

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

CRR No. 2048 of 2017 (O&M)

Date of Decision: 25.08.2017

DINESH KUMAR AND ANOTHER

...Petitioners

VS.

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. G.S. Bhatia, Advocate,
for the petitioners.

Mr. Arpinder Singh Sidhu, DAG, Punjab

1. *Whether the Reporters of local newspaper may be allowed to see the judgment?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest?*

KULDIP SINGH, J. (ORAL)

Heard.

Impugned in the present revision petition is the judgement dated 17.05.2017 passed by the learned Additional Sessions Judge, Jalandhar affirming with modification/alteration, the judgment of conviction and order of sentence dated 19.09.2016 of learned Judicial Magistrate First Class, Jalandhar vide which the accused-petitioners were convicted under Sections 452, 323, 353, 186, 428 read with Section 34 of Indian Penal Code and to undergo the sentence as under: -

Section 452 Read with Section 34 IPC

Both the convicts are sentenced for committing an offence punishable under Section 452 read with Section 34 of Indian Penal Code to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹ 500/- each. In default of payment of fine to further undergo rigorous imprisonment for a period of one month.

Section 323 read with Section 34 IPC

Both the convicts are sentenced to undergo rigorous imprisonment for a period of six months.

Section 428 read with Section 34 IPC

Both the convicts are sentenced to undergo rigorous imprisonment for a period of six months.

Section 353 read with Section 34 IPC

Both the convicts are sentenced to undergo rigorous imprisonment for a period of one year.

Section 186 read with Section 34 IPC

Both the convicts are sentenced to undergo rigorous imprisonment for a period of three months.

All the sentences were directed to run concurrently.

From the very outset, it is to be seen that conviction of the accused-petitioners under Section 428 read with Section 34 IPC is incorrect as said section deals with mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Whereas, in the present case, the allegations are of damaging of property and causing injuries which are covered under Section 427 IPC. Therefore, the conviction under Section 428 read with Section 34 IPC is to be read as Section 427 read with Section 34 IPC.

Learned counsel for the petitioners presses the present revision petition only on the point of quantum of sentence and prays for releasing of the accused-petitioners on probation.

After perusing the custody Certificate dated 05.07.2017 of accused-petitioner No. 1, it comes out that both the accused-petitioners have undergone the total sentence of 1 month and 28 days meaning thereby as on today both have undergone sentence of little more than 3 months.

The facts of the case are that, petitioner No. 1-Dinesh Kumar had married one Neelam daughter of the complainant-Ramesh Chander and there was a matrimonial dispute between the parties. On 27.05.2012, Dinesh Kumar accompanied by his brother Yogesh Kumar and 2-3 other persons came to the house of the complainant-Ramesh Chander alongwith dowry articles loaded in the truck to return the same to the complainant and unloaded the dowry articles in front of the house of the complainant. However, on the intervention of the persons of the locality, they took back the dowry articles. It is further alleged that at about 4.00 P.M., accused-petitioners, Dinesh Kumar and his brother Yogesh Kumar again came to the house the complainant-Ramesh Chander and beat him and broke house hold articles of his house. Thereafter, Police arrived at the spot and during a bid to stop the accused-petitioners, the shirt of the uniform of Head Constable, Daljinder Lal was torn and buttons were also detached. However, both the accused-petitioners were apprehended on the spot and were taken to the Police Station and complainant-Ramesh Chander was medico legally examined. After investigation, the concerned SHO made a complaint under Section 195 of Cr. P.C. After recording evidence, the trial Court has imposed the above noted conviction upon the accused-petitioners.

Learned counsel for the petitioners has argued that petitioner No. 1-Dinesh Kumar is an employee of the Indian Railways as admitted by the witnesses. Since, it was basically a matrimonial dispute and Dinesh Kumar was fearing that he may not be booked for misappropriation of dowry articles, therefore, he had gone to the house of the complainant in order to return the dowry articles and as the complainant party was not ready to accept the same, the dispute arose which has been given the colour of the present occurrence.

Learned counsel for the petitioner, further referred to the cross-examination of Ramesh Chander as well as the statement of Neelam, wife of Dinesh Kumar-petitioner No. 1, wherein they have admitted that when the Police had taken the accused-petitioners to the Police Station, they were beaten up by the Police. Neelam had admitted that she had seen some blood oozing out of the mouth of the accused-petitioners due to injury. It goes to show that either accused-petitioners were beaten up by the complainant-party during the scuffle or by the police officials on account of beatings of the Police official and mishandling of Head Constable-Daljinder Lal, when they were in the Police Station. In this way, in either case, both the petitioners have been sufficiently punished by giving them physical punishment.

Considering the fact that it was a matrimonial dispute and after their arrest they were beaten up and were given physical punishment and also considering the fact that accused-petitioner No. 1 is an employee in the Indian Railways and the purpose for which accused-petitioners came to the house of the complainant was to return the dowry articles due to matrimonial dispute, I am of the view that present case is a proper case where the interest of justice should tampered with the beneficial provisions of the Probation of Offenders Act, 1958. As such, while maintaining the conviction under Section 452, 323, 427, 353 and 186 read with Section 34 IPC, the sentence passed by the learned Chief Judicial Magistrate, Jalandhar as upheld by the learned Additional Sessions Judge, Jalandhar, is hereby set aside. Both the petitioners are ordered to be released on probation for a period of one year on their furnishing personal bonds in the sum of ₹ 20,000/- each with one surety of the like amount to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Jalandhar. Consequently, both the accused-petitioners, Dinesh Kumar and

Yogesh Kumar be released forthwith, if not required in any other case and furnish probation bond before learned Chief Judicial Magistrate, Jalandhar immediately thereafter and submit compliance report to this Court. During the period of probation, they will maintain peace and be of good behavior. The conviction will not be treated as a disqualification attached to conviction as per Section 12 of the Probation of Offenders Act, 1958.

In addition to the fine imposed by the trial Court, both the accused-petitioners are burdened with cost of ₹10,000/- each, payable to the State as litigation expenses.

In view of the above, the present revision is partly allowed.

August 25, 2017
Suresh Kumar

(KULDIP SINGH)
JUDGE

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