

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 05.05.2017

Criminal Revision No. 4310 of 2015

Dayal Singh and others

.....PETITIONERS

Versus

State of Punjab

.....RESPONDENT

Criminal Revision No. 4318 of 2015

Saroop Singh and others

.....PETITIONERS

Versus

State of Punjab

.....RESPONDENT

Criminal Revision No. 3949 of 2015

Hari Chand

.....PETITIONER

Versus

State of Punjab

.....RESPONDENT

Present: Mr. Mansur Ali, Advocate,
for the petitioner(s) in CRR-4310-2015.

Mr. Inderjit Sharma, Advocate,
for the petitioner(s) in CRR-3949-2015.

Mr. H.S.Deol, Advocate,
for the petitioner(s) in CRR-4318-2015.

Mr. Manu Luna, Advocate,
for the complainant.

Mr. Surjeet Singh Chaudhary, Deputy Advocate General,
Punjab.

AUGUSTINE GEORGE MASI, J.

By this order, I propose to decide three revision petitions i.e.

Crl. Revision No. 4310 of 2015 titled as Dayal Singh and others vs. State of

Punjab, Crl. Revision No. 4318 of 2015 titled as Saroop Singh and others

vs. State of Punjab and Crl. Revision No. 3949 of 2015 titled as Hari Chand vs. State of Punjab. These revision petitions have been preferred challenging the order passed by the Additional Sessions Judge, Fazilka dated 07.09.2015 passed in four appeals preferred by the petitioners, which were dismissed and one revision petition preferred by the complainant Ashok Singh, which was allowed and the sentence imposed under Section 354 IPC stands enhanced from one year to four years apart from upholding the conviction and sentence under Sections 148, 298, 323, 324, 342, 355 and 357 IPC imposed by the Sub-Divisional Judicial Magistrate, Jalalabad (W) dated 06.01.2015. The sentences were ordered to run concurrently.

2. On 05.05.2017, the case came up for hearing when following order was passed:-

“ I have heard the counsel for the petitioners, complainant and the State. The Primary issue which has been raised by the counsel for the petitioners is that the revision petition filed by the complainant for enhancement of sentence of one year rigorous imprisonment and fine of ₹1000/-, in default of payment of fine, to undergo further rigorous imprisonment of one month, which has been entertained by the learned Additional Sessions Judge, Fazilka, was not maintainable.

This Court finds the submission made by the counsel for the petitioners to be correct and if that be so, the impugned order dated 07.09.2015 passed by the Additional Sessions Judge, Fazilka, enhancing the sentence of the petitioners cannot sustain and is hereby set aside upholding the conviction and sentence of the petitioners as awarded by the Sub-

Divisional Judicial Magistrate, Jalalabad.

It is conceded position that the petitioners have already undergone the sentence which has been awarded by the trial Court and therefore, the bail bonds of petitioners namely Dayal Singh, Sona Singh, Sikandar Singh, Matto Bai @ Natho Bai, Kulwant Singh, Darshan Singh, Bhajan Singh @ Rana @ Gurjant Singh, Teja Singh and Satnam Singh in CRR No. 4310 of 2015 stand discharged and the petitioners namely Mohinder Singh, Shinder Singh, Manga Singh sons of Dona Singh, Kulwant Kaur wife of Chhinder Singh, Sheela Bai wife of Mohinder Singh in CRR No.4310 of 2015; Saroop Singh son of Lachhman Singh, Kirna Rani daughter of Lachhman Singh, Preeto Bai wife of Lachhman Singh in CRR No.4318 of 2015 and Hari Chand son of Pallu Ram in CRR No. 3949 of 2015, who are in custody, are hereby ordered to be released forthwith, if not required in any other case.

The detailed order with reasons to follow.

CRM-12600-2017 IN CRR-3949-2015

In the light of the order passed in the revision petitions, the present application has been rendered infructuous.

Disposed of as such.”

Thus, this order.

