

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

Criminal Revision No.4909 of 2016.

Decided on:-October 23, 2017.

Suresh.

.....Petitioner.

Versus

Anil and others

.....Respondents.

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

Present:- Mr. Rajwant Singh Chahal, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner-complainant has filed present revision petition against judgment dated 17.08.2016 passed by learned Additional Sessions Judge, Bhiwani whereby the appeal filed by the respondents-accused against the judgment of conviction dated 04.01.2016 and order of sentence dated 05.01.2016 passed by learned Sub-Divisional Judicial Magistrate, Tosham was disposed of and 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.

Briefly stated, the FIR No.95 dated 27.02.2010 under Sections 147, 148, 149, 323, 325 and 506 IPC was registered against the respondents-accused, namely, Anil, Kuldeep, Om Parkash, Mahipal and Dilbag at Police Station Tosham, District Bhiwani with the allegations that on 26.02.2010, a medical Ruqa was received from CHC, Tosham regarding admission of injured-complainant Suresh (petitioner herein). After seeking opinion from the doctor regarding fitness of the injured, his statement was recorded by the

police, wherein he had stated that he had come to attend the marriage of daughter of Hoshiar Singh and thereafter, he returned to village Khanak. When the injured along with Satbir were sitting in front of a welding shop, in the meantime, accused Dilbag, Mahipal, Anil and Om Parkash came there along with other 4-5 boys. Accused Dilbag gave an iron rod blow on his right leg, whereas accused Om Parkash gave a Danda blow on his left arm and all the accused had caused injuries on his person.

After registration of the case, police investigated the matter and submitted Challan in the Court as provided under Section 173 Cr.P.C. The copies of Challan were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C. Finding a prima-facie case under Sections 147, 148, 149, 323, 325 and 506 IPC against the accused, they were charge-sheeted accordingly to which they did not plead guilty and claimed trial.

The trial Court vide judgment dated 04.01.2016 held all the five respondents-accused guilty for commission of offence under Sections 323, 325, 506 and 149 IPC. Vide separate order dated 05.01.2016 passed by learned trial Court, all the five convicts were sentenced as under:

Offence	Sentence
323 IPC	Rigorous imprisonment for a period of six months each.
325 IPC	Rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1,000/- each.
506 IPC	Rigorous imprisonment for a period of 2 years and to pay a fine of Rs.500/- each.
149 IPC	Rigorous imprisonment for a period of 2 years and to pay a fine of Rs.500/- each.

It was further ordered that in case of failure to make payment of fine, the convicts shall further undergo rigorous imprisonment for a period of one month and all the substantive sentences shall run concurrently.

Against the judgment of conviction dated 04.01.2016 and order of sentence dated 05.01.2016 passed by learned Magistrate, the respondents-accused filed an appeal before the Court of Session. Vide judgment dated 17.08.2016 passed by learned Additional Sessions Judge, Bhiwani, the appeal filed by the respondents was disposed of while maintaining the conviction of the respondents, but the order of sentence was modified and the respondents-accused were released on probation of good conduct for a period of one year on furnishing probation bonds in the sum of Rs.50,000/- with one surety in the like amount each. During probation period, the accused were directed to maintain peace and be of good behaviour and not to indulge in any illegal activities. The appellate Court had also directed that each accused shall pay Rs.8,000/- to injured-complainant Suresh in view of Section 357(3) Cr.P.C. The accused were also directed to pay the amount of compensation in the trial Court within a period of one month and the trial Court was further directed to disburse the amount of compensation to the injured-complainant in accordance with law.

It is in these circumstances, the petitioner-complainant being dissatisfied has filed the present revision petition impugning the judgment dated 17.08.2016 passed by the appellate Court qua sentence part.

Learned counsel for the petitioner-complainant has argued that the trial Court has rightly convicted the respondents-accused and has passed

the order of sentence. However, learned appellate Court has wrongly released the respondents-accused on probation. While releasing the respondents No.1 to 5-accused on probation, learned appellate Court has ignored the nature of injuries suffered by the petitioner-complainant.

He has further argued that as per Dr. Ashish Gupta, Medical Officer, CHC, Tosham, who appeared in the witness box as PW4 and prepared the medico-legal report of the injured-complainant on 26.02.2010, there were following injuries on the person of injured-complainant:

1. *A lacerated wound of length 4 cm x 1 cm breadth in left temporal region of head. Advice x-ray, KUO blunt within 6 hours.*
2. *Multiple abrasion left forearm with complaint of pain and diffuse swelling left forearm. Advice x-ray. KUO blunt within 6 hours.*
3. *Complaint of pain, diffuse swelling and tenderness dorsal aspect left hand. Advice x-ray. KUO blunt within 6 hours.*
4. *Complaint of pain and tenderness right forearm. Advice x-ray, KUO blunt within 6 hours.*
5. *Complaint of pain and tenderness dorsal aspect right hand. Advice x-ray. KUO blunt within 6 hours.*
6. *A lacerated wound of length 4 cm x 3 cm breadth on right lower leg with fresh bleeding. Advice x-ray. KUO blunt within 6 hours.*
7. *Complaint of pain and tenderness right thigh. Advice x-ray. KUO blunt within 6 hours.*
8. *Complaint of pain and tenderness left thigh. Advice x-ray. KUO blunt within 6 hours.*

He has further contended that PW3 Dr. Rahul Batra, MD, Radio Diagnosis, Department of Imaging and Radio diagnosis, Jindal Institute of Medical Science, Hisar, who performed x-ray and radio-logically examined

the petitioner, has found fracture shaft of right tibia and fracture base of 2nd metacarpal on the person of the petitioner. Therefore, the petitioner-complainant was required to be adequately compensated for the injuries suffered by him. The nature of injuries suffered by the petitioner was not of such kind, which may warrant any interference in the order of sentence passed by learned trial Court. In this manner, learned appellate Court has committed an illegality while releasing the respondents No.1 to 5-accused on probation of good conduct.

I have heard learned counsel for the petitioner-complainant.

For the injuries suffered by the petitioner-complainant, learned appellate Court, vide impugned judgment dated 17.08.2016, has awarded compensation of Rs.40,000/- (Rs.8,000/- each by all the five respondents) to the petitioner as per the provisions of Section 357(3) Cr.P.C. Thus, it cannot be said that the compensation awarded to the petitioner is inadequate viz. a viz. the injuries suffered by him. Moreover, by this time, even the period of probation of one year is already over and no material has been brought on record by the petitioner which may suggest that the respondents-accused have committed any breach during this period.

While releasing the respondents-accused on probation of good conduct, learned appellate Court has observed that the parties have been residing in the close vicinity and the respondents-accused are not previous convicts. Therefore, learned appellate Court, in its wisdom, has modified the sentence awarded by learned trial Court and released the respondents-accused on probation of good conduct by giving them benefit of Section 360 Cr.P.C.

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 prayer 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.

Accordingly, the impugned judgment dated 17.08.2016 passed by learned Additional Sessions Judge, Bhiwani is upheld and the present revision petition, being devoid of any merit, is dismissed.

October 23, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No