

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 3102 of 2012 (O&M)
Date of decision : 5.3.2018

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Prashant

.....Petitioner

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: Mr. Ashok Tyagi, Advocate
for the petitioner.

Mr. Neeraj Poswal, Assistant Advocate General,
Haryana.

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H. S. Madaan, J.

Accused – Prashant, booked in FIR No. 145 dated 2.9.2008,
for offences under Sections 279, 336, 427 IPC, registered with
Police Station Old Gurgaon, was tried by the Judicial Magistrate Ist
Class, Gurgaon, and vide judgment dated 11.3.2011, he was
convicted for offence under Section 427 IPC and as per order dated

14.3.2011, he was sentenced to pay a fine of Rs.3,000/- and in default of payment of fine to undergo simple imprisonment for 10 days. He had deposited the amount of fine.

Briefly stated facts of the case, as per prosecution story are that the criminal machinery was set into motion by complainant Surender Singh, driver of Haryana Roadways bus No. HR-55A/7465, who in his written complaint Exhibit PW1/A, submitted to the Police, has stated that on 2.9.2008, he was on duty as driver in bus No. HR-55A/7465; that Rajesh Kumar was on duty as Conductor in the said bus, which was going from Gurgaon to Badli; that when the bus reached ahead of Dhanwapur railway crossing, an Alto car bearing No. HR-26AQ/7844, being driven by accused Prashant came from behind and it was brought to a halt in front of the bus; that accused car driver Prashant alighted from the car and hit the windscreen of the bus with a brick bat, as a result of which the same got smashed. In the complaint, a prayer was made that necessary action be taken against the accused car driver.

After registration of formal FIR the case was investigated. The accused was arrested in this case and released on bail as the offence happened to be a bailable one. The offending vehicle was taken into police custody.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Gurgaon, having jurisdiction.

On presentation of challan, copies of documents relied upon therein were supplied to the accused free of cost, as provided

under Section 207 Cr.P.C. Then finding that charge for offence under Section 427 IPC was disclosed against the accused, he was charge sheeted accordingly, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, the prosecution examined as many as three witnesses i.e. PW-1 Surender Singh – complainant, who deposed in consonance with the prosecution story, as narrated in written complaint Exhibit PW1/A, PW-2 Rajesh Kumar, conductor, supported the prosecution case on material aspects, PW-3 ASI Sushila Devi, who had carried out investigation in this case, testified in that regard, proving various documents. With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to him, but he denied the allegations, pleading false implication. The accused did not lead any evidence in defence, despite availing of opportunities .

After hearing arguments, the trial court convicted the accused as mentioned above. However, the accused felt dissatisfied with the judgment of his conviction and order of sentence passed by the trial Magistrate and preferred an appeal to the Court of Sessions, which was dismissed by the Additional Sessions Judge, Gurgaon vide judgment dated 4.7.2012.

Therefore, he has knocked at the door of this Court by way of filing the present revision petition, praying that the impugned judgments passed by the Court below be set aside and he be acquitted

of the charge framed against him. Notice of the revision petition was given to the State of Haryana, who has put in appearance through State counsel.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record.

The prosecution had proved its charge against the accused beyond a shadow of reasonable doubt by examining PW-1 – complainant Surender Singh, driver of the bus and PW-2 Rajesh Kumar - conductor of the bus, which had been admitted by the accused. Both of them deposed in a natural and convincing manner. Both of them were subjected to lengthy cross examination, but they stuck to their guns and could not be shattered on any material point. Their presence at the spot is natural and probable and the account given by them is worthy of reliance. No reason has been alleged or proved, prompted by which PWs might have involved the accused in this case wrongly or deposed against him falsely to implicate him wrongly in this case. Similarly, the investigation in this case has been conducted in a fair and impartial manner. PW-3 Sushila Devi, had no reason to challan the accused wrongly or depose against him falsely. The accused has failed to render any reasonable or plausible explanation for his alleged false implication in this case. Normally, if he had been roped wrongly, he would not have kept quiet with the Damoclian sword of conviction hanging over his head. His silence and in-action in the matter goes to show that he had nothing to say and his plea of false implication lacks merit. Since the prosecution has been able to prove its charge against the accused for offence

under Section 427 IPC, beyond a shadow of reasonable doubt, the trial Magistrate was justified in convicting the accused for the said offence and sentencing him to pay the fine. Similarly the judgment passed by the Additional Sessions Judge, in appeal, is certainly not arbitrary or passed, ignoring the settled principles of criminal law.

