

267.

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

CRR-2485-2017

Date of decision:20.02.2019.

MAHABIR SINGH

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Anshumaan Dalal, Advocate,
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

HARI PAL VERMA, J.(Oral)

The petitioner-accused has preferred the present revision petition against the judgment dated 01.06.2017 passed by learned Additional Sessions Judge, Rohtak, whereby his appeal against the judgment of conviction dated 05.03.2016 and order of sentence dated 10.03.2016 passed by learned Judicial Magistrate Ist Class, Rohtak, was dismissed.

Briefly stated, an FIR No.274 dated 15.07.2010 was registered under Sections 323/354/452/506 IPC at Police Station Sadar, Rohtak, at the instance of Smt. Mukesh (complainant), who is the widow of Satbir Singh and is a housewife. As per the FIR, on 04.07.2010 at about 10 PM when the complainant was sleeping with her children in her house, the accused-Mahabir (petitioner herein) came inside her house after jumping over the wall and with bad intentions, started doing indecent acts with her. He torn her blouse and pressed her breast. When she tried to rescue herself from his

grasp, she suffered scratches from his nails. The accused had given a bite on

the right side of her face. She raised an alarm. On hearing the noise, her brother-in-law Kartar and his son Ravinder reached at the spot. Noticing them, the accused tried to escape by jumping over the wall, but fell down on the bricks. While leaving the spot, he also threatened the complainant to kill her if the matter is reported to the police. The complainant reported the matter to the police next morning.

On the basis of above information, investigation was carried out and during the course of investigation, the accused was arrested and sent to face the trial in the case.

After completion of investigation, Challan was presented in Court. Copy of challan was supplied to the accused free of costs as envisaged under Section 207 Cr.PC. Thereafter, the accused was charge-sheeted by the trial Court for the commission of offence under Sections 452/354/323/506 IPC to which he did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, the trial Court vide its judgment dated 05.03.2016 held the petitioner-accused guilty for offences under Sections 323, 354, 452 of IPC and vide separate order dated 10.03.2016, sentenced him as under:-

Section	Period
323 of IPC	Rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/-. In default of payment of fine, to further undergo, another imprisonment for a period of 15 days.
354 of IPC	Rigorous imprisonment for a period of one year and to pay a fine of Rs.1,500/-. In default of payment of fine, to further undergo, another imprisonment for a period of one month.
SANJEEV KUMAR 2019.03.26 09:32 I attest to the accuracy and integrity of this document	

<u>CRR-2485-2017</u>	- 3 -
452 of IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/-. In default of payment of fine, to further undergo, another imprisonment for a period of two months.

However, the sentences were ordered to run concurrently.

Feeling aggrieved, the petitioner preferred an appeal against the judgment of conviction and order of sentence before the Court of Session. But vide order dated 01.06.2017, his appeal was also dismissed by learned Additional Sessions Judge, Rohtak.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition challenging the verdicts of both the Courts below.

During the course of hearing before this Court, the matter was reported to be settled between the parties vide settlement dated 16.11.2017.

Since the matter has been resolved amicably between the parties and as against the awarded sentence of two years, the petitioner had undergone actual imprisonment of five months and sixteen days, vide order dated 17.11.2017, the remaining sentence of the petitioner was suspended during the pendency of present petition.

Vide order dated 28.09.2018, parties were directed to appear before learned Chief Judicial Magistrate, Rohtak on 26.10.2018 for recording their statements in support of the compromise/settlement and the learned Magistrate was directed to send its report qua the genuineness of the compromise.

Pursuant to the aforesaid order, parties have appeared before learned Chief Judicial Magistrate, Rohtak and got their statements recorded.

On the basis of the statements so recorded, learned Magistrate has submitted report dated 16.11.2018 to the effect that the compromise has been effected between the parties without any fear and pressure from any side.

Respondent No.2-complainant, namely, Mukesh as well as the petitioner-Mahabir have made a joint statement with regard to compromise before the learned Magistrate on 13.11.2018. The same is reproduced as under:-

“That the compromise between the parties is made voluntarily and without any pressure. Both the parties is ready to withdraw any proceedings between parties i.e. FIR No.274 dt. 15.7.2010 u/s 323, 354, 452, 506 IPC, P.S. Sadar, Rohtak and FIR No.275 dt. 16.7.2010, u/s 323, 452, 325, 34 IPC, P.S. Sadar Rohtak and any proceedings raised out of these FIRs.”

Learned counsel for the petitioner states that in view of the settlement so arrived at between the parties, the sentence awarded to the petitioner may be reduced to the period already undergone by him. He has contended that the petitioner is poor person and is not a previous convict. There is no other case pending against him. He is suffering the agony of criminal proceedings since 15.07.2010 i.e. the date when the FIR in question was registered against him.

On the other hand, learned State counsel has argued that the petitioner does not deserve any interference in the present petition. She states that as against the awarded sentence of 2 years, the petitioner remained in custody for 5 months and 16 days.

I have heard learned counsel for the parties.

On perusal of the judgments of both the Courts below, this

the evidence on record while holding the petitioner guilty for commission of offence under Sections 452, 354, 323 of IPC. The appellate Court has also rightly dismissed his appeal. There is no illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, learned counsel for the petitioner has not assailed the judgments of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the petitioner is, therefore, affirmed.

However, considering the fact that the matter has been amicably settled and taking into account the protracted trial, antecedents of the petitioner, coupled with the fact that as against the awarded sentence of 2 years, he has already suffered incarceration for a period of more than 5 months, this Court feels that ends of justice would be met if the sentence awarded to the petitioner is reduced to the period already undergone by him.

Ordered accordingly.

With the aforesaid modification in the order of sentence, present revision petition stands dismissed.

(HARI PAL VERMA)
JUDGE

20.02.2019

sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.

Yes/No.