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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-5816 of 2018
DATE OF DECISION: March 08, 2019.

Puran Singh and others ... Petitioners.

Versus

Karnail Singh and another ...Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by: Mr. Nakul Sharma, Advocate
for the petitioners.

Mr. Prabhjot Singh Walia, AAG, Punjab.

SHEKHER DHAWAN, J.

1. Present revision petition is directed against judgment dated 28.11.2018 passed by learned Additional Sessions Judge, Ferozepur whereby judgment of conviction dated 07.02.2017 of learned Sub Divisional Judicial Magistrate, Guruhar Sahi was maintained and the order of sentence dated 07.02.2017 was modified and the accused persons (petitioners herein) were sentenced as under :-

Name of the accused-petitioner	Under Section	Sentence	In default
Puran Singh	Section 325/149 of Indian Penal Code (for short, "IPC")	to undergo Simple Imprisonment for a period of Nine months and to pay fine of Rs.1000/-.	SI for one month.

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	Section 148 IPC	To undergo SI for six months	-
	Section 323 IPC.	To undergo SI for three months	-
Karam Singh	Section 325/149 IPC	to undergo Simple Imprisonment for a period of Nine months and to pay fine of Rs.1000/-.	SI for one month.
	Section 148 IPC	To undergo SI for six months	-
	Section 323 IPC.	To undergo SI for three months	-
Sham Singh	Section 325 IPC	to undergo Simple Imprisonment for a period of Nine months and to pay fine of Rs.1000/-.	SI for one month.
	Section 148 IPC	To undergo SI for six months	-
	Section 323/149 IPC.	To undergo SI for three months	-
Harbhajan Singh	Section 325/149 IPC	to undergo Simple Imprisonment for a period of Nine months and to pay fine of Rs.1000/-.	SI for one month.
	Section 148 IPC	To undergo SI for six months	-
	Section 323 IPC.	To undergo SI for three months	-

2. Facts relevant for the purpose of decision of this petition; that on 3.7.2010, accused persons (total 10 in number) had caused grievous hurt to complainant party by way of blunt weapons and case was registered under Sections 452, 325, 323, 506, 148 and 149 IPC.

3. During trial, learned Court below completed various proceedings of trial including framing of charges against the accused, recording of statements of the prosecution witnesses as well as

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examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and defence version on record, the trial Court held the accused, present petitioners alongwith others guilty and convicted and sentenced them vide judgment of conviction and order of sentence dated 7.2.2017.

4. Being aggrieved of passing of the judgment of conviction and the order of sentence, the accused persons alongwith other convicts preferred the first appeal before the Court of Session. While considering the appeal, the appellate Court, maintained the judgment of conviction but modified the order of sentence vide judgment dated 28.11.2018 as detailed in para No.1 above. By the same order, dated 28.11.2018, learned first Appellate Court modified the order of sentence and the remaining accused persons were ordered to be released on probation on their furnishing probation bonds in the sum of Rs.25,000/- each with one surety in the like amount each for a period of one year.

5. Dissatisfied with the aforesaid order passed by learned Additional Sessions Judge, the petitioners have preferred the instant revision petition.

6. Learned counsel for the petitioners contended that there were total ten accused facing trial and out of them five have already been released on probation besides one, Smt. Indro died during the pendency of the first appeal. The present four petitioners have been ordered to undergo Simple Imprisonment for a period of Nine months under Section 325 IPC and by now, they have undergone 3 months and 9 days of total sentence against awarded sentence of Simple Imprisonment for Nine months.

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7. Learned counsel for the petitioners further contended that other litigation *inter se* parties before different Courts have already come to an end; the petitioners are not previous convicts and it would be in the interest of justice if they are given an opportunity to lead peaceful life.

8. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that in the light of the fact that the accused-persons are not previous convicts and the offence alleged against them is under Section 325 IPC, no purpose would be served by keeping the accused persons behind the bars. The offences alleged against the accused are under Sections 323, 325, 148 read with Section 149 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. Kuldip 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.

9. In **Karamjit Singh Vs. State (Delhi Admn.) 2001 (9) SCC 161**, Hon`ble Apex Court observed as under:-

“Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the Court has to weigh the degree of

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culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society ; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law, an attempt has to be made to afford an opportunity to the individual to reform himself and lead life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.”

10. Similar matter was before Hon`ble Apex Court in **Prem Chand Vs. The State of Himachal Pradesh, 2017 ALL MR (Crl.) 5358**, where the accused person was ordered to be released on probation by extending the benefit under the Act for the offences under Section 279 and 377 IPC taking into consideration the fact that there was no complaint regarding the conduct of the accused person during the pendency of the proceedings and he was the first offenders only.

11. In view of the above discussion and especially in the light of the fact that the petitioners do not challenge the judgment of conviction and otherwise there being sufficient material available on the file which has already been screened by both the Courts below, there is no ground to set-aside the judgment of conviction recorded against the present

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petitioners and the revision petition against the judgment of conviction stands dismissed being devoid of any merit.

12. Coming to the point of sentence, all the four petitioners have already undergone 3 months and 9 days of total sentence against awarded sentence of Simple Imprisonment for Nine months. Similarly placed five co-accused have already been ordered to be released on probation by learned first Appellate Court. All the four petitioners are not previous convicts and their conviction is inter alia under Section 325 IPC. In the present case, certainly there are grounds to modify the order of sentence qua the petitioners also and if they are ordered to be released on probation to lead peaceful life, that shall give them an opportunity to settle in life. Accordingly, the order of sentence passed by learned first Appellate Court is modified and the present petitioners are ordered to be released on probation on furnishing probation bonds in the sum of Rs.30,000/- each with one surety in the like amount each for a period of one year. Accordingly, the petitioners, namely, Puran Singh, Karam Singh, Sham Singh and Harbhajan Singh, who are presently confined in jail, be released from custody in this case, if not required in any other case.

13. Resultantly, the present revision petition stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

March 08, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes