

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

Criminal Revision No.3313 of 2016 (O&M)
Decided on:-August 16, 2017.

Satish.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Pankaj Mehta, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present revision petition against judgment dated 02.06.2016 passed by learned Additional Sessions Judge, Hisar whereby on an appeal filed by the accused (respondents No.2 and 3 herein) against the judgment of conviction dated 14.10.2014 and order of sentence dated 17.10.2014 passed by learned Chief Judicial Magistrate, Hisar, the conviction of the respondents-accused was maintained, but while invoking the provisions of the Probation of Offenders Act, 1958, they were released on probation of good conduct. The petitioner-complainant was compensated and an amount of Rs.2,000/- each was ordered to be deposited by the accused. The said compensation amount was required to be given to the complainant as an additional compensation.

Briefly stated, the FIR No.144 dated 06.02.2012 under Sections 323 and 325 read with Section 34 IPC was registered against the respondents No.2 and 3 at Police Station City Hisar with the allegations that on 31.01.2012, petitioner-complainant Satish was sitting in a tea shop near Madan Kiryana Store, Government Colony. In the meantime, two boys, namely, Sonu son of Satpal and Kaliya son of Har Chand, residents of Government Colony came there. While Sonu gave stick (Lathi) blows on his legs, Kaliya gave a Lathi blow on his back. The wife of petitioner, namely, Rajwanti was also sitting there. She raised a noise. In this manner, the petitioner was saved by the nearby persons and his wife. He was having Rs.26,000/- and two gold rings, which were misplaced in quarrel. He was admitted in General Hospital, Hisar by his wife and the matter was reported to the police.

The trial Court vide judgment dated 14.10.2014 held the respondents-accused guilty for commission of offence under Sections 323 and 325 read with Section 34 IPC. Vide separate order dated 17.10.2014, they were sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.200/- each for commission of offence under Section 323 read with Section 34 IPC. They were further sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,000/- each for commission of offence under Section 325 read with Section 34 IPC.

Against the judgment of conviction dated 14.10.2014 and order of sentence dated 17.10.2014 passed by learned Magistrate, the respondents-accused filed an appeal before the Court of Session. However, vide judgment

dated 02.06.2016 passed by learned Additional Sessions Judge, Hisar, the appeal was partly allowed to the extent that the order of conviction was maintained, but order of sentence was modified and the respondents-accused were released on probation of good conduct for a period of six months on furnishing probation bonds in the sum of Rs.30,000/- with one surety each in the like amount. During probation period, the accused were directed to maintain peace and be of good behaviour and to receive sentence as and when required. The accused were also directed to make payment of Rs.2,000/- each in the form of fine, which was required to be paid to the injured as compensation, in addition to the fine already deposited by the accused before learned trial Court.

It is in these circumstances, the petitioner-complainant has filed the present revision petition impugning the judgment dated 02.06.2016 passed by the appellate Court qua sentence part.

Learned counsel for the petitioner-complainant has argued that the trial Court has rightly convicted the accused and has passed the order of sentence. The accused have rightly been sentenced to undergo simple imprisonment for six months with fine of Rs.200/- each under Section 323 read with Section 34 IPC and to undergo simple imprisonment for a period of two years with fine of Rs.1,000/- each under Section 325 read with Section 34 IPC. The material witness, namely, Dr. Tej Pal Sharma as PW6 has deposed that the injured has suffered fracture shaft of left tibia bone and accordingly, the trial Court convicted and sentenced the accused. But in appeal, the sentence has been modified in the manner indicated above. The complainant

has produced the documentary evidence that he suffered fracture as well as other injuries. Therefore, learned appellate Court has wrongly released the respondents-accused on probation. The impugned judgment dated 02.06.2016 is, therefore, highly improbable, unjust, arbitrary and deserves to be set aside qua sentence part.

He has further argued that even after being released on probation, the respondents-accused are not adhering the directions issued by learned appellate Court and their behaviour towards the petitioner-complainant is very rude and they are giving threats to the petitioner. If the Courts do not protect the injured/victim, the injured would then resort to private vengeance.

I have heard learned counsel for the petitioner-complainant.

Perusal of the impugned judgment dated 02.06.2016 reveals that learned appellate Court has observed that the appellants (respondents No.2 and 3 herein) have undergone the ordeals of trial for more than four years and they are not previous convicts. Moreover, they have not repeated any criminal act during this period and are poor persons. In these circumstances, the appellate Court found them entitled to be released on probation.

It would be pertinent to mention here that scope of revisional jurisdiction is vested with limited powers. The record reveals that the prosecution has not proved that the respondents-accused are habitual offenders either before the trial Court or before the appellate Court. As such, the appellate Court has rightly accepted the request of respondents-accused for releasing them on probation of good conduct.

Moreover, quantum of sentence is always fixed by the Court and is prerogative of the Court unless a minimum sentence is prescribed for an offence. Therefore, this Court does not find any illegality, irregularity or perversity in the impugned judgment passed by learned appellate Court which may warrant interference of this Court by invoking its revisional jurisdiction.

So far as plea of learned counsel for the petitioner that the respondents-accused are not following the directions given by learned appellate Court is concerned, the respondents-accused were released on probation of good conduct for a period of six months by learned appellate Court vide impugned judgment dated 02.06.2016. However, the petitioner has not brought on record any such material showing that during the said period of six months, the respondents-accused have breached any of the conditions of probation. The petitioner has also not produced any record which may show that he has reported the matter to the Courts below regarding breach of conditions of probation by the respondents-accused. Therefore, in the absence of any such material, such plea of petitioner cannot be accepted.

Perusal of impugned judgment passed by learned appellate Court also reveals that the amount of compensation has been deposited by the respondents-accused and the same has already been given to the petitioner-complainant as additional compensation before the appellate Court. Thus, the petitioner has been compensated viz. a viz. the injuries suffered by him.

Therefore, this Court does not find any merit in the present revision petition. Accordingly, the impugned judgment dated 02.06.2016

passed by learned Additional Sessions Judge, Hisar is upheld and the present revision petition is dismissed.

August 16, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No