

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

CRR No.2181 of 2015 (O&M)

Date of decision: July 16, 2019

Sanjiv Diwan and anr

.....Petitioners

Versus

State of Haryana

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Yadwender Saini, Advocate
for the petitioners.

Mr. Rahul Mohan, DAG, Haryana.

MAHABIR SINGH SINDHU, J (Oral)

The present revision petition has been filed by the petitioners against the impugned judgment of conviction and order of sentence dated 04.06.2014 passed by learned Judicial Magistrate First Class, Gurgaon (for short 'JMIC'), vide which the petitioners were convicted under Sections 186, 342, 353 read with Section 34 of IPC and sentenced for a period of one year. Further challenge is to the judgment dated 27.05.2015 passed by learned Additional Sessions Judge, Gurgaon, whereby the conviction of the petitioners was maintained under Section 353 read with Section 34 of IPC and also held them guilty under Section 341 read with Section 34 of IPC.

Brief facts of the case are that complainant-Rajesh Dahiya, Inspector Income Tax Ward No.6, Gurgaon on the direction of Income Tax Officer Sh. J.K. Saini had gone to Discount Mart Shop No. A-31,

PVK Palam Vihar, Gurgaon in connection with the case of one Balraj Wadhwa regarding Assessment Year 2007-2008. Petitioner No.2 met him and told that he is the owner of Discount Mart shop to whom the complainant showed his identity card. Thereafter he wrote one page of Rajiv Diwan's statement and told him to sign the same, but Rajiv Diwan refused to sign the same and said that whatever he wishes to say he would say in the office and complainant returned to his office. Further alleged that on the same day in the evening (i.e on 05.11.2009 itself) Shri J.K. Saini, Income Tax Officer had given him summons in the name of Rajiv Diwan vide despatch No. ITO/GGN/09-10/12990 dated 05.11.2009 and asked him to get these summons served to Rajiv Diwan and he alongwith one Suresh Dhanial, Process Server went to A-31, PVK. Palam Vihar for service of summon. Also alleged that when he gave summons to Rajiv Diwan, he rang up his brother, who reached on the spot and suddenly attacked them and gave beatings with kick and fist blows, but he managed to escape from the clutches of accused persons and called up the police at 100 number. Further stated that the accused-petitioners wrongfully confined the Process Server-Suresh Dhanial in their shop and gave beatings to him. After that police came at the spot and got him released from the shop of the petitioners. Rajiv Diwan and Sanjiv Diwan gave beatings to him as well as to process Server, assaulted and obstructed them in the discharge of their official duties and also threatened to kill.

After completion of the investigation, report under Section

173 Cr.P.C. was submitted and thereafter, charges under Sections 186,

332, 342, 353 of IPC read with Section 34 of IPC and Section 506 of IPC were framed against the petitioners to which they pleaded not guilty and claimed trial. Prosecution examined 6 witnesses, including complainant-Rajesh Dahiya as PW1.

In support of the prosecution case, oral as well as documentary evidence was led and the same was put to the accused under Section 313 Cr. P.C., wherein he claimed innocence by raising the plea of false implication.

After hearing both sides and perusing the record, learned trial Court held the petitioners guilty under Sections 186, 342 and 353 IPC read with Section 34 of IPC and sentenced for a period of one year vide judgment and order dated 04.06.2014.

Aggrieved against the judgment and order passed by the learned JMIC, an appeal was preferred by the petitioners, but the same was partly allowed and petitioners were acquitted of the charges for the commission of offence punishable under Sections 186 and 342 IPC; however, the conviction under Section 353 read with Section 34 of IPC was affirmed and further they were held guilty under Section 341 read with Section 34 of IPC and sentenced vide judgment dated 27.05.2015 in the following terms:

Under Section	Sentence	In default of Fine
341 of IPC read with Section 34 of IPC	Simple imprisonment for one month	-
353 of IPC read with Section 34 of IPC	Rigorous Imprisonment for one year	-

Both the sentences were ordered to run consecutively. The period undergone by the petitioners during investigation, inquiry and trial, was set off against the punishment awarded to them as per provisions of Section 428 Cr.P.C.

Learned counsel for the petitioners instead of challenging the conviction, confines his prayer only to the extent that petitioners be released on probation.

Heard both the parties and perused the paper-book.

The sentence of the petitioners was suspended by this Court on 30.07.2015 and they have not misused the concession of bail. Conviction is only under Sections 341 and 353 read with Section 34 of IPC and petitioners were sentenced for one year and out of which, they have already undergone the actual sentence of two months and six days and there is no other criminal case pending against them. Petitioners are facing the criminal proceedings for the last more than five years and thus they have already suffered a lot. Also jointly stated by both sides that none of the petitioners have been found involved in any other criminal activity except the present case. Since there is no challenge to the conviction by the petitioners, therefore, keeping in view the provisions of Section 4 of Probation of Offenders Act, 1958, this Court deems it appropriate to maintain the conviction under Sections 341 and 353 read with Section 34 of IPC, but release them on probation for a period of one year.

In view of the above, the present revision petition is partly allowed. Conviction of the petitioners under Sections 341 and 353 read

with Section 34 of IPC , is upheld and they are ordered to be released on probation for a period of one year on their furnishing personal bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, concerned, with an undertaking that during the period of one year, they shall not commit similar or any other offence; maintain peace, harmony and be of good behaviour.

Pending miscellaneous applications, if any, shall also stand disposed off.

(MAHABIR SINGH SINDHU)
JUDGE

July 16, 2019

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No