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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 911/2017 & CrI. M.B. no. 2172/2017

ISHWAR LAL & ORS Petitioners
Through : Mr. S.P. Sharma, Adv.

versus

STATE (NCT OF DELHI) Respondent
Through :Ms. Manjeet Arya, APP with ASI
Mukesh Chand, P.S. Palam Village

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **06.12.2017**

Petitioners were convicted by the trial court under Sections 325/34 IPC and sentenced to undergo rigorous imprisonment for one year and six months and pay fine of ₹10,000/- each; in default of payment of fine to undergo simple imprisonment for 90 days. It was ordered that fine deposited by the petitioners be paid as compensation to complainant for the monetary loss and mental harassment suffered by him due to the injury.

Petitioners preferred a Criminal Appeal No. 159/2017, which has been disposed by the Additional Sessions Judge, New Delhi, vide judgment dated 15th November, 2017. Conviction of the petitioners has been upheld. However, their sentences have been modified. Petitioner no. 1 has been

given benefit of the Probation of Offenders Act, 1958 (“the Act”, for short). He has been released on probation for one year. Compensation has been enhanced to ₹35,000/-. As regards petitioner nos. 2 and 3 are concerned, their sentences have been reduced to simple imprisonment for six months, besides payment of fine of ₹10,000/- each.

That is how, petitioners are before this Court by way of present Revision Petition under Section 397 Crl.P.C.

Scope of interference by the High Court, in exercise of its supervisory jurisdiction under Section 397 Cr.P.C., is limited. High Court has not to sift and weigh the evidence on record, which has already been marshalled by the two courts, that is, trial court and appellate court, and substitute its own findings of fact. Only gross perversity in the findings as well as the procedural illegality, if any, has to be considered. High Court can interfere only if petitioners are able to demonstrate any flagrant violation or misuse of procedure in the order or that the settled legal position had been ignored. Petitioners have failed to point out any perversity and illegality in the impugned order resulting in miscarriage of justice. It cannot be said that the findings returned by the courts below are without any evidence and/or are perverse.

After arguing for some time, learned counsel for the petitioners has given up challenge to the conviction of petitioners. The only arguments advanced is that petitioner nos. 2 and 3 are first time offenders. Injured (PW1 Shri Suresh Chand) is neighbour of the petitioners. A quarrel took place between them on some trivial issue and in a fit of rage, petitioners assaulted the injured. Assault was not premeditated, inasmuch petitioners were not armed with any weapon. Petitioner nos. 2 and 3 are in incarceration since 3rd May, 2017. It is submitted that petitioner nos. 2 and 3 are married and have to support their families. Petitioner no. 2 has recently been married. Petitioner no. 2 has one school going child. It is prayed that petitioner nos. 2 and 3 may be extended the benefit of probation.

A perusal of the judgment of Appellate Court shows that victim has already received ₹35,000/- towards compensation. Petitioners have already learnt a lesson as they are in incarceration for about a month.

Keeping in mind the totality of the facts and circumstances, more particularly the fact that a quarrel ensued between the neighbours, which led to the incident and that petitioner nos. 2 and 3 have no past criminal record as also the nature of the offence, I find it to be a fit case to extend the benefit of this Act to petitioner nos. 2 and 3. Accordingly, sentences of the

petitioner nos. 2 and 3 are modified and it is ordered that be released on probation, on their furnishing a personal bond in the sum of ₹20,000/- each with one surety each in the like amount to the satisfaction of the trial court, for maintaining peace and good behaviour for a period of one year and also paying compensation of ₹40,000/- each to the injured PW1 Suresh Chand. In case of default in depositing the compensation in Trial Court, the concession of benefit of probation, as extended to the petitioner nos. 2 and 3 shall stand withdrawn and petitioner nos. 2 and 3, shall face the sentences as awarded by the Appellate Court. However, it is clarified that the fine already deposited by the petitioner nos. 2 and 3, shall be given adjustment of, while depositing the compensation in terms of this order. Trial court shall release the compensation amount to PW1 Suresh Chand.

Revision petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous. Dasti.

A.K. PATHAK, J.

DECEMBER 06, 2017

r.bararia