

105.

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

CRR-523-2016 (O&M)

Date of decision:30.08.2018.

SURESH KUMAR

... Petitioner

versus

SHAKTI AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Satvir Singh, Advocate, for
Ms. Deepika Bawa, Advocate,
for the petitioner.

Mr. O.P. Kamboj, Advocate,
for respondents No.1 and 2.

Mr. Surinder Pal Singh Tinna, Additional Advocate General,
Punjab,for respondent No.3.

HARI PAL VERMA, J.(Oral)

CRM-4448-2016

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 41 days in filing the present revision petition.

For the reasons stated in the application, same is allowed and the delay of 41 days in filing the present revision petition is condoned.

CRR-523-2016

Petitioner has filed the present revision petition against the judgment dated 16.09.2015 passed by learned Additional Sessions Judge, Fazilka, whereby his appeal against the judgment dated 15.12.2014 passed by learned Chief Judicial Magistrate, Fazilka was dismissed. Learned

Additional Sessions Judge though has held the respondents No.1 and 2-accused guilty for offence under Section 324 IPC, but has extended the benefit of Probation of Offenders Act, 1958. Vide judgment dated 15.12.2014, learned trial Court though has convicted the respondents-accused under Section 323 read with Section 34 IPC, but has acquitted them for the offence under Section 324 IPC. The trial Court released the respondents on probation on furnishing of probation bonds in the sum of Rs.10,000/- each with one surety of like amount with an undertaking not to repeat the offence, be of a good behaviour for a period of one year. The court has also imposed a fine of Rs.2,000/-.

Learned counsel for the petitioner has argued that the nature of injuries that were inflicted upon the person of petitioner-complainant were numerous in number and immediately after the incident, petitioner was medico-legally examined. The doctor has found the following injuries on the persons of the petitioner:-

- “1. An incised wound 7 cm x 0.5 cm just behind right ear. Fresh bleeding was present. X-ray was advised.
2. A lacerated wound above left ear at temporal site of left side of head. Fresh bleeding was present. X-ray was advised.
3. An incised wound on left forearm on dorsal side 10 cm x 2.5 cm. Clotted blood was present. X-ray was advised.
4. An incised wound on dorsal site left hand on little finger at middle phalanx 2 cm x 0.1 cm. X-ray was advised.
5. An incised wound on dorsal site left hand on ring finger at middle phalanx in series to injury no.4. X-ray was advised.
6. An incised wound on dorsal site left hand on middle finger at middle phalanx in series to injury no.5. X-ray was advised.
7. An abrasion at the back on right side 6 cm x 4 cm. X-ray was advised.”

Learned counsel has further argued that considering the nature of injuries and the fact that such injuries cannot be self-inflicted ones, the lower Appellate Court was required to give compensation under Section 357 of Cr.P.C. He has further argued that the courts below were required to apply balance between the sentence and the injuries so suffered by the complainant. In case the accused are not awarded punishment/ sentence for the offence committed by them, it will give a wrong message to the society and there would be no check on the accused like the present one. He has relied upon a judgment of Hon'ble Apex Court in **State through C.B.I., Anti Corruption Branch, Chandigarh Versus Sanjiv Bhalla and another- 2014(4) R.C.R. (Criminal) 17** to contend that compensation to the victim of a crime is mandatory.

On the other hand, learned counsel for the respondents states that the respondents No.1 and 2-accused have already completed their period of probation and, therefore, at this stage, no modification can be ordered and in case interference is made, then it would tantamount to double jeopardy, as the period during which respondents-accused remained on probation, they have maintained peace as ordered by the Court.

I have heard learned counsel for the parties.

The findings recorded by the courts below and the injuries so attributed on the petitioner-complainant could not have been self-inflicted. There is no doubt that the injuries have been opined to be simple in nature, but number of injuries inflicted on the persons of the accused is a matter of concern, for which, this Court, having recourse to the judgment passed by the Hon'ble Apex Court in **Sanjiv Bhalla's case** (supra), finds that the petitioner deserves to be compensated.

In the aforesaid judgment, Hon'ble Apex Court has relied upon

Ankush Shivaji Gaikwad Versus State of Maharashtra-2013(2)

RCR(Criminal) 1036, of which the relevant paragraph reads as under:-

“While the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation.”

In view of aforesaid judgment, it is clear that the Court cannot pass a mechanical order and for refusing compensation in a particular case, application of mind is required to be discussed.

Thus, for awarding or refusing compensation, court has to give a reasoning, but since no such reasoning has been given by the lower Appellate Court and at the same time, number of injuries so inflicted on the person of the petitioner warrants the award of compensation. Accordingly, this Court finds that the judgment passed by the court below needs to be modified to the extent that the petitioner shall be entitled for compensation, as provided under Section 357 Cr.P.C., to the tune of Rs.20,000/-. The respondents-accused shall deposit the same before the learned Chief Judicial Magistrate within two months from today and the same shall be disbursed to the petitioner in accordance with law. In case, respondents-accused fail to deposit the aforesaid amount of compensation, they would be liable to undergo simple imprisonment for a period of one month.

The petition stands disposed of accordingly.

(HARI PAL VERMA)
JUDGE

30.08.2018

sanjeev

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No