

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

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**CRR No.1658 of 2016 (O&M).
Date of Decision: 22.05.2019.**

Nirmala Devi

....Petitioner.

Versus

State of Haryana and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Abhishek Yadav, Advocate for the petitioner.

Mr. Ramesh Kumar Ambavta Assistant Advocate General,
Haryana.

Shekher Dhawan, J.

CRM-14328-2016

For the reasons mentioned in the application, delay of 44 days in filing the revision petition is condoned.

CRM stands disposed of.

CRM-14329-2016

Allowed, as prayed for.

CRR-1658-2016

Present revision petition is directed against the judgment dated 21.11.2015 passed by learned Additional Sessions Judge, Rewari, whereby the appeal preferred by the petitioner against the judgment of conviction dated 15.02.2014 and order of sentence dated 17.02.2014 passed by learned Judicial Magistrate Ist Class, Rewari was dismissed.

Learned trial Court held that no offence under Section 452 of the Indian Penal Code is made out. However, accused Krishan Kumar, Sharda and Sarla (respondents No.2 to 4 herein) were ordered to be released on probation on their furnishing probation bonds in case F.I.R. No.144 dated 23.06.2007 under Sections 452, 323/34 of the Indian Penal Code (for short, 'IPC'), registered at Police Station Khol.

Learned counsel for the petitioner contended that learned trial Court acquitted the respondents-accused under Section 452 IPC and holding them guilty for commission of offence punishable under Section 323 read with Section 34 IPC, released them on probation for a period of one year, on their furnishing probation bonds in the sum of Rs.30,000/- with one surety in the like amount each with direction to the respondents-accused to keep peace and good behaviour. The petitioner-complainant filed appeal before the Court of Sessions and learned Additional Sessions Judge, Rewari dismissed the said appeal.

Learned counsel for the petitioner further contended that though learned trial Court rightly held the accused persons guilty and convicted them under Section 323 read with Section 34 IPC, but without considering the character and antecedents of the accused persons, ordered to release them on probation, whereas they should have been ordered to be sentenced substantially by sending them behind the bar.

Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that learned trial Court rightly held that no offence is made out against the accused persons for commission of offence under Section 452 IPC as there was no evidence on the file which could prove that the accused persons committed any house trespass with

rightly held that in view of the infirmities in the prosecution case, learned trial Court was justified in acquitting the accused under Section 452 IPC and releasing them on probation under Section 323 read with Section 34 IPC. Moreso, learned counsel for the petitioner could not lay his hands on any material indicating that the accused persons were previous convicts or they were involved in any other criminal activity or they were tried for any criminal offence or convicted or sentenced thereunder.

In view of the above, there was nothing wrong while learned trial Court ordering the accused persons to be released on probation as they are the first offenders. There is absolutely no illegality in the order passed by learned trial Court because the offence alleged against the accused persons and conviction having been recorded is under Section 323 read with Section 34 IPC. As per view taken by Hon'ble Supreme Court in ***Hari Kishan and States of Haryana Vs. Sukhbir Singh, 1988(2) R.C.R. (Criminal) 394*** and by this Court in ***State of Punjab Vs. Kuldeep Singh and others, 2007(2) R.C.R. (Criminal) 670*** and ***Ram Kumar Vs. State of Haryana, 2000 (1) R.C.R. (Criminal) 771,*** accused persons involved in such like cases, who are not previous convicts and not habitual offenders, can be extended the benefit of probation under the Act. Learned first Appellate Court had rightly dismissed the appeal thereby maintaining the order of sentence for release of the accused-persons on probation on furnishing probation bonds in the sum of Rs.30,000/- with one surety each in the like amount. There is absolutely no infirmity in the well reasoned judgments of learned trial Court as well as learned Additional Sessions Judge and the present revision petition is without any merit.

Resultantly, the present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

22.05.2019

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No