Though the accused is not named in the FIR, but then his name cropped up during investigation of the case. The FIR is not an encyclopedia. Since, most of the times, the FIR is lodged in a hurry and its only purpose is to set the criminal machinery into motion and the minute details of the incidents are not given therein. The manner of crime or offence and details of the culprit can be found out only during the investigation. Further more the accused cannot take advantage of the fact that he is not named in the FIR. He can also not take up the plea that no test identification parade was arranged, so as to get him identified from the eye witnesses, as both the eye witnesses have stated that it was the accused who had damaged the windscreen of the bus, identifying him to be the same person in the court. There was no necessity of holding of any test identification parade. Furthermore, since the offence for which the accused had been booked, happened to be a bailable one and after being arrested he had been released on bail, the police could not get his custody, so as to make him participate in the test identification parade. The accused on his own part had not prayed for holding of any such test identification parade, as it comes out from the record. However, the eyewitnesses having seen the culprit at the spot, the image of the culprit must have got etched and imprinted on their minds and their identifying the

culprit in the court, as an accused, cannot be said to be his identification for the first time, granting any advantage to the accused during the trial.

Learned counsel for the revision petitioner has prayed that benefit of probation be granted to the petitioner. In support of his contention, that there is no bar to release the petitioner on probation in a subsequent case, when such benefit had already been given to him in a previous case, he has referred to citation reported as **Kuldip Singh @ Pappi Singh @ Pappa vs. The State of Punjab 1983 (2) RCR (Criminal) 161**, by a co-ordinate Bench of this Court.

However, I find that no case for grant of benefit of probation to the petitioner is made out, keeping in view the fact that as per affidavit furnished by Assistant Commissioner of Police, Gurgaon, the accused is involved in four more criminal cases, in addition to the case in hand, the details of which are as under :-

- 1) FIR No. 123 dated 23.4.2007 under Sections 323, 506 IPC, Police Station Rajindera Park, Gurgaon. The petitioner has been acquitted by the learned Court vide order dated 16.11.2007.
- 2) FIR No. 93 dated 8.8.2010 under Sections 148, 149, 323, 307, 462, 427, 506 IPC and 25/54/59 Arms Act, Police Station Rajindera Park, Gurgaon. The petitioner has been acquitted by the learned Court vide order dated 8.4.2012
- 3) FIR No. 140 dated 11.12.2011 under Sections 323, 324, 326, 34 IPC, Police Station Rajindera Park,

Gurgaon.

4) FIR No. 16 dated 8.1.2011 under Sections 3148, 148, 323, 452, 427, 506 IPC, Police Station, City Gurgaon.

Although he is shown to have been acquitted in first two cases, but then it comes out that he has got a criminal bent of mind. Grant of probation is a concession to a criminal to enable him to reform himself and not to indulge in criminal activity again, but if a person keeps on repeating the crime, then there is little justification for granting such concession to him time and again, with no prospects of reforms being there. The authority referred to by learned counsel for the petitioner is not applicable to the present case, due to different facts and the context in which such observations have been made. Furthermore, since the petitioner has been sentenced to pay fine only, he has deposited, one wonders as to why he is keen to be released on probation instead. However, I do not find any ground to grant such concession to the petitioner. There is absolutely no merit in the revision petition. The judgments passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality of infirmity in such judgments, which might have called for interference by this court, while exercising the revisional jurisdiction. The revisional jurisdiction of this Court is quite limited. It is to interfere only when there is a glaring infirmity or illegality apparent on the face of judgment passed by the Courts below or for that matter if the judgment is perverse or contrary to the settled principles of criminal law. The impugned judgments are certainly not of that type. The

Courts below were justified in convicting the accused for offence under Sections 427 IPC.

The revision petition is without any merit and is dismissed accordingly.

5.3.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
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Whether reportable	Yes / No
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