

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 1842 of 2015 (O&M)
Date of Decision: 13.5.2019**

Prem Pal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.K.Mathur, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

HARNARESH SINGH GILL, J

The present petition has arisen out of the judgment dated 16.4.2015 passed by Sessions Judge, Yamuna Nagar at Jagadhari vide which the appeal filed by the petitioner, challenging the judgment of conviction dated 21.2.2013 and order of sentence dated 22.2.2013, passed by Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhari in case FIR No. 89 dated 2.3.2009 under Sections 323, 353, 186 of the Indian Penal Code, registered at Police Station City Jagadhri, was dismissed.

Prosecution story, in brief, is that complainant EHC Jagir Singh had made a complaint stating therein that on 2.3.2009 at about 11.45 A.M., when he was on duty in the judicial lock-up (Bakshi Khana) wherein several accused were confined, one person came to him and told that he wanted to serve tea to his relatives who were in Bakshikhana but when the complainant stopped him, the said person pushed him and engaged in a

scuffle with the complainant. Accused, namely, Prem Pal had torn the shirt of his uniform and the buttons of the shirt were also broken. As per the allegations, petitioner-accused Prem Pal had also tried to put his hand on the weapon i.e. carbine. Accordingly, the FIR in question was registered against the petitioner-accused.

After completion of investigation and necessary formalities, challan was presented against the petitioner-accused.

Charges were framed against the accused-petitioner under Sections 332, 353, 186 IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined 6 witnesses, including PW-2 Harpal Singh Sub Inspector, who was incharge of the Escort Guard on 2.3.2009 and also PW-4 Abhey Ram-ASI, the investigating officer in the present case.

In the statement recorded under Section 313 Cr.P.C., the accused denied the charges and pleaded false implication.

After taking into consideration the evidence on record and the testimonies of the witnesses, the trial Court vide judgement dated 21.2.2013 convicted the petitioner under Sections 186, 332, 353 IPC and vide order dated 22.2.2013 sentenced him as under:-

<i>Sections</i>	<i>Imprisonment</i>
<i>186 IPC</i>	<i>To undergo rigorous imprisonment for three months.</i>
<i>332 IPC</i>	<i>To undergo rigorous imprisonment for one year.</i>
<i>353 IPC</i>	<i>To undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one month.</i>

Aggrieved of the said judgment and order, the petitioner preferred an appeal before the Sessions Judge, Yamuna Nagar at Jagadhari

which was dismissed by the Appellate Court vide judgment dated 16.4.2015.

Still aggrieved, the petitioner has preferred the present revision petition.

I have heard learned counsel for the parties and have also gone through the records of the Courts below, with their able assistance.

Learned counsel for the petitioner has argued that the prosecution has planted a false case upon the petitioner. The duty certificate of the police officials had not been placed on record and hence, it was not proved that complainant-EHC Jagir Singh was on duty when the alleged scuffle had occurred. He has further argued that before registration of the FIR, the matter was not brought to the notice of the higher authorities. It is further argued that as a matter of fact, when petitioner-Prem Pal was crossing the Court verandah in front of Bakshikhana in the District Court along with the other persons, suddenly his shoulder touched the shoulder of Jagir Singh, whereupon he started abusing and slapping the petitioner. The petitioner was also caught hold by him from his neck. Since the complaint on behalf of the petitioner was not entertained by the police, the petitioner had no option but to file a complaint against EHC Jagir Singh and he was summoned in the said complaint case. The summoning order was proved on record as Ex. D-1.

Per contra, learned counsel for the State has argued that the prosecution has successfully proved its case. Complainant EHC-Jagir Singh stepped into the witness box as PW-1 and had supported and corroborated the prosecution version. He stated that he was posted as Escort Guard in the Bakshi-khana, where the petitioner wanted to serve tea to one of his

relatives in the lock-up.

I have given my thoughtful consideration to the rival contentions of the parties. It is a case in which a minor scuffle had occurred between the complainant and the petitioner. Both of them had preferred complaints against each other. No doubt that the duty roster, deputing complainant-EHC Jagir Singh, had not been placed on record, even then the prosecution has been able to prove its case as the prosecution witnesses had stepped into the witness box and corroborated the prosecution version. Thus though no independent witness had joined the police party at the time of investigation, the same is of no consequence, once the witnesses examined had fully supported the prosecution version.

Keeping into consideration the cogent and trustworthy evidence produced by prosecution, I do not find any illegality or infirmity in the judgments and order passed by the Courts below. In view of the said fact, no ground is made out for interference in the conviction recorded by the Courts below, which is accordingly, upheld.

Coming to the quantum of sentence, as per the custody certificate, out of total sentence of one year, the petitioner has undergone actual sentence of 01 month and 11 days.

In the instant case, the FIR had been registered on 2.3.2009. The petitioner has been facing the agony of trial for the last 10 years. Thus, no useful purpose will be served by sending the petitioner behind the bars once again to undergo the remaining sentence. It is a fit case, where the petitioner can be released on probation but by enhancing the fine amount.

In my view, Sections 360 and 361 of the Code of Criminal Procedure would mandate a Court to consider the release of an accused on

probation. The Hon'ble Supreme Court in **Chandreshwar Sharma Vs. State of Bihar, (2000) 9 SCC 245**, while considering such mandate, has held to the following effect:-

“3. The appellant herein was convicted under Sections 379 and 411 Indian Penal Code and was sentenced to rigorous imprisonment for one year as 3.5 kg of non-ferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the Tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negated and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code should not be made applicable. Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance. From the perusal of the judgment of the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forum below had considered the question of applicability of Section 360 of the Criminal Procedure Code. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then shall record in its judgment the specific reasons for not having done so. (Emphasis Supplied). This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the Criminal Procedure Code. As such, the mandatory duty cast on the Magistrate has not been performed.....”

Similar is the view taken by this Court in **Akhtar and another**

vs. State of Haryana, 2013(8) RCR (Criminal) 2992.

In *CRR No. 4103 of 2012 titled Akhtar and another versus State of Haryana*, this Court has held as under:-

*“In my view, the provisions of Sections 360 and 361 Cr.P.C. would mandate a Court to consider release of a person on probation and where the prayer is declined without recording much reasons, same would be violative of the provisions of Sections 360 and 361 Cr.P.C. In this regard, the counsel for the petitioners has placed before me **Chandreshwar Sharma Versus State of Bihar, JT 2000(2) SC 36**, similar view is expressed. Here also, the appellant before the Hon'ble Supreme Court was convicted for offences under Sections 379 and 411 IPC and was sentenced to one year RI. The Appellate Court had affirmed the conviction but none of the forums had considered the question of applicability of Section 360 of the Code. The Hon'ble Supreme Court has held that while refusing to grant the benefit of Section 360, the Court has to record specific reasons in the judgment. Neither the trial Court nor the Appellate Court have recorded any reason for which the Courts did not consider it fit to release the petitioners on probation, they being first offenders.*

The provisions of Section 360 Cr.P.C. are as under:-

360. Order to release on probation of good conduct or after admonition.

(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender

should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing

him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”

After going through the Section 360 Cr.P.C., it is clear that when any person not under 21 years of age is convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less, or where any person under 21 years of age or any woman is convicted for an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender and if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct.

Resultantly, while upholding the conviction of the petitioner as recorded by the Courts below, his substantive sentence of imprisonment is set aside. Instead, he is ordered to be released on probation for a period of one year subject to his executing bonds to the satisfaction of the Chief Judicial Magistrate concerned, undertaking to keep peace and be of good behaviour for the said period and to appear and receive the sentence as and when called upon to do so in case of violation of any of the conditions of the bonds. However, the fine imposed upon the petitioner is enhanced to ₹ 25,000/-. The petitioner is directed to deposit the said fine with the trial

Court within two months from today. It is made clear that in case the enhanced fine is not deposited, as ordered above, or if the petitioner is found to have involved himself in criminal activities during the period of probation, then this revision shall be deemed to have been dismissed.

With the above mentioned modification, the revision petition stands disposed of.

(HARNARESH SINGH GILL)
JUDGE

May 13, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes