasmat Khan against Israil and other respondents, challenging the impugned judgment of conviction dated 24.08.2011 and order of sentence dated 25.08.2011 passed by learned Judicial Magistrate Ist Class, Ferozepur Jhirka, vide which the accused-respondents were convicted under Sections 323, 325 and 451 read with Section 34 IPC and accused Israil, Khursheedan, Jubeda and Sehnaj were ordered to be released on probation for the period of six months on their furnishing probation bonds in the sum of ₹10,000/- with one surety in the like amount, whereas accused Naseem Ahmad, Waseem and Mansoor, were sentenced to undergo rigorous imprisonment for a period of 6 months and to pay fine of ₹250/- and in default of payment of fine, to undergo simple imprisonment for a period of

one week under each Section and also challenging judgment dated

13.12.2012 passed by learned Addl. Sessions Judge, Ambala, vide which the appeal filed by the petitioner-complainant against the judgment and order passed by learned JMIC, Ferozepur Jhirka, was dismissed whereas appeal filed by accused-respondents Naseem Ahmad, Waseem and Mansoor, was partly allowed and they were also released on probation on furnishing personal bonds in the sum of ₹10,000/- each with one surety in the like amount each to the satisfaction of the trial Court.

I have heard learned counsel for the petitioner and have gone through the record.

The perusal of the record shows that a complaint was filed by petitioner-complainant Hasmat Khan against accused Naseem Ahmad, Naim Ahmad, Waseem, Mansoor, Khursheedan, Jubeda, Sehnaz and Israil under Sections 323, 325, 452, 427, 342, 506, 34 IPC and Section 25 of the Arms Act. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Ferozepur Jhirka, are as under:-

“The complainant has filed the present complaint with the allegations that a civil suit between complainant and accused Israil is pending before civil court regarding a wall between their houses. As such there was some differences between them. On 28.09.2004 at about 8.30 O'clock, when complainant was present at his house, accused Naseem, Naim, Wasim and Mansoor, in prosecution of their common object came in a marshal jeep in front of the house of complainant armed with lathi, danda and hockeys. They started abusing, on this Shamim son of complainant came outside the house and asked the reason of abusing. On this Israil who was present at the roof of his house told said persons to kill him (Shamim). Naseem gave a stone blow on the head of Shamim, son of complainant. Namim gave a iron rod blow on the head of Shamim, son of complainant. Naim gave a iron rod blow on the head of Shamim, Mansoor gave a lathi blow on the mouth of Shamim, Washim gave a hockey blow on shoulder of Shamim. Sharafraj came at the spot to gave Shamim but accused persons also attacked upon him and fracture was caused in his thumb. They also gave certain injuries on the

person of Sarajraj. Complainant alongwith his wife and daughter came to spot for saving their children, accused Khurshdeen, Jubeda, Sehnaz and Israil alongwith other accused entered into the house of complainant and started beating them. They also committed mischief by damaging household articles and motorcycles of complainant. On hearing uproar, Tayyub Hussain and Yakub came to the spot and rescued them from the accused persons. While returning back, they gave threat to kill them in future and accused Naim opened fire from country made pistol. The matter was reported to the police and injured were medically examined from GH Mandikhera. Police colluded with accused and did not taken any action. Hence, the present complaint.”

Learned JMIC, Ferozepur, on the basis of the evidence, convicted and sentenced the accused vide judgment of conviction dated 24.08.2011 and order of conviction 25.08.2011 as stated above. An appeal was filed by the petitioner-complainant before learned Court of Session and learned Addl. Sessions Judge, Nuh, vide impugned judgment dated 13.12.2012, dismissed the appeal, whereas appeal filed by accused-respondents was partly allowed, as stated above.

Aggrieved from the above-said judgments, present revision has been filed by the petitioner-complainant.

From the record, first of all, I find that the occurrence is of 2004 and accused-respondents have suffered a lot due to long criminal trial. Secondly, as discussed in the judgment passed by learned Magistrate, so many accused are old persons. Further, it is in the judgment of conviction that the accused are first offenders. The grievous injury is stated to be on the thumb of the complainant and other injuries are simple in nature.

Keeping in view the above facts and circumstances, I find that no illegality has been committed by learned Courts below. No ground is made out for sentencing the accused, especially in view of the grievous

injury, which is on the thumb only. Accused Israil, Khursheedan, Jubeda and Sehnaj have rightly been released on probation by learned Magistrate and no illegality has been committed by learned Addl. Sessions Judge, Nuh, while releasing accused-respondents Naseem Ahmad, Waseem and Mansoor on probation. The impugned judgments passed by the Courts below, are correct, as per law and evidence and do not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

August 02, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No