

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

Criminal Revision No.112 of 2014.
Decided on:-July 30, 2018.

Harpal Singh.

.....Petitioner.

Versus

Nachhattar Singh and others

.....Respondents.

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

Present:- Mr. Surinder Garg, Advocate
for the petitioner.

Mr. P.S. Brar, Advocate
for respondents No.1 to 13.

Mr. Tanvir Joshi, AAG, Punjab
for respondent No.14-State.

HARI PAL VERMA, J.

The petitioner-complainant has filed present revision petition against judgment dated 21.09.2013 passed by learned Additional Sessions Judge, Faridkot, whereby three appeals, one filed by the petitioner-complainant, the second filed by respondents No.1 and 8, namely, Nachhattar Singh and Devinder Singh and the third filed by respondents No.3 and 5, namely, Gurcharan Singh @ Chanan Singh and Baljinder Singh against the judgment of conviction and order of sentence dated 25.03.2011 passed by learned Judicial Magistrate 1st Class, Faridkot were dismissed.

Briefly stated, on 05.07.2001 at about 11.30 A.M., the respondents No.1 to 13-accused being the members of an unlawful assembly and armed with deadly weapons caused simple as well as grievous injuries to complainant, namely, Harpal Singh (petitioner herein) as well as injured Raj Singh and Jarnail Singh. On the basis of the statement of complainant Harpal Singh, the FIR No.67 dated 06.07.2001 under Sections 324, 323, 148 and 149 IPC as well as Section 25 of the Arms Act, 1959 was registered against the respondents No.1 to 13-accused at Police Station Sadar Faridkot. On 18.07.2001, x-ray report of the injured was received and Section 325 IPC was also added in the case. However, no ammunition was found to be used during the fight and as such, the offence under Section 25 of the Arms Act, 1959 was deleted.

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 148, 326, 325, 324, 323 and 149 IPC against the respondents-accused, they were charge-sheeted accordingly to which they did not plead guilty and claimed trial.

After recording the evidence and hearing both the sides, learned trial Court vide judgment dated 25.03.2011 held the respondents No.1, 3, 5 and 8 guilty for commission of offence under Sections 324 and 323 read with Section 34 IPC, but acquitted the respondents No.2, 4, 6, 7 and 9 to 13 of the

charges framed against them. Vide separate order dated 25.03.2011 passed by learned trial Court, respondents No.1, 3, 5 and 8 were sentenced as under:

<i>Name of convict</i>	<i>Under Section</i>	<i>Sentence</i>	<i>In-default</i>
Nachhattar Singh	324 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Nachhattar Singh	324/34 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Nachhattar Singh	324/34 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Nachhattar Singh	323/34 IPC	To pay a fine of Rs.500/-	To undergo simple imprisonment for 7 days
Baljinder Singh	324 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Baljinder Singh	324/34 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Baljinder Singh	324/34 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Baljinder Singh	323/34 IPC	To pay a fine of Rs.500/-	To undergo simple imprisonment for 7 days
Gurcharan Singh	324 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Gurcharan Singh	324/34 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Gurcharan Singh	324/34 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Gurcharan Singh	323/34 IPC	To pay a fine of Rs.500/-	To undergo simple imprisonment for 7 days
Davinder Singh	324/34 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days

Davinder Singh	324/34 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Davinder Singh	324/34 IPC	To pay a fine of Rs.1000/-	To undergo simple imprisonment for 15 days
Davinder Singh	323/34 IPC	To pay a fine of Rs.500/-	To undergo simple imprisonment for 7 days

Against the judgment of conviction and order of sentence dated 25.03.2011 passed by learned Magistrate, the complainant-petitioner had filed an appeal before the Court of Session for enhancement of the sentence of respondents No.1, 3, 5 and 8 and against acquittal of respondents No.2, 4, 6, 7 and 9 to 13. Similarly, respondents No.1 and 8 as well as respondents No.3 and 5 filed their appeals against the sentence of fine imposed upon them.

Vide judgment dated 21.09.2013 passed by learned Additional Sessions Judge, Faridkot, all the three appeals were dismissed.

It is in these circumstances, the petitioner-complainant has filed the present revision petition.

Learned counsel for the petitioner-complainant has argued that sufficient evidence was brought on record by the prosecution and specific role was attributed to the accused. Therefore, the question of false implication of the respondents-accused does not arise at all. However, both the Courts below have wrongly acquitted some of the respondents and gave less punishment to the other respondents, which has to be enhanced. The respondents came to the fields of the complainant party armed with deadly weapons and they were the aggressor party and after forming an unlawful assembly, they gave injuries to

the complainant party. Therefore, the respondents-accused are liable to be convicted under Section 148/149 IPC, but both the Courts below have wrongly acquitted them under the said charges.

He has further argued that Dr. Harjit Chawla (PW9) has proved the injuries suffered by the injured and declared the injury No.1 suffered by the complainant as grievous. So, when the medical evidence was available on record, the respondents-accused should have been given severe punishment. The impugned judgments passed by the Courts below are based on surmises and conjectures and are liable to be modified and accordingly, the sentence awarded to respondents No.1, 3, 5 and 8 should be enhanced and the respondents No.2, 4, 6, 7 and 9 to 13 should be convicted in accordance with law.

