

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

**CRM-35942-2018 in/and
CRR No.3397 of 2018(O&M)
Date of decision :09.01.2019**

Kala Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Pritpal Singh Miglani, Advocate, for the petitioners.

Mr. K.S.Aulakh, DAG, Punjab.

RAJBIR SEHRAWAT, J. (ORAL)

This is a revision petition for challenging the judgment/order dated 21.08.2018 passed by learned Additional Sessions Judge, Ferozepur, whereby the appeal filed by the petitioners against the judgment of conviction and order of sentence dated 22.08.2017 passed by learned Judicial Magistrate 1st Class, Ferozepur has been dismissed, thereby; upholding the conviction of the petitioners under Sections 323 & 326 of IPC and the maximum sentence for rigorous imprisonment for a period of 01 year awarded to the petitioners thereunder.

At the outset, learned counsel for the petitioners has submitted that since the petitioners have already undergone more than 50% of the sentence awarded to them, therefore, he has the instructions to submit that the present petition be restricted to quantum of sentence only and that he does not press the petition qua the order of conviction.

Accordingly, the present petition is restricted to quantum of

sentence only.

The brief facts as mentioned in the order passed by the Courts below are that the FIR in the present case was registered on the statement of complainant Mangat Singh, wherein, it was alleged that he owns land which is situated towards the western side of the village Changa Khurd. The electric motor; by which his land was irrigated; was common with Banka Singh, the father of petitioner No.1, and Ujjagar Singh and they used to irrigate their land with the said tubewell; being operated through the said electric motor. On 26.10.2013, at about 10.00 am, the complainant went to irrigate his land. Petitioners were irrigating their land at that time. When the complainant started the electric motor to operate the tubewell then both the petitioners started abusing him and gave injuries on the back side of the left shoulders of the complainant with the agricultural implements. It was alleged that the motive for inflicting the injuries was that the present petitioners/accused were not allowing the complainant to irrigate the land through the common tubewell/electric motor.

The prosecution led its evidence. The trial Court appreciated the evidence and convicted the petitioners under Section 326, 323 and 34 of IPC. On conviction, the trial Court sentenced the petitioners for maximum of 01 year of rigorous imprisonment along with fine.

Aggrieved against the judgment of conviction and order of sentence passed by the trial Court, the petitioners preferred the appeal before the learned Additional Sessions Judge, Ferozepur. However, that appeal was also dismissed by the Appellate Court on 21.08.2018.

Accordingly, the present revision petition has been filed by the petitioners.

As mentioned above, the petitioners have restricted the present petition qua quantum of sentence only.

To support his submission qua reduction of sentence, counsel for the petitioners has submitted that petitioner No.1 is a person of 80 years of age. Petitioner No.2 is the sole bread earner of the family. Both the petitioners are the first time offenders. Otherwise also, it was a case of sudden fight which took place between two sides, in which, the other side was also tried for having caused injuries to the present petitioners. Therefore, in this situation, there was no intention to commit the offence as such. The petitioners have clean record. There is no other case against either of the petitioners. Even during the custody, the petitioners have maintained absolutely good behaviour, which has entitled them to remissions in sentence to the extent of 01 month and 16 days, during the short span of six months of imprisonment only. Since the petitioners have shown sufficient tendency to reform themselves, therefore, the sentence of the petitioners be reduced to the sentence already undergone.

On the other hand, learned counsel for the State submits that the petitioners have already been shown sympathy by the Courts below. Therefore, only the minimum sentence has been imposed against them.

Learned counsel for the State has further submitted that there was a cross case against the other side also. They have also been convicted of the offence. However, on a specific query, learned counsel for the State has submitted that the accused in the cross case; at the

instance of the present petitioners; have been released on probation.

Having heard learned counsel for the parties, this Court finds sufficient merits in the submissions made by the learned counsel for the petitioners. Admittedly, this is a fight which has taken place between close relations who were using same tubewell and irrigating the agricultural land. Therefore, the offence seems to have just happened in this case; without there being a strict intention to commit the offence as such. Although the present petition has been restricted only qua the sentence, however, the facts prevalent at the time of the offence can also be taken into consideration for the purpose of quantum of sentence as well. The facts prevalent at the time of the alleged offence support the contention of the counsel for the petitioners that the petitioners are not the criminals by nature. It is also not disputed by the State that there is no other case against the petitioners.

The custody certificates of the petitioners produced by the learned State counsel also show that both the petitioners have undergone actual sentence of 06 months and 03 days, out of the total sentence of 01 year. Besides this, both the petitioners have also earned remissions of 01 month and 16 days. Thus the total sentence undergone by the petitioners comes to 07 months and 19 days, out of the total sentence of 01 year. Since the petitioners have shown their good conduct even during the custody, therefore, it can safely be presumed that they have learnt their lesson and therefore, they have shown the tendency to reform themselves and to join the main stream. Hence, it would not be unjustified that, in the facts and circumstances of the present case, the petitioners are granted

benefit of reduction of sentence and the same is reduced to the sentence already undergone by them.

In view of the above, the present petition is partly allowed. While maintaining the conviction of the petitioners, the sentence awarded to the petitioners is reduced to the period already undergone by them. The fine already stands deposited. Let the petitioners be released from the custody forthwith, if they are not required in connection with any other case.

(RAJBIR SEHRAWAT)
JUDGE

09.01.2019

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Whether speaking / reasoned : Yes No

Whether Reportable : Yes No