

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 1440 of 2013

Date of Decision: 20.03.2019

Mahender Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sanjay Vashishth, Advocate
for the petitioner.

Mr. S.S.Pannu, DAG, Haryana.

HARNARESH SINGH GILL, J.

The present revision arises out of the judgment and order dated 8.2.2013 passed by Additional Sessions Judge, Bhiwani, vide which the appeal filed by the petitioner challenging the judgment of conviction and order of sentence dated 25.11.2009 passed by Sub Divisional Judicial Magistrate, Charkhi Dadri, in case FIR No. 116 dated 31.7.2002 under Sections 170,420, 506 of the Indian Penal Code ('IPC' for short), registered at Police Station Badhra, was dismissed. However, while upholding the conviction of the petitioner he was ordered to be released on probation by giving him the benefit of Section 360 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short).

The brief facts of the present case are that complainant Jai Lal, a retired Subedar, had made a statement to the police that on 28.7.2002, he was sleeping in his tubewell room along with his son Ajit and nephew

Rajbir. At about 10.00 P.M., three boys came to his tubewell and said that their names had been involved in the murder case of Lakhi Ram and that Daya Nand, Hari Ram and Tara Chand had already been named by Jai Singh and if they arranged the amount of Rs. 30,000/-, to be paid to the Deputy Superintendent of Police, who is sitting in the vehicle parked on the road, they would get rid of that case. To arrange the money, Rajbir went towards roadside and saw a black colour vehicle and Mahender son of Ram Sawroop was present near the vehicle. Mahender was strolling near the vehicle personating to be a DSP. Rajbir came back. Three boys, who had come to the tubewell room, started abusing and asked them to arrange Rs. 30,000/- otherwise they would be killed. Ajit and Rajbir were caught by them and they grappled with each other and later got rescued. Ajit and Rajbir fled towards the village and the three boys ran away towards their vehicle and were not seen later. In that situation, the number of the car could not be noted. Later, panchayat was convened and many persons had tendered their apology but accused persons never came nor tendered any apology. Accordingly, the present FIR was registered.

Charges were framed against the accused under Sections 420, 506 read with Section 34 IPC and petitioner/accused-Mahender Singh was further charged sheet under Section 170 IPC, to which they pleaded not guilty and claimed trial.

After taking into consideration the evidence on record, the trial Court, vide judgement and order dated 25.11.2009 convicted the petitioner and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 300/- for commission of offence punishable under Section 170 IPC. In default of payment of fine, he was to further

undergo imprisonment for a period of one month. However, petitioner and his co-accused namely Jai Karan and Krishan were acquitted of the charges under Sections 420/506 read with Section 34 IPC.

Aggrieved of the said judgment and order, as referred above, petitioner-accused preferred an appeal, before the learned Sessions Judge. Vide judgment dated 8.2.2013, the Additional Sessions Judge, after taking into consideration the evidence on record, dismissed the appeal of the petitioner but by giving the benefit of Section 360 Cr.P.C., the petitioner was released on probation of good conduct for one year on his furnishing bail bonds in the sum of Rs. 25,000/- with one surety in the like amount. The petitioner was also directed to pay an amount of Rs. 10,000/- as compensation to the complainant in view of Section 357(3) Cr.P.C.

Aggrieved of the said judgment passed by the Appellate Court, the petitioner has preferred the present revision.

Learned counsel for the petitioner has argued that at the initial stage, the complainant had stated that the accused persons were in a black Esteem car whereas later on Tata Sira vehicle was recovered vide memo Ex. PW1/A. It has been further argued that Mahender Singh was not unknown to the complainant nor to his son Ajit and nephew Rajbir, because it has come on record that petitioner-accused Mahender had purchased an agriculture land adjoining the fields of the complainant. Thus, being a co-farmer, the petitioner is not a stranger so question of fake identity does not arise. It has been further argued that the trial Court has acquitted the other co-accused, who have been alleged to be present and demanded Rs. 30,000/-, whereas the petitioner has been released on probation only.

There is no recovery of police uniform nor there is any recovery of vehicle

from any of the accused i.e. Mahabir and Jai Karan. Since there is no demand by Mahender and instead of probation, learned counsel for the petitioner has argued, that the learned Additional Sessions Judge ought to have acquitted him of the charge.

Per contra, learned State counsel has argued that being a co-farmer, the petitioner-accused along with the other co-accused went to the tubewell room of complainant Jai Lal in the night of 28.7.2002 and asked him to arrange a sum of Rs. 30,000/- to get rid of them from involving in the murder case of Lakhi Ram. The complainant's son Ajit and nephew Rajbir recognized Mahender who was personating as Deputy Superintendent of Police. It has been further argued that petitioner-accused Mahender Singh was arrested on the same day and his disclosure statement, Ex. PW7/C, was also recorded by Head Constable Man Singh, in the presence of Constable Jagmal. Learned State counsel has further argued that the judgment passed by the Appellate Court, is well reasoned and the petitioner-accused has been dealt with leniency and the Appellate Court has rightly given him the benefit of probation.

I have heard the learned counsel for the petitioner as well as the learned State counsel and have gone through the record of the Courts below minutely, with their able assistance.

It is a case in which co-accused of petitioner Mahender Singh were acquitted by the trial Court, whereas petitioner-Mahender Singh was convicted for commission of offence punishable under Section 170 IPC. The appeal preferred by the petitioner was dismissed by the Appellate Court but by taking into consideration that petitioner was not a previous convict and had been facing the agony of trial for the last 11 years and was more

than 60 years of age, he was released on probation of good conduct for a period of one year. The petitioner was also directed to pay a sum of Rs. 10,000/- as compensation to the complainant.

Probation period of one year ended on 8.2.2014

Keeping in view the facts and circumstances of the present case, this Court is of the considered view that the impugned judgment of the learned Appellate Court, does not require any interference, especially when in the revisional jurisdiction, this Court is not required to re-appreciate the evidence. The only aspect which is required to be adjudicated upon in the present revision is whether there is any material regularity in the findings recorded by the learned Appellate Court. No prejudice of any kind has been shown to have been caused to the rights of the petitioner. Learned counsel for the petitioner, could not controvert the fact that in view of the benefit granted under Section 360 Cr.P.C., there shall be no adverse effect of any kind on career of the petitioner in terms of Section 12 of the Probation of Offenders Act 1958. As noticed above, the probation period of one year has already ended on 8.2.2014.

In view of the above, I find no material irregularity or infirmity in the impugned judgment passed by the learned Additional Sessions Judge, Bhiwani. Hence, the present revision petition is dismissed.

(HARNARESH SINGH GILL)
JUDGE

March 20, 2019
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No