3. Briefly, the facts are that FIR No. 141 dated 07.06.2006 was registered at Police Station City Jalalabad under Sections 120-B/148/298/323/324/342/354/355/506/149 IPC on the statement of Ashok

Kartar Kaur and Khushal Singh on 07.06.2006 being members of unlawful assembly duly armed with deadly weapons and wrongly confined them. The accused had cut the hair of Kartar Kaur with the help of scissors and blackened her face with burnt oil, stripped her and paraded her on a cycle-cart in the village. Injuries were also caused to Khushal Singh. After investigation, report under Section 173 Cr.P.C. was submitted in Court. Accused were charged under Sections 120-B, 148, 298, 323, 324, 342, 354, 355, 357 IPC read with Section 149 IPC, to which the accused-petitioners pleaded not guilty and claimed trial. After the trial, learned Sub-Divisional Judicial Magistrate, Jalalabad(W) convicted and sentenced the petitioners under Sections 148, 298, 323, 324, 342, 354, 355 and 357 read with Section 149 of the Indian Penal Code. Against the said conviction and sentence order, four appeals were preferred by the petitioners and one revision by the complainant-Ashok Singh for enhancement of sentence. Learned Additional Sessions Judge, Fazilka dismissed the appeals preferred by the petitioners, however, allowed the revision petition and enhanced the sentence imposed under Section 354 of the Indian Penal Code from one year to four years keeping intact the other sentences under various sections.

4. Learned counsel for the petitioners has raised the primary issue that the revision petition filed by the complainant, who is not a victim, for enhancement of sentence as imposed by the trial Court is not maintainable. To support his contention, he has placed reliance upon a Full Bench judgment of this Court in **M/s Tata Steel Ltd. vs. M/s Atma Tube Products Ltd.**, 2013 (2) RCR (Criminal) 1005, to contend that a victim only has a right to file an appeal, which has been provided for under the

Procedure. Right to appeal to a victim has been provided under Proviso to Section 372 Cr. P.C. in particular circumstances and thus it should be the guiding source for dealing with right of revision also. Since the right to appeal is only limited to victim as defined in Section 2 (wa) of Cr. P.C., a complainant can prefer revision only if he/she is a victim. In the present case, the complainant would not fall within the term of 'victim' as he has not suffered any loss or injury as admittedly, he was not even present at the spot when the crime had taken place and further injury and illegal confinement, if any, has been suffered by his parents. He, therefore, contends that the revision preferred by the complainant would not be maintainable. Prayer has, thus, been made for setting aside the order passed by the learned Additional District and Sessions Judge, whereby the sentence has been enhanced from one year to four years under Section 354 IPC. All the counsel for the petitioners have given up the challenge to the order of conviction and sentence as imposed by the trial Court .

5. On the other hand, learned counsel for the State as also the counsel for the complainant have vehemently contended that the Court, while exercising its powers of revision as conferred under Sections 377 and 397 Cr. P.C, has ample powers even to suo moto enhance the sentence. They, in any case, assert that the complainant being the son of the victims is competent to maintain a revision petition. Assertion has also been made that the impugned order passed by the learned Additional District and Sessions Judge, Fazilka is in accordance with law which does not call for any interference by this Court.

6. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the impugned

judgment passed by the learned Additional District and Sessions Judge, Fazilka.

7. All the counsel for the petitioners did not challenge the judgment of conviction and order of sentence passed by the Sub-Divisional Judicial Magistrate, Jalalabad as well as the findings of the appellate Court except challenging the enhancement of sentence under Section 354 of the Indian Penal Code by Additional Sessions Judge, Fazilka.

8. The provisions of the Code of Criminal Procedure have been amended from time to time and as it stands now, indications are that the Code has drastically and significantly been amended conferring more powers and rights upon the victim especially with regard to right of appeal. Section 378 Cr. P.C. deals with the right of appeal in case of acquittal. Section 377 Cr. P.C. provides for an appeal by the State Government against the sentence passed by the trial Court. It is pertinent to mention here that this right is only limited to the State and not to the complainant or the victim.

9. Right of appeal or revision is creation of a Statute and, therefore, if the Statute does not confer any right, a person cannot avail of such a remedy, which is not specifically provided for under the Statute. As the law stands the right to appeal against inadequacy of the sentence has been given only to the State Government and the complainant or a third person has no such right. As per Section 372 Cr. P.C. Proviso thereto, right of appeal has been provided to a victim in particular specified circumstances only. A victim of crime can, under the following circumstances, prefer an appeal against (i) an order of acquittal of the accused; (ii) convicting the accused of a lesser offence; and (iii) imposing inadequate compensation.

None of these three situations has arisen in the present case and, therefore, appeal has rightly not been preferred by the complainant.

10. As mentioned above, right to appeal has been curtailed and qualified, according to which, no appeal is to lie unless or otherwise provided under the Code or any other law for the time being in force with a proviso that victim shall have a right to prefer an appeal against an order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. It is thus apparent that no appeal lies for enhancement of sentence.

