

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

CRR No.3629 of 2017 (O&M).
Decided on:-July 17, 2018.

Fateh Singh and others

.....Petitioners.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Devender Punia, Advocate
for the petitioners.

Mr. Anmol Malik, AAG, Haryana
for the respondent-State.

HARI PAL VERMA, J.

Petitioners, namely, Fateh Singh, Om Parkash, Satish, Umesh, Ashok and Shri Bhagwan have filed the present revision petition against the judgment dated 27.09.2017 passed by learned Additional Sessions Judge, Gurugram whereby their appeal against the judgment of conviction dated 15.05.2015 and order of sentence dated 16.05.2015 passed by learned Judicial Magistrate 1st Class, Gurgaon (now Gurugram), was dismissed with modification in the order of sentence.

Briefly stated, an FIR No.33 dated 29.01.2011 under Sections 148, 149, 323, 325, 452 and 506 IPC was registered against the petitioners-accused at Police Station Badshahpur, District Gurugram on the allegations that on 28.01.2011 at about 04.30 P.M., petitioner Satish had dumped cow-

ding in front of the house of complainant Mukesh. When the wife of the complainant Gyano Devi resisted, petitioner Satish along with other petitioners-accused came there armed with Lathi, Danda and Saria. Petitioner-accused Fateh Singh caught hold of Gyano Devi. The complainant reached to rescue her, but petitioner-accused Om Parkash gave a Saria blow on his left hand, whereas petitioner-accused Ashok gave a Lathi blow on his back. Accused Sribhagwan also gave an iron pipe blow on the right leg of the complainant. As a result, the complainant fell down and all the petitioners-accused gave several blows to him. When the complainant and his wife raised an alarm, brothers of complainant, namely, Rajesh and Vijay reached the spot and rescued them from the clutches of the accused. Before leaving the spot, the petitioners-accused also criminally intimidated the complainant and his wife that they (complainant and his wife) shall be killed.

After completion of investigation, Challan was presented in the Court. The copies of Challan as envisaged under Section 207 Cr.PC were supplied to the accused free of costs. On finding a prima-facie case, the accused were charge sheeted for the commission of offence punishable under Sections 148, 323, 325, 452 and 506 read with Section 149 IPC to which they did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 15.05.2015 and order dated 16.05.2015 convicted and sentenced the petitioners as under:

<u>Offence</u>	<u>Sentence</u>
148 IPC	Simple imprisonment for one year each.

323 IPC	Simple imprisonment for one year each.
325 IPC	Simple imprisonment for three years and fine of Rs.1000/- each and in default of payment of fine to further undergo simple imprisonment for one month each.
452 IPC	Simple imprisonment for three years and fine of Rs.1000/- each and in default of payment of fine to further undergo simple imprisonment for one month each.
506 IPC	Simple imprisonment for two years each.

It was further ordered that all the substantive sentences shall run concurrently.

Feeling aggrieved, the petitioners preferred an appeal against the said judgment and order of sentence before the Court of Session. However, vide judgment dated 27.09.2017 passed by learned Additional Sessions Judge, Gurugram, the appeal filed by the petitioners was dismissed, however, with modification in the order of sentence to the following effect:

<u>Offence</u>	<u>Sentence</u>
148 IPC	Simple imprisonment for six months each.
323 IPC	Simple imprisonment for six months each.
325 IPC	Simple imprisonment for 1½ years and fine of Rs.1000/- each and in default of payment of fine to further undergo simple imprisonment for one month each.
452 IPC	Simple imprisonment for 1½ years and fine of Rs.1000/- each and in default of payment of fine to further undergo simple imprisonment for one month each.
506 IPC	Simple imprisonment for one year each.

However, all the aforesaid substantive sentences were ordered to run concurrently.

It is in the aforesaid circumstances, the petitioners have filed the present revision petition.

On October 06, 2017, when the present revision petition came up for hearing before this Court, learned counsel for the petitioners did not challenge the revision on merits, however, pressed the revision petition only on the point of quantum of sentence.

Learned counsel for the petitioners has contended that as against the awarded sentence of 1½ years by learned appellate Court, the petitioners have already undergone actual imprisonment for 10 months and 25 days including remission for 1 month.

He has further contended that the petitioners are poor persons, first time offenders and there is no other criminal case pending against them. The petitioners have been suffering the agony of criminal proceedings since 29.01.2011 i.e. the date when the FIR in question was registered against them. Thus, he has prayed that the sentence of the petitioners may be reduced to the period already undergone by them.

On the other hand, learned State counsel has not disputed the custody of the petitioners, but has opposed the plea of taking a liberal view, as pleaded by learned counsel for the petitioners. However, he states that there is no other case against the petitioners. Custody certificates produced by learned State counsel in the Court today, are taken on record.

I have heard learned counsel for the parties.

On perusal of the judgments of both the Courts below, this Court is of the considered view that the trial Court has rightly appreciated the evidence on record while holding the petitioners guilty for commission of offence under Sections 148, 323, 325, 452 and 506 read with Section 149 IPC. The appellate Court has also dismissed their appeal. There is no illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, learned counsel for the petitioners has not assailed the judgments of conviction on merits and has, rather, restricted his arguments qua the quantum of sentence only. Therefore, conviction of the petitioners is hereby affirmed.

So far as the issue of quantum of sentence is concerned, admittedly, the petitioners have already undergone imprisonment for 10 months and 25 days including remission. They have earned remission for 1 month and no other case is pending against them. They have been facing the agony of criminal proceedings since 29.01.2011 i.e. the date when the FIR in question was registered against them.

Therefore, taking into account the protracted trial, antecedents of the petitioners, coupled with the fact that they have already suffered incarceration for a period of more than 10 months and 25 days including remission, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioners is reduced to the period already undergone by them subject to payment of fine of Rs.5,000/- each under Section 325 IPC instead of Rs.1,000/- each as imposed by learned trial Court and affirmed by

learned appellate Court. On deposit of increased amount of fine, the petitioners be released forthwith, if not required in any other case.

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

July 17, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No