

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

224

CRR-4171-2017 (O&M)
Date of Decision : 10.04.2019

HEERA SINGH

...PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

...RESPONDENTS

2.

CRR-1437-2018 (O&M)

KRISHAN LAL @ KISHAN CHAND AND ANOTHER

...PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Kartar Singh, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

Mr. Manoj Kaushik, Advocate
for respondents No.2 and 3.

MANOJ BAJAJ, J.(ORAL)

The complainant is in this revision to challenge the concession of probation extended by the Appellate Court vide impugned judgment dated 09.10.2017, while upholding the conviction of the convicts (respondents). The relevant paragraph 27 of the impugned judgment reads as under :-

“Having regard to all the circumstances, I am of the considered view that instead of sending the accused behind bars in the company of hardened criminals, it will be in the interest of justice to give them a chance to rehabilitate in the society by extending them the benefit of probation. The injured complainant can be compensated by money for the injuries caused to him. Accused has already faced ordeal of trial for the last more than eight years. Therefore, I set aside the impugned order of sentence dated 21.02.2017. It is directed that both the accused Kishan and Kamla be released on probation for a period of one year on their furnishing probation bonds in the sum of Rs.50,000/- each with a surety in the like amount to the satisfaction of Ld. Trial Court, with the direction to both the accused to come and receive the sentence, as and when directed to do so and in the meantime, to keep peace and be of good behaviour. At the same time, both the accused are burdened with prosecution cost to the extent of Rs.40,000/- i.e. Rs.20,000/-each, out of which Rs.25,000/-shall be paid as compensation to injured-complainant Heera Singh to whom grievous injury was caused to him on his head and Rs.10,000/- shall be paid

to other injured Machhla Devi. In case the accused failed to pay the compensation amount as above, they will have to undergo the sentence as ordered by learned trial Court and this order will have no effect. Both the parties are directed to appear before the Ld. Trial Court on 16.10.2017 for further proceedings. Both the appeals are disposed of accordingly. Trial Court record be sent back along with copy of this judgment. Appeal file be consigned to records.”

A perusal of the above clearly indicates that the Appellate Court has extended the benefit of probation to the convicts by striking a balance, as a compensation of Rs.40,000/- also stands awarded to the victims. It is apparent that the Court has extended the impugned concession on sound judicial principles and the same does not warrant any interference.

Learned counsel for the petitioner has relied upon the judgment in the case of **Maqsood and ors. vs. State of U.P., 2015(4) RCR (Criminal) 678**, wherein the facts are clearly distinguishable as the conviction was modified by the High Court by upholding the convicts guilty of the offence punishable under Section 325/34 IPC, instead of Section 308 IPC as recorded by the trial Court. The sentence part was accordingly reduced from 04 years to 01 year by the High Court. The prayer for release on probation was made for the first time before the Hon'ble Supreme Court and the said prayer was not accepted considering the awarded punishment of one year as lenient. The facts in the present case are entirely different, as the conviction by the Appellate Court is maintained in the same offence as recorded by the trial Court and in addition adequate compensation stands given to the victims. In the cited case, no compensation was awarded either

by the trial Court or by the High Court.

Learned counsel for the petitioner has also referred to another judgment in **Pinku @ Nikan vs. State of Himachal Pradesh, 2015 (4) RCR (Criminal) 420**, wherein the trial ended in acquittal, however, the High Court proceeded to reverse the same into conviction. The said order was challenged by the convicts before the Hon'ble Supreme Court and no interference was shown therein. The facts of this case are clearly distinguishable as no compensation was awarded to the victims while imposing a sentence of one year imprisonment. Whereas in the present case, the appellate Court has extended the concession of Probation of Offenders Act by striking a balance in awarding a compensation of Rs.40,000/-.

Apparently, the facts of that case are different and the same may not be applicable strictly in the present set of facts and circumstances of this case. At this stage, it is also conceded by learned counsel appearing on behalf of the petitioner that these citations were neither relied upon before the Appellate Court nor the prayer for said concession was opposed. It is settled law that sentence part is prerogative of the Court and the scope of interference is limited to the case where the sentence imposed is extremely disproportionate to the guilt of the offender. The Court has considered all the attending circumstances carefully particularly the fact that the parties are real brothers, who are at the advanced age. This Court does not find any material illegality or impropriety warranting interference in exercise of revisional jurisdiction.

This criminal revision petition is dismissed.

CRR-1437-2018

In view of the decision passed in CRR-4171-2017, learned counsel for the petitioner (convicts) does not want to press this petition to challenge the conviction and wishes to withdraw this petition.

The prayer is accepted.

The criminal revision is ordered to be dismissed as withdrawn.

10.04.2019
anju

(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No