

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.4408 of 2016

Date of Decision: February 27, 2017

Dalvir Singh and anotherPetitioners

Versus

State of PunjabRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.SS Rana, Advocate for the petitioners.

Mr.PS Grewal, Deputy Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

Vide judgment and order dated 7.3.2014/10.3.2014 passed by the Sub Divisional Judicial Magistrate, Nihal Singh Wala, the present petitioners were convicted under Sections 325/323/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment as under:

<u>Name of convict</u>	<u>Section</u>	<u>Sentence</u>	<u>Fine</u>	<u>In default</u>
Dalvir Singh	323 IPC	Three months	500/-	five days
	325/34 IPC	Three years	1000/-	ten days
Lakhvir Singh	323 IPC	Three months	500/-	five days
	325/34 IPC	Three years	1000/-	ten days

2. The instant revision is directed against the judgment dated 1.11.2016 passed by the learned Sessions Judge, Moga, whereby the judgment of conviction and order of sentence passed by the trial Court has been affirmed.

3. Briefly noticed that the case was registered at the

instance of Tarsem Lal in relation to an occurrence that took place on 12.12.2007. Complainant had asserted that he had constructed a drain for drainage of rain water and Binder Kaur i.e. mother of the accused (petitioners herein) used to choke the drain daily by throwing the garbage. On the date of occurrence, it was alleged that the complainant was cleaning the drainage but Binder Kaur threw the garbage. He having objected, the two sons of Binder Kaur i.e. petitioners herein, came armed with a Gandasa and a Kahi. Dalvir Singh, petitioner No.1 inflicted a Gandasa blow on his head and Lakhvir Singh, petitioner No.2 gave a Kahi blow which landed on his right thumb. On the statement of the injured/complainant Tarsem Lal, FIR in question was registered. Upon completion of investigation, challan was presented against the accused before the trial Court. Charges under Sections 323, 325, 34 of the Indian Penal Code were framed against the accused on 22.7.2008 to which both accused pleaded not guilty and claimed trial. Prosecution to prove its case examined PW1 complainant Tarsem, PW2 eye witness Sukhwinder Dass, PW3 Raj Singh, PW4 Dr.Neera Chopra and PW5 Investigating Officer SI Resham Singh. After closure of prosecution evidence, both the accused were examined under Section 313 of the Code of Criminal Procedure. They pleaded innocence and claimed false implication. In their defence, accused examined their mother as DW1. After hearing learned counsel for the parties and having appreciated the evidence produced on record, the trial Court has convicted the accused/petitioners herein and sentenced them in the manner as noticed hereinabove. The appeal preferred by the

accused has also been dismissed and the judgment of conviction and order of sentence has been affirmed.

4. Resultantly, the instant revision.

5. On 28.11.2016, when this petition came up for preliminary hearing, learned counsel had got recorded a statement that he would confine the scope of this petition only for release of the petitioners on probation and had taken a stand that the petitioners are ready to make a payment of ₹60,000/- to the complainant towards compensation.

6. Placed on record is a receipt marked A1 which would reflect that amount of ₹30,000/- each has been deposited by the petitioners herein before the trial Court on 17.1.2017.

7. The incident/occurrence in the present case relates back to the year 2007. The petitioners have been facing the pangs of criminal prosecution for the last about ten years. As per custody certificate furnished by the learned State counsel, the petitioners have undergone the sentence of three months and 23 days including remissions as on 15.2.2017. In other words, the sentence undergone as of date would be in excess of four months against the substantive sentence of three years rigorous imprisonment. The occurrence between the parties had taken place over a petty issue i.e. of blocking/obstructing the flow of rain water in a drain.

8. In the considered view of this Court, it would be a fit case for grant of benefit of probation to the petitioners. The object of this statute is to give a chance to the offender for reforming so that he may become a responsible citizen. Release

of probationer on bond with or without sureties on probation of good conduct is, in fact, a preventive measure which gives to an offender an opportunity of reformation within the community itself. The petitioners have already made a deposit of a sum of ₹60,000/- with the trial Court towards compensation payable to the complainant/injured.

9. For the reasons recorded above, the present revision is partly accepted. While maintaining the judgment of conviction against the petitioners, the order of sentence is set aside and the sentence is reduced to the period already undergone.

10. Petitioners are directed to be released on probation on their furnishing probation bonds of good conduct for a period of two years to the satisfaction of the trial Court. During this period, they shall keep peace and be of good behaviour and shall be called upon to receive the sentence in case of violation of any condition of the bond.

11. Trial Court is directed to release the amount of ₹60,000/- deposited by the petitioners in favour of the complainant without any further delay.

12. Revision petition is disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

February 27, 2017

SRM

Note: *Whether speaking/reasoned?* *Yes/No*
 Whether Reportable? *Yes/No*