

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : November 18, 2019

1. Criminal Revision No. 217 of 2013

IshwarPetitioner

versus

State of HaryanaRespondent

2. Criminal Revision No. 508 of 2013

Rajbir and anotherPetitioners

versus

State of HaryanaRespondent

3. Criminal Revision No. 1945 of 2013

Krishna DeviPetitioner

versus

State of Haryana and othersRespondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. SS Mor, Advocate for petitioners in
CRR-217-2013 & CRR-508-2013 and for
respondents no. 2 to 4 in CRR-1945-2013

Mr. Ramender Chauhan, Advocate, for
petitioner in CRR-1945-2013

Mr. Amrik Narwal, DAG, Haryana

Fateh Deep Singh, J. (Oral)

Since all the aforesaid revision petitions have arisen out of one and the same judgment, the same are being disposed of by this common order.

Revisionists Ishwar, Rajbir and Sombir were tried in a case bearing FIR No. 74 dated 2.9.2009, under Sections 323, 354,452,341, 379, 506 read with Section 34 IPC, Police Station PS Behal District Bhiwani and through its judgment order dated 25/26.11.2010 the court of learned Sub Divisional Judicial Magistrate, Loharu convicted petitioner-Ishwar Singh under Sections 452,354,506,341 IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs 1500/- and in default of payment of fine, to further undergo SI for two months under Section 452 IPC and further sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs 1000/- and in default of payment of fine, to further undergo SI for two months under Sections 354,506 IPC. He was also sentenced to undergo rigorous imprisonment for one month and to pay a fine of Rs 500/- and in default of payment of fine, to further undergo SI for one month under Section 341 IPC. Petitioners Ishwar Singh, Rajbir and Sombir were sentenced to pay a fine of Rs 1000/- each and in

default of payment of fine, to undergo SI for two months under Section 323 read with section 34 IPC. The convicts aggrieved over this finding filed separate appeals against their conviction. The complainant-Krishna Devi also filed appeal for enhancement of substantive sentence and vide common judgment dated 9.1.2013, the court of learned Additional Sessions Judge, Bhiwani dismissed all the appeals.

Still unsatisfied the convicts had come up in two separate criminal revisions with the aid of Section 401 Cr.P.C. before this Court.

The complainant-petitioner Krishna Devi unsatisfied with the aforesaid findings had also come up in criminal revision for enhancement of substantive sentence.

Mr. SS Mor, learned counsel for the petitioners/revisionists at the very onset has submitted that petitioner-Ishwar has been found guilty under Sections 452,354, 506, 341,323,34 IPC and sentenced to undergo maximum RI for one year and out of which he has already undergone incarceration of one month and 25 days, as per custody certificate placed on the record by learned State counsel. Petitioners Rajbir and Sombir were sentenced to pay a fine of Rs 1000/- each. It is contended that the petitioners are

suffering pangs of this prosecution since the year 2009 and thus for more than ten years the Sword of Damocles is hanging over their head. The petitioners over this period have advanced in age and thus prayed for showing leniency by way of grant of concession of probation.

Though the learned State counsel does not disputes the fact of this long suffering by the petitioners but has opposed the grant of the concession of probation on the grounds that they had tried to outrage the modesty of a helpless woman and therefore, are not entitled to any concession. Counsel for the complainant has prayed for enhancement of substantive sentence to all the accused in view of heinousness of crime.

Appreciating the submissions, for more than ten long years the convicts had been suffering for this and convict Ishwar has also undergone substantial period of incarceration and at the time of commission of offence the convicts were young and by now must have entered into middle age with family to support. It is further worth while to note here that none of the courts below in view of sentence of imprisonment so awarded had ever considered grant of concession in terms of Section 360 Cr.P.C. which is legislated for the first time offenders with a view to ensure that they are not sent

behind the bars and where they may go awry from the path of rectitude and become hardened criminals. Keeping in view all the circumstances, this Court finds it to be a fit case for releasing the petitioners/convicts on probation. Accordingly, the petitioners/convicts are ordered to be released on probation of good conduct on furnishing probation bonds to the satisfaction of learned trial Magistrate in the sum of Rs 20,000/- with one surety of like amount upon undertaking to appear and receive sentence whenever called upon during the period of one year and in the meantime to keep peace and be of good behaviour. The fine amount imposed by the courts below shall be treated as cost of the proceedings. If probation bonds are not furnished and full compliance made within two months, on receipt of copy of this order, the revision petitions filed by the convicts shall be deemed to have been dismissed.

With modification in sentence as aforesaid, the revision petitions bearing CRR-217-2013 and CRR-508-2013 stand disposed of accordingly.

Since the private respondents have already suffered pangs of this prosecution for the last 10 years, they have been released on probation of good conduct. The offences for which they have faced the trial are not of heinous nature and thus, there is no

sufficient ground to enhance the substantive sentence. The revision petition bearing CRR-1945-2013, thus, being without any merit stands dismissed.

November 18, 2019
'tiwana'

(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>