

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

CRR-285-2009

Date of Decision: 02.11.2019

Balwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Dhir, Advocate for the petitioner.
Mr. Hittan Nehra, Addl. A.G., Punjab.

ANIL KSHETARPAL, J.

The present revision petition is directed against the judgment of conviction and order of sentence dated 26.04.2006 passed by the learned Chief Judicial Magistrate in a criminal case arising out of FIR No.36 dated 30.3.2002 registered under Sections 452/326/34 IPC and judgment dated 24.1.2009 passed by learned Additional Sessions Judge, whereby sentence awarded to the petitioner was upheld, however, Jagroop Singh was released on probation.

The learned Chief Judicial Magistrate sentenced the petitioner as under:-

Section	Sentence
452 IPC	Two years rigorous imprisonment and fine of Rs.1000/- and in default of payment of fine further imprisonment for six months rigorous imprisonment.
325 IPC	Two years rigorous imprisonment and fine of Rs.1000/- and in default of payment of fine further imprisonment for six months rigorous imprisonment.

In fact, two accused were held guilty, one is the petitioner herein-Balwinder Singh and second was Jagroop Singh. Both of them have filed the appeals which were assigned to learned Additional Sessions Judge.

The learned Additional Sessions Judge, Sangrur on re-appreciation of evidence dismissed the appeals on merits, however, released Jagroop Singh on probation but sentence awarded to petitioner Balwinder Singh was upheld.

Learned counsel for the petitioner submits that as per Section 360 of the Code of Criminal Procedure ('Code' for short) read with Section 361 of the Code, it was incumbent on the learned trial court as well as the Court of Session to consider the case of the petitioner for being released on probation. He further submits that the incident/occurrence took place on 29.03.2002 and petitioner has already faced protracted criminal litigation for a period of more than 17 years. He further submits that the petitioner is a first time offender, not involved in any other case. He also submits that the petitioner was released on bail on 07.02.2009 and after lapse of more than 10 years, sending the petitioner behind bars at this stage would not be equitable.

On the other hand, learned counsel for the State, although does not dispute that the petitioner is not involved in any other case, however, submits that the petitioner has been rightly convicted by both the courts below and in the revision petition, this Court should not order release of the petitioner on probation particularly when the Court of Sessions did not consider it appropriate.

Section 360 of the Code makes it obligatory for the Court to consider releasing of the convict on probation, if convicted for an offence for which the imprisonment provided is for a term of 7 years or less. Maximum sentence for an offence punishable under Sections 325 and 452 IPC is up-to 7 years. Thus, Section 360 of the Code was applicable.

Keeping in view the facts of the case, it is considered appropriate to accept the request of learned counsel for the petitioner. Rather than remitting the matter back to the Court of Sessions after a period of 10 years, the impugned judgment and order of sentence is modified by releasing the petitioner on probation on furnishing of probation bonds in the sum of Rs.25,000/- with one surety thereby undertaking to maintain peace and be of good behaviour for a period of two years within a period of 30 days before the Chief Judicial Magistrate/Illaq Magistrate and in case of default, to appear and receive sentence as and when called upon. It is stated that amount of fine has already been deposited.

In view of the above, the present revision petition is disposed of. Pending application(s), if any, shall also stand disposed of, in terms thereof.

02.11.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No