

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

CRR No. 147 of 2016

DATE OF DECISION :- January 28, 2020

Nishan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Arun Takhi, Advocate for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Mr. Rajat Dogra, Advocate for respondents No. 2 to 6.

Major Singh, Kirpal Singh, Jasmer Singh, Gurdeep Singh and Dharminster Singh, all of them being accused in F.I.R. No. 23 dated 6.2.2004 for offences under Sections 325,324,323,148,149 IPC registered with Police Station Zira faced trial by Sub Divisional Judicial Magistrate, Zira. Learned trial Magistrate formulated the following points for consideration :-

“1. Whether all the accused were members of an unlawful assembly accompanied with deadly weapons for the purpose of causing injuries on the person of Nishan Singh and Ranjit Singh as such all the accused committed offence under Section 148 I.P.C.?

2. Whether the accused Jasmer Singh voluntarily caused grievous hurt to the person of Nishan Singh with common object of the other accused as such all the accused committed

offence under Section 325 read with Section 149 I.P.C.?

3. Whether the accused Major Singh voluntarily caused grievous hurt to the person of Ranjit Singh with common object of the other accused as such all the accused committed offence under Section 325 read with Section 149 I.P.C.?

4. Whether the accused Gurdeep Singh and Major Singh voluntarily caused grievous hurt to the person of Nishan Singh with sharp edged weapon with common object of the other accused as such all the accused committed offence under Section 324 read with Section 149 I.P.C.?

5. Whether the accused Jasmer Singh voluntarily caused simple hurt to the person of Nishan Singh with common object of the other accused as such all the accused committed offence under Section 323 read with Section 149 I.P.C.?”

On conclusion of trial vide judgment dated 16.7.2015, learned trial Magistrate concluded that “from whole the evidence produced on record and documents proved on record it is proved that occurrence took place and all the accused were members of an unlawful assembly accompanied with deadly weapons for the purpose of causing injuries on the person of Nishan Singh and Ranjit Singh and the accused Jasmer Singh voluntarily caused grievous hurt to the person of Nishan Singh with common object of the other accused and the accused Major Singh voluntarily caused grievous hurt to the person of Ranjit Singh with common object of the other accused and the accused Gurdeep Singh and Major Singh voluntarily caused hurt to the person of Nishan Singh with sharp edged weapon with common object of the other accused and the accused Jasmer Singh voluntarily caused simple hurt to the person of Nishan Singh with common object of the other accused. Therefore, all these points are decided

in favour of the prosecution and against the accused. All the accused are held guilty under Sections 325/324/323/148 read with Section 149 I.P.C. Let they be heard on the quantum of sentence.”

The accused convicts were sentenced as follows vide order/ judgment dated 16.7.2015 :-

Name of the Convicts	Under Section	Rigorous Imprisonment for the period	Fine (Rupees)	Further rigorous imprisonment in default of payment of fine.
Convict Major Singh son of Mukhtiar Singh	148 IPC	2 years	---	---
	323/149 IPC	6 months	---	---
	324 IPC	2 years	---	---
	325 IPC	3 years	2000/-	1 month
Convict Kirpal Singh son of Madan Singh	148 IPC	2 years	---	---
	323/149 IPC	6 months	---	---
	324/149 IPC	2 years	---	---
	325/149 IPC	3 years	2000/-	1 month
Convict Jasmer Singh son of Madan Singh	148 IPC	2 years	---	---
	323 IPC	6 months	---	---
	324/149 IPC	2 years	---	---
	325 IPC	3 years	2000/-	1 month
Convict Gurdip Singh son of Waryam Singh	148 IPC	2 years	---	---
	323/149 IPC	6 months	---	---
	324 IPC	2 years	---	---
	325/149 IPC	3 years	2000/-	1 month
Convict Dharminder Singh son of Kirpal Singh	148 IPC	2 years	---	---
	323/149 IPC	6 months	---	---
	324/149 IPC	2 years	---	---
	325/149 IPC	3 years	2000/-	1 month

The request for granting benefit of probation to them was declined. The accused convicts had preferred an appeal to the Court of Sessions, which was disposed of by Additional Sessions Judge, Ferozepur vide judgment dated 13.10.2015, inasmuch as the conviction of all the accused was upheld, however, the appellants accused-convicts were granted

benefit under Section 4(1) of the Probation of Offenders Act on their executing probation bonds in the sum of Rs.25,000/- each with one surety of the like amount each with an undertaking to keep peace and tranquility for one year and not to commit any such offence during that period, failing which to appear in the Court to receive sentence. The amount of fine of Rs.2000/- already paid by each convict was ordered to be converted as cost of litigation.

The complainant felt aggrieved by such judgment granting benefit of probation to the accused convicts and has approached this Court by way of filing revision petition, notice thereof has been given to respondent-accused and the State and they have put in appearance.

I have learned counsel for the parties besides going through the record.

Learned counsel for the revisionist has contended that learned Additional Sessions Judge, Ferozepur had granted benefit of probation to the accused convicts without calling report from the probation officer which was mandatory, therefore, order granting benefit of probation to the accused convicts is not sustainable. In support of his contention he had referred to judgment M.C.D. Versus State of Delhi and another 2005(3) R.C.R. (Criminal) 13 by the Apex Court. Learned counsel for the respondent-accused submits that the conviction of Kirpal Singh relates to a case way back in the year 1965 and further more benefit of probation was rightly granted to the accused-convicts keeping in view the facts and circumstances of the case. Without considering the case on merits as to whether the accused convicts were rightly granted benefit of probation or not, it is to be

noted that there has been a serious procedural lapse on the part of Additional Sessions Judge, Ferozepur who had not called the report of probation officer which was mandatory though he might or might not have relied upon the same.

In view of the judgment M.C.D. Versus State of Delhi and another (supra), the revision petition is accepted. The order of granting benefit of probation to the accused convicts is set aside and the case is remanded to learned Additional Sessions Judge, Ferozepur with a direction to hear the accused convicts on the point of quantum of sentence again and then to call report from the probation officer and thereafter pass order with regard to the sentence. Learned State counsel be also given an opportunity to present his view point in that regard.

The parties through their counsel are directed to appear before the Court of Additional Sessions Judge, Ferozepur on 24.2.2020. The Registry of this Court is directed to send the lower Court record there immediately.

(H.S. MADAAN)
JUDGE

January 28, 2020

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No