

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

CRR-4824-2016 (O&M)

Date of decision : 21.03.2017

Manoj Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present : Mr. N.S. Shekhawat, Advocate,
for the petitioner.

Mr. Arun Kumar, AAG, Haryana.

Mr. Deepinder Singh and Mr. Ram Kishan, Advocates,
for the complainant.

JITENDRA CHAUHAN, J.

The present revision petition is directed against judgment and order dated 18/21.01.2016, passed by learned Judicial Magistrate 1st Class, Kosli, whereby, the petitioner has been convicted under Sections 323, 341 and 506 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of 01 year along with fine and judgment and order dated 23.11.2016, passed by Sessions Judge, Rewari, whereby, the appeal preferred by the accused-petitioner stands dismissed.

Brief facts of the case as recorded by learned appellate Court in para No.2 of its judgment, are as under:-

“2. *The facts in brief leading to the trial of the*

appellant-accused are that on 12.1.2013, when ASI Josephool

along with Ct. Satish Kumar was present at Jatusana bus stand on patrol duty, complainant Ishwar Singh met him and moved a complaint alleging therein that on 12.1.2013 at about 10-00 a.m. when he was going to washer man to take clothes and reached near the shop of accused Manoj, he was restrained by accused Manoj. He was having a stone in his hand and hit the same on the left cheek of complainant, as a result of which he fell on the ground. Thereafter, accused Manoj gave fist and slap blows to him. He also threatened to kill him on the pretext to compromise the cases which were already pending against him. When the complainant raised alarm, his wife Kanta Devi reached there and rescued him from the clutches of the accused.”

It is contended that it is case of version and cross-version. Learned counsel refers to MLR of the petitioner, Ex.D1, to contend that the petitioner himself suffered as many as six injuries including fracture of little finger of right hand, which cannot be self suffered. On the basis of his statement, DDR, Ex.D2 was also recorded, which is proved from the statement of ASI Jagphool Singh, PW3. The police colluded with the complainant and did not register a cross-case against him. Earlier also, the parties had been engaged in criminal litigation and the complainant was nursing a grudge against the petitioner. It is further averred that in the facts and circumstances of the case, Sections 341 and 506 IPC are also not made out. Lastly, learned counsel prays that in the event of dismissal of the revision petition, a lenient view may be taken in the matter of sentence.

On the other hand, learned State counsel, assisted by learned counsel for the complainant has vehemently argued that two Courts of law have already held the petitioner guilty of the crime. There is no error or patent irregularity in the impugned judgment. There are direct and specific allegations against him. The petitioner was a young man of 30 years at the time of occurrence, whereas, the complainant-injured was more than 60 years. The petitioner was a serving jawan with the ITBP as well. Therefore, the story of inflicting six injuries by the complainant on the person of the petitioner is highly improbable.

I have heard learned counsel for the parties and perused the record.

It is admitted case of the parties that the petitioner is a previous convict in FIR No.1 dated 07.01.2012 registered at the behest of the complainant for causing injuries to him. Another FIR bearing No.158 dated 27.08.2012, was got registered by the present petitioner against the complainant herein alleging that the complainant was possessing illegal arms. During investigation, it was found that the pistol and cartridge were kept in the motor-cycle of the complainant by the petitioner to falsely implicate the complainant and thus, he was prosecuted for framing the complainant, even though, he was subsequently acquitted. In this background, the findings recorded by learned Courts below to the extent that the petitioner had been nursing a grudge against the complainant and in order to settle scores, he stopped the complainant on 12.01.2013, waylaid him, threatened him to withdraw the pending case and ran away after assaulting him with a stone is highly probable.

On the contrary, the story propounded by the petitioner to the extent that he received six injuries is highly improbable and is not supported by cogent evidence. It is the case of the petitioner that the police was in collusion with the complainant and did not register his version. However, there is no evidence that the petitioner ever assailed the same or brought it to the notice of the higher authorities. As far as the medical evidence is concerned, the petitioner has placed on record MLR, Ex.D1, which was conducted on 12.01.2013 at about 1.50 p.m. The alleged incident took place at 10.30 a.m., however, there is no explanation on record to justify the delay. The petitioner, when examined by Dr. Abhishek Saini, DW-2, stated that he medico-legally examined the petitioner with alleged history of assault, however, the name of the assailant was not mentioned. The petitioner also did not examine his mother to say that firstly she was assaulted and when the petitioner came to rescue her, he was also given injuries.

In revisional jurisdiction, this Court cannot undertake minute re-examination of the entire evidence on record and upset the concurrent findings recorded by the trial Court as well as the first appellate Court. Reliance is placed on ***State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and others, (2004) 7 SCC 659***, wherein, Hon'ble the Supreme Court has held as under:-

“The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 410 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of Appellate Court, if

necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power."

In view of the above discussion, this Court does not find any ground to interfere in the well reasoned judgments of conviction recorded by learned Courts below and accordingly, the same is hereby upheld.

However, keeping in view the fact that the petitioner is a young man of 30-35 years and as per the custody certificate dated 05.03.2017, issued by the Deputy Superintendent, District Prison, Rewari, he has already undergone 06 months and 08 days of actual sentence, this Court is inclined to take a lenient view as far as the quantum of sentence is concerned. Accordingly, the substantive sentence of rigorous imprisonment awarded under Section 506 IPC is reduced from RI for 01 year to RI for 09 months.

This revision petition stands disposed of accordingly.

As the main case has been decided, CRM-40814-2016, for suspension of sentence, is rendered infructuous.

21.03.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No