

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

CRR-4280-2014

Date of decision:-25.10.2017

Sushil Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Amit Goyal, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

Mr.Ashwani Bhardwaj, Advocate
for respondents No.2 to 4.

H.S. MADAAN, J.

Accused Karambir and Dharambir, both sons of Babu Ram and Avdesh Kumar son of Fakir Chand, all of them being accused in FIR No.227 dated 26.11.2009 for the offences under Sections 323, 452 read with Section 34 IPC, registered with Police Station Jakhal faced trial by Sub Divisional Judicial Magistrate, Tohana, District Fatehabad and the trial Magistrate vide judgment dated 6.10.2012 convicted all the three accused for the offences under Sections 323, 452 read with Section 34 IPC and by order dated 11.10.2012 sentenced them to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- each and in default thereof, to further undergo simple imprisonment for a

period of one month for the offence under Section 452/34 IPC and further to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.500/- each and in default thereof, to further undergo simple imprisonment for a period of ten days for the offence under Section 323/34 IPC, both the sentences were ordered to run concurrently.

Feeling aggrieved, the accused-convicts have preferred an appeal in the Court of Sessions, which was disposed of by learned Additional Sessions Judge, Fatehabad vide judgment dated 21.10.2014 thereby conviction of the accused was maintained, however, in place of sentence, they were ordered to be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958 and they were directed to pay a sum of Rs.8,000/- each as compensation to injured Sushil Kumar.

The complainant felt aggrieved by the said order granting benefit of probation to the accused/convicts and he has filed the present revision petition praying that the impugned judgment/order dated 21.10.2014 be modified and accused be actually sentenced in terms of the sentence awarded by the trial Magistrate.

Notice of the revision petition was given to the respondents, which include respondent No.1 – State and the accused. They have appeared through counsel.

I have heard learned counsel for the petitioner/complainant and respondents besides going through the record.

Admittedly, the lower Appellate Court while granting benefit of probation to the accused/convicts had not called for report from

Probation Officer. Now the question arises as to whether such report is essential or not. Learned counsel for the revision petitioner has pressed into service citation **M.C.D. Versus State of Delhi and another, 2005(3) R.C.R.(Criminal) 13**, wherein the Hon'ble Apex Court had observed that it is mandatory for the Court to call for report of Probation Officer as per Section 4 and consider the same though the Court is not bound by the said report.

However, learned counsel for the respondents No.2 to 4 has also relied upon citation **Paras Ram alias Pars Ram Versus The State of Haryana, 1973 PLR 246**, wherein it was observed by a Co-ordinate Bench of this Court that where the Court wants to satisfy itself that it would not be desirable to deal with the accused under Sections 3 or 4, it shall call the report of the Probation Officer and the cases where the Court comes to the conclusion that taking into consideration the circumstances of the case including the nature of the offence and the character of the offender, it is desirable to release him on probation under Sections 3 or 4 of the Act, then no report is required to be called for under Section 6 from the Probation Officer.

However, in view of the ratio of the authority by Hon'ble Apex Court, the same is to be relied upon and not the authority referred to by learned counsel for the respondents.

Under the circumstances, the impugned judgment passed by learned Additional Sessions Judge, Fatehabad is set aside to the extent that the accused/convicts were ordered to be released on probation. The case is remanded to lower Appellate Court i.e. of Additional Sessions

Judge, Fatehabad. The lower Appellate Court may call for report from Probation Officer with regard to previous antecedents of such accused/convicts and then after hearing counsel for the parties pass a fresh order with regard to the sentence part. It may be clarified here that the Lower Appellate Court would not be debarred from granting benefit of probation to the accused/convicts, if after calling for and perusing report of Probation Officer, it is convinced that case for grant of benefit of probation to the accused/convicts is made out. The parties through their counsel are directed to appear before Lower Appellate Court on 15.11.2017 at 10:00 a.m. The lower Appellate Court may complete the exercise within a period of two months from the date of receipt of certified copy of the order .

In that way, the petition stands allowed.

25.10.2017

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No