On the other hand, learned counsel for respondents No.1 to 13 has argued that conviction of the respondents No.1, 3, 5 and 8 has been maintained by the appellate Court, whereas respondents No.2, 4, 6, 7 and 9 to 13 have rightly been acquitted by learned trial Court and verdict of the trial Court has been affirmed by learned appellate Court as there was no convincing and cogent evidence available on record against them.

He has further argued that vide impugned order of sentence dated 25.03.2011, learned trial Court has sentenced the respondents No.1, 3, 5 and 8 under Section 324 read with Section 34 IPC thrice, which is not sustainable in the eyes of law.

I have heard learned counsel for the parties.

Record reveals that vide impugned judgment dated 25.03.2011, learned trial Court had convicted the respondents No.1, 3, 5 and 8 for commission of offence under Section 323 and 324 read with Section 34 IPC after thoroughly appreciating the evidence produced on record by both the sides. It was observed by the learned trial Court that all the injuries were simple in nature except one injury on the person of injured Raj Singh, which was allegedly caused by respondent-accused Baldev Singh on his forearm with the help of 'Gandasa', whereas the other grievous injury on the leg of injured Jarnail Singh was caused with the help of 'Kirpan' by respondent-accused Baljinder Singh. However, injured Jarnail Singh while appearing in the witness box as PW2 has deposed in his cross-examination that he received the injury on his right leg and he received only one injury, which was caused by accused Baljinder Singh. However, Harpal Singh (PW8) stated that accused Baljinder Singh gave a 'Talwar' blow on the leg of injured Jarnail Singh. The trial Court further observed that Dr. S.S. Sandhu (DW1) has specifically stated that two cut fractures are not possible with single blow and there are two cut fractures in this injury and as per the prosecution witnesses, this injury was caused by a single blow of Talwar. So, as far as this injury is concerned, the same is a fabricated one and is caused by a friendly hand.

Learned trial Court further observed that so far as the injury on the forearm of injured Raj Singh is concerned, it was deposed by Jarnail Singh (PW2) and Amrik Singh (PW3) that this injury was caused by accused Baldev Singh on the right wrist of Raj Singh with the help of 'Gandasa'. However, complainant Harpal Singh (PW8) deposed that accused Baldev

Singh was a having pipe in his hand. Thus, the trial Court observed that it cannot be said beyond doubt that the said injury was caused by accused Baldev Singh.

Thus, learned trial Court acquitted the respondents No.2, 4, 6, 7 and 9 to 13 as their presence on the scene of occurrence was found to be doubtful and held the respondents No.1, 3, 5 and 8 guilty under Section 323 and 324 read with Section 34 IPC. The appeal filed by the petitioner-complainant was also dismissed by learned appellate Court.

It would be pertinent to mention here that scope of revisional jurisdiction is vested with limited powers. The petitioner has not been able to prove on record any illegality, irregularity or perversity in the impugned judgment of conviction passed by learned trial Court and affirmed by learned appellate Court which may warrant interference of this Court by invoking its revisional jurisdiction.

So far as the plea of learned counsel for respondents No.1, 3, 5 and 8 regarding punishment of the respondents-accused under Section 324 read with Section 34 IPC is concerned, the same carries weight. Perusal of the impugned order of sentence dated 25.03.2011 passed by learned trial Court reveals that the respondents-accused have been sentenced to pay a fine of Rs.1,000/- each thrice, which is patently illegal. As enshrined in Article 20(2) of the Constitution of India, a person cannot be punished for the same offence more than once. Even the learned appellate Court has failed to consider the said mistake on the part of learned trial Court.

However, in the interest of justice, the sentence of fine of Rs.500/- each imposed upon the respondents No.1, 3, 5 and 8 under Section 323 read with Section 34 IPC and fine of Rs.1,000/- each under Section 324 read with Section 34 IPC is ordered to be enhanced to the extent of double amount of fine. Meaning thereby, the respondents No.1, 3, 5 and 8 are sentenced to pay a fine of Rs.1,000/- each under Section 323 read with Section 34 IPC and further to pay a fine of Rs.2,000/- each under Section 324 read with Section 34 IPC. However, in default of payment of fine imposed by this Court, there will be no change in the sentence of imprisonment as awarded by learned trial Court.

Record reveals that vide impugned order of sentence dated 25.03.2011, learned trial Court has held that the fine has been paid by the convicts.

It is made clear that in case the respondents No.1, 3, 5 and 8 have paid more amount of fine than Rs.3,000/- each, as imposed by this Court, the same is ordered to be refunded to them as per rules.

At the same time, it is also made clear that in case the respondents No.1, 3, 5 and 8 have not deposited the total amount of fine of Rs.3,000/- each, as imposed by this Court, in that event, these respondents shall be required to deposit the enhanced amount of fine within a period of one month from today before the Court of Chief Judicial Magistrate/Duty Magistrate, Faridkot.

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

July 30, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No