11. According to sub-section 4 of Section 401 of the Code of Criminal Procedure where an appeal lies under this Code but not filed, then no proceedings by way of revision shall be entertained at the instance of the party who could have appealed. Therefore, the remedy of revision has also been restricted to such situations where no appeal lies.

12. This leads us to a situation where no appeal is provided for under the Statute, what would be the remedy then available. Will that mean that a victim would be left remedy-less?

This is not true as revisional powers are provided for under Section 397 and 401 of the Code of Criminal Procedure. The revisional powers, despite there being amendment in the Code of Criminal Procedure, have been left untouched and thus, the Courts conferred with such powers can invoke and exercise these. The Court, in exercise of its revisional jurisdiction, is empowered to call for and examine the records of any proceedings before any inferior Criminal Court situated within its jurisdiction for the purpose of satisfying itself as to the correctness, legality

the regularity of any proceedings. Injustice could arise from irregularity of procedure, misreading of evidence or misconception of law and or facts. The object of conferring revisional powers under the Code is of general superintendence in order to correct the grave failure of justice, if any. Therefore, this can be termed as a power which can be exercised by the Court conferred with revisional jurisdiction suo moto.

13. As per sub section 4 of Section 401 of the Code, remedy of revision, as stated above, is limited to the situation where remedy of appeal is not available to party. This would not mean that any person can maintain a revision who cannot file appeal. Now this power of invoking revisional jurisdiction by a party has to be seen in the context of the intention behind the amendment made in the Code of Criminal Procedure and, therefore, has to be viewed in the context of remedy of appeal. As stated above, the appeal has been restricted to the 'victim(s)' only. Therefore, it can safely be said that the revision can be maintained by a victim alone, irrespective of the fact whether he is a complainant or not and none else. It can, therefore, be said that there is no restriction or bar on a victim to approach the Courts conferred with revisional powers for invoking and exercising their revisional jurisdiction even for enhancement of sentence. The contention, thus, of the counsel for the petitioners that even the victim does not have the remedy of filing a revision petition cannot be accepted.

14. Now the question arises whether the revision preferred by the complainant in this case was maintainable?

15. As per the definition, victim is a person who has suffered loss or injury. The word 'loss or injury' could be explained with reference to the

be categorized to mean a person ,who has suffered loss or injury and if such a person is a minor or of unsound mind, his/her guardian and legal heirs if the sufferer dies.

16. It is an admitted fact that the complainant was neither present on the spot nor has he suffered any loss or injury, thus, not a victim. Revision would not be maintainable as the complainant herein is not a victim as defined under Section 2 (wa) of the Code of Criminal Procedure. If that be so, the revision preferred by the complainant could not have been entertained by the Additional Sessions Judge.

17. Now coming to the suo moto powers which the revisional Court can exercise if a revision petition as such is not maintainable, as held above. There can be no doubt that the revisional Court can suo moto exercise its powers by invoking Section 397 of the Code of Criminal Procedure especially when, the appeals preferred by the petitioners were being considered and, therefore, the Court could have exercised its jurisdiction, in case there was any injustice caused or there has been grave failure of justice because of any irregularity in the procedure, misreading of evidence or misconception about the facts or law and or both. On considering the impugned judgment passed by the Additional Sessions Judge dated 07.09.2015, there does not appear to be grave injustice or miscarriage of justice which had been caused requiring exercise of the power of revision. The Court appears to have been overawed and influenced by the circumstances. The trial Court has duly considered the facts and circumstances, weighed and rightly appreciated them while awarding the sentence. The sentence, as has been imposed by the trial

case, which did not require interference by the Court below in exercise of its revisional jurisdiction suo moto as well.

18. It may be added here that the FIR is of the year 2006, which has been decided finally by the trial Court on 06.01.2015 and keeping in view the said period, for which the protracted trial had been faced by the accused, the trial Court has properly weighed the facts and circumstances and imposed the sentence which was adequate.

19. In view of the above, these revision petitions are allowed by setting aside the order of enhancement of sentence under Section 354 of the Indian Penal Code passed by the Additional Sessions Judge, Fazilka dated 07.09.2015 upholding the initial order passed by the trial Court dated 06.01.2015.

(AUGUSTINE GEORGE MAISH)
JUDGE

May 05, 2017

pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No