

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

Criminal Revision No.2782 of 2010.
Decided on:- July 22, 2019.

Krishan Kumar.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Harish Goyal, Advocate for
Mr. Puneet Garg, Advocate
for the petitioner.

Mr. Harpreet Singh Multani, A.A.G., Punjab.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present criminal revision against the judgment dated 10.09.2010 passed by learned Additional Sessions Judge, Patiala whereby his appeal against the judgment of conviction and order of sentence dated 22.08.2008 passed by learned Chief Judicial Magistrate, Patiala, was dismissed.

Briefly stated, FIR No.273 dated 12.05.2004 under Sections 341, 354, 323 and 506 read with Section 34 IPC was registered against the petitioner and co-accused Daljit Kumar at Police Station Sadar Patiala at the behest of complainant Baljit Kaur.

As per the FIR, on 10.05.2004, the complainant was going to cast her vote and when she had reached near the polling booth, petitioner

Krishan Kumar and his co-accused Daljit Kumar encircled her and started teasing her. When she (the complainant) opposed them, they gave slaps and tore her clothes. The accused had also threatened her and tried to commit rape upon her. However, on hearing the noise, people from the polling booth came at the spot and rescued her from clutches of the accused. The accused ran away from the spot. Earlier also, accused Krishan Kumar had kidnapped her daughter, but no action was taken and a compromise was effected.

After completion of investigation, report under Section 173 Cr.P.C. was filed in the Court. The copy of report along with other documents was supplied to the accused, as envisaged under Section 207 Cr.P.C. Finding a prima facie case against the petitioner and co-accused Daljit Kumar, they were charge-sheeted under Sections 341, 354, 323 and 506 IPC, to which they did not plead guilty and rather claimed trial.

After recording the evidence and hearing arguments, learned trial Court vide impugned judgment dated 22.08.2008 held the petitioner as well as co-accused Daljit Kumar guilty for offence under Sections 341, 354 and 323 IPC and convicted them thereunder. However, both the accused were acquitted for offence under Section 506 IPC. Vide separate order dated 22.08.2008, the petitioner and Daljit Kumar were sentenced to undergo imprisonment as under:

OffencePunishment

341 IPC

Rigorous imprisonment for a period of 6 months and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days each.

323 IPC	Rigorous imprisonment for a period of 6 months and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days each.
354 IPC	Rigorous imprisonment for a period of 6 months and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days each.

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

Aggrieved against the judgment of conviction and order of sentence dated 22.08.2008 passed by the trial Court, the petitioner as well as other convict Daljit Kumar preferred their separate appeals before the Court of Session. Vide common judgment dated 10.09.2010, while maintaining conviction of Daljit Kumar, he was released on probation, but the appeal filed by petitioner Krishan Kumar was dismissed by learned Additional Sessions Judge, Patiala.

It is in these circumstances, the petitioner has filed the present criminal revision.

Learned counsel for the petitioner has argued that the impugned judgments passed by learned Courts below suffer from legal infirmities. The impugned judgments passed by the Courts below are against the law as well as evidence produced on record. The evidence has not properly been appreciated by the Courts below.

He has further argued that except the statement of complainant Baljit Kaur as PW1, there is no other eye-witness in the case. Even Bakhshish Singh, who had appeared in the witness box as PW3 is not an eye-witness in

the case and his statement is based on hearsay. The alleged incident had taken place on 10.05.2004, whereas the FIR was registered on 12.05.2004 i.e. after a delay of 2 days. Moreover, daughter of the complainant had eloped with petitioner Krishan Kumar and it is for this reason, the petitioner had falsely been implicated in the case.

On the other hand, learned State counsel, on instructions from ASI Randhir Singh, has argued that there is sufficient evidence to support the case of the complainant. In the cases like the present one, there cannot be other witness and the complainant has duly supported the case of the prosecution. Therefore, there is no illegality in the judgment of conviction passed by the Court below. Moreover, scope of interference in revisionary jurisdiction is very limited.

Having heard learned counsel for the parties, this Court finds that for the offence under Section 341 IPC, the trial Court had awarded rigorous imprisonment for a period of 6 months, but as per the provisions of Section 341 IPC, the accused can be punished for simple imprisonment for a term which may extend upto one month. Therefore, the awarded sentence under Section 341 IPC is contrary to law.

Perusal of the paper book further reveals that there is no medical evidence about the injury so as to convict the petitioner for offence under Section 323 IPC as she was not medico-legally examined. Further more, the FIR was registered after 2 days of the incident. Even in paragraph No.17 of the impugned judgment dated 10.09.2010 passed by learned Additional Sessions Judge, Patiala, the Court had made a reference that the complainant

in her cross-examination had admitted that her daughter Simarjit Kaur had eloped with petitioner Krishan Kumar. Therefore, this Court finds that false implication of the petitioner in the case cannot be ruled out. The circumstances do warrant that the petitioner is entitled to be given the benefit of doubt.

No doubt, the scope of interference in the revisional jurisdiction is very limited, but considering the aforementioned circumstances, as indicated above, this Court is sufficiently satisfied that the story propounded by the complainant is motivated as the daughter of the complainant has allegedly eloped with the petitioner.

Therefore, while allowing the present criminal revision, the petitioner is acquitted of the charge framed against him and the impugned judgment of conviction and order of sentence dated 22.08.2008 passed by the trial Court as well as the impugned judgment dated 10.09.2010 passed by the appellate Court are set aside. The bail bonds and surety bonds of the petitioner are discharged.

July 22, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No