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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1123-2022 (O&M)
Date of Decision:01.06.2022

Sunil

.. Petitioner

Vs.

Sate of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Shilak Ram Hooda, Advocate for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

...

Manoj Bajaj, J. (Oral)

Petitioner has preferred this criminal revision to challenge the Appellate Court judgement dated 07.04.2022, whereby the judgement of conviction dated 06.08.2019 and order of sentence dated 08.08.2019 passed by the Sub Divisional Judicial Magistrate, Kharkhoda, Sonipat, was upheld. The prosecution of the petitioner arose from case FIR No.322 dated 15.07.2014, registered under Sections 323, 324 and 506 IPC, at Police Station Kharkhoda.

Briefly, the facts are that on the basis of complaint given by Pawan Kumar son of Umed Singh, the above FIR was registered, wherein he alleged that on 14.07.2014 at about 6:30 PM, he was going to his fields from his house and when he reached near village chaupal, Sunil @ Sonu son of Jai Singh, Caste Jat, resident of Village Mandori coming towards village from bus stand, started hurling abusive language to him. He was resisted, but he started giving him legs and fist blows and also inflicted a knife blow on the upper side of his right hand, left shoulder and chest. Upon raising

alarm, his father Umed Singh rushed there. Assailant fled from there while rendering threat to his life along with his knife. While going away, he was threatening to kill him on finding a suitable opportunity. His father took him to CHC, Kharkhoda on arranging a private vehicle, from where he was referred to PGIMS, Rohtak. He was discharged from the hospital and came home. On these broad allegations, the case was registered for alleged commission of offences against human body and criminal intimidation.

After completion of investigation in the case, Challan was presented in the Court, and upon finding a prima-facie case, the accused was charge sheeted for the commission of offences punishable under Sections 323, 324 and 506 IPC, to which he pleaded not guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 06.08.2019, while acquitting him for the offence punishable under Section 506 IPC, proceeded to convict him for other offences under Sections 323 and 324 IPC and imposed following sentence:

Name of convict	Offences	Period of Sentence
Sunil	323 IPC	Rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for a period of fifteen days.
	324 IPC	Rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo simple imprisonment for a period of thirty days.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment and order of sentence before the Court of Sessions. However, vide judgment dated 07.04.2022 passed by learned Additional Sessions Judge, Sonipat, the appeal was dismissed. It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

On 25.05.2022, the following order was passed by this Court:

“Learned counsel for the petitioner/convict does not press his prayer relating to the conviction part recorded in the impugned judgment dated 06.08.2019 passed by trial Court, and confines it only in respect of the sentence part.

Notice of motion.

At this stage, Mr. Bhupender Singh, DAG, Haryana accepts notice on behalf of the respondent-State and prays for time.

On request, adjourned to 01.06.2022.”

Learned counsel for the petitioner has contended that against the awarded sentence of one year, petitioner-Sunil has already undergone imprisonment for one month and twenty five days, who is first time offender and there is no other criminal case pending against him. According to learned counsel, the convict has been suffering the agony of protracted criminal proceedings, who is 29 years old, and further submitted that the lenient view be taken against the petitioner in order to give him an opportunity to reform himself. He submits that in the facts and circumstances of this case, the petitioner be extended the concession of probation.

On the other hand, learned State counsel while opposing the prayer does not dispute this fact that the petitioner is neither a previous convict nor involved in any other case. He has produced the custody certificate of the petitioner dated 31.05.2022 by way of affidavit of Krishan Kumar Maan, Deputy Superintendent, District Prison, Sonipat, which

indicates that he has undergone one month and twenty five days of sentence. But according to him, the sentence imposed by the trial Court is proportionate to his guilt.

I have heard learned counsel for the parties.

On perusal of the judgments of both the Courts below, this Court is of the considered view that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty. Further, the appellate Court also examined the material on record carefully while upholding his conviction and this Court does not find any illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court by invoking its revisional jurisdiction as well as conviction part of the petitioner.

So far as the issue of quantum of sentence is concerned, admittedly, petitioner has already undergone imprisonment for one month and twenty five days. He is the first time offender and no other case is pending against him. He has been facing the agony of criminal proceedings. Therefore, taking into account the young age of convict, protracted trial, antecedents of the convict as well as the period of his incarceration, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioner is modified by extending the benefit of probation to the petitioners under The Probation of Offenders Act, 1958. Here, it is will be useful to refer to the decision of Hon'ble Supreme Court in “**Sita Ram Paswan Vs. State of Bihar, 2005(4), R.C.R. (Criminal) 138**” and the relevant part reads as under:

“8. Section 4 of the Probation of Offenders Act empowers the Court to release a convicted person on his entering into a bond with or without sureties on probation when he is found guilty of committing of any

offence, not punishable with death or imprisonment for life. Relevant portion of Section 4 of the Probation of Offenders Act, 1958 reads thus:

Section 4: Power of Court to release certain offenders on probation of good conduct - (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour."

For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India."

Thus, in view of the above, this revision petition is partly

allowed. The impugned judgment of conviction dated 06.08.2019 passed by

the learned Sub Divisional Judicial Magistrate, Kharkhoda, Sonipat and

affirmed by the Appellate Court vide judgment dated 07.04.2022 is upheld, however, the sentence part is modified to the extent that instead of undergoing actual sentence, the petitioner is directed to be released on probation on furnishing fresh surety bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Sonipat. He is also directed to give an undertaking to keep peace and good behaviour for a period of one year.

Ordered accordingly.

With the aforesaid modification on the quantum of sentence, the present revision petition is disposed off.

01.06.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No