

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

CRR No.1803 of 2017 (O&M).

Decided on:-09.08.2017.

Surender.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. R.K. Agnihotri, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J. (ORAL)

The petitioner has filed the present revision petition against the judgment dated 15.02.2017 passed by learned Sessions Judge, Narnaul whereby his appeal against the judgment of conviction dated 27.01.2016 and order of sentence dated 28.01.2016 passed by learned Judicial Magistrate 1st Class, Narnaul, was dismissed.

Briefly stated, an FIR No.235 dated 09.09.2011 under Sections 323/452/506/34 IPC was registered against petitioner Surender and three other co-accused, namely, Mukesh, Virender and Krishan @ Pardeep at Police Station Sadar Narnaul at the instance of complainant Om Parkash.

As per the prosecution version, on 30.08.2011, Jawahar son of Naresh being nephew of complainant Om Parkash was doing some mischief and, therefore, the complainant scolded him. On 31.08.2011 at about 2:30 PM, accused Krishan @ Pardeep came to the house of complainant followed

by other co-accused, namely, Virender and Mukesh. While they were sitting in the room, two more people joined them and one of them was Surender (petitioner herein). Accused Surender gave an axe blow on the head of the complainant, whereas the other co-accused gave him some slaps and fist blows due to which he became unconscious. His wife, namely, Sushila and his brother, namely, Rama Nand saved him from the clutches of accused and took him to the hospital.

The statement of complainant was recorded by the investigating officer and the FIR in question was registered against the accused. After completion of investigation, Challan was presented in the Court. The copies of Challan as envisaged under Section 207 Cr.PC were supplied to the accused free of costs. On finding a prima-facie case, the accused were charge sheeted for the commission of offence punishable under Sections 452/323/506 read with Section 34 IPC to which they did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 27.01.2016 convicted petitioner Surender for the commission of offence punishable under Sections 323 and 452 read with Section 34 IPC, but had acquitted the other co-accused namely, Mukesh, Virender and Krishan @ Pardeep. Since the prosecution failed to prove the offence under Section 506 IPC, petitioner Surender was acquitted of that charge.

Vide separate order dated 28.01.2016, learned trial Court sentenced petitioner Surender to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.2,000/- for the offence punishable under

Section 452 read with Section 34 IPC and in default of fine, to further undergo simple imprisonment for two months. Similarly, for the commission of offence punishable under Section 323 read with Section 34 IPC, petitioner Surender was sentenced to pay a fine of Rs.500/- and in default thereof, to undergo simple imprisonment for one month.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment and order of sentence before the Court of Sessions. However, the appeal was dismissed by the learned Sessions Judge, Narnaul, vide judgment dated 15.02.2017.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

At the outset, learned counsel for the petitioner has not challenged conviction of the petitioner and has confined his arguments qua the quantum of sentence only. He has contended that as against the awarded sentence of two years, the petitioner is in custody since 15.02.2017 i.e. the date when his appeal was dismissed by learned appellate Court. There is no other criminal case pending against him.

He further states that the other co-accused, namely, Mukesh, Virender and Krishan @ Pardeep were acquitted by the trial Court vide judgment dated 27.01.2016. However, the said acquittal was challenged by complainant Om Parkash by way of an appeal and the learned Sessions Judge, Narnaul vide judgment dated 27.02.2017, accepted the appeal of the complainant by holding the co-accused, namely, Mukesh, Virender and Krishan @ Pardeep guilty under Sections 323 and 452 read with Section 34

IPC. However, vide separate order of sentence dated 27.02.2017 passed by learned Sessions Judge, Narnaul, they were released on probation of good conduct on furnishing probation bond in the sum of Rs.30,000/- each with one surety in the like amount for a period of two years and within the said period of two years, the convicts were directed to be of good conduct and to maintain peace. The convicts were also directed to pay compensation of Rs.10,000/- each to the complainant-injured, namely, Om Parkash.

He has further contended that the petitioner is a first time offender and having family to look after. The petitioner has been suffering the agony of criminal proceedings since 09.09.2011 when the FIR was registered against him. Thus, he has prayed that the sentence of the petitioner may be reduced to the period already undergone by him.

Learned State counsel has filed the custody certificate of the petitioner in the Court today, which is taken on record. He has not disputed the custody of the petitioner, but opposed the plea of taking liberal view, as raised by learned counsel for the petitioner. However, he states that there is no other case against him.

I have heard learned counsel for the parties.

On perusal of the judgments of both the Courts below, this Court is of the considered view that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Sections 323 and 452 read with Section 34 IPC. The appellate Court has also rightly dismissed his appeal. There is no illegality or perversity in the findings given by both the Courts below which may warrant

interference of this Court by invoking revisional jurisdiction. Even otherwise, learned counsel for the petitioner has not assailed the judgments of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of petitioner, namely, Surender is, therefore, affirmed.

So far as the issue on quantum of sentence is concerned, admittedly, the petitioner is in custody since 15.02.2017 and no other case is pending against him. He has been facing the agony of criminal proceedings since 09.09.2011 i.e. the date when the FIR in question was registered against him. The other co-accused have already been released on probation by learned appellate Court vide order dated 27.02.2017. Therefore, taking into account the protracted trial, antecedents of the petitioner coupled with the fact that he has already suffered incarceration for a period of 5 months and 26 days, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioner is reduced to the period already undergone by him.

Ordered accordingly.

However, there will be no change in the sentence of fine. Perusal of the order of sentence passed by learned trial Court reveals that the fine has already been paid by petitioner Surender. Therefore, he be released forthwith, if not required in any other case.

With aforesaid modification in the order of sentence, the present revision petition is dismissed.

August 09, 2017
Sanjeev/Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No