

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

**CRM-M-22642-2022
Date of decision: 23.05.2022**

Gurmahabir Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. A. D. S. Jattana, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 08.11.2021 (Annexure P-8), whereby during the pendency of the appeal (Annexure P-2), the judgment dated 22.09.2021 (Annexure P-1), passed by the trial Court, stands amended and modified.

Learned counsel for the petitioner submits that the trial Court, while convicting the petitioner along with five other co-accused on 22.09.2021, passed the following order:

“13. So having regard to the totality and facts and circumstances and having regard to the kind and nature of the evidence that the prosecution has produced on record, this court is of the considered view that the prosecution has been able to discharge its onus successfully for the offences under section 323, 326, 120-B read with section-149 of Indian Penal Code. Therefore, all accused are held guilty under section 323, 326, 120-B read with section-149 of Indian Penal Code. Let the convicts be heard on quantum of sentence.”

Thereafter, while passing the order on quantum of sentence, all

the accused were sentenced to undergo rigorous imprisonment for 03 months under Section 323 IPC read with Section 149 IPC and 06 months rigorous imprisonment under Section 120-B IPC with a total fine of Rs. 2500/- each.

Learned counsel for the petitioner submits that the petitioner had preferred an appeal before the lower appellate Court and in the meantime, on 08.11.2021, the trial Court passed the impugned order, which reads as under:

“Original file received from the record room. Perusal of the file reveals that accused persons were held gully for the commission of offence punishable under section 323/326/120-B IPC read with section 149 IPC and all of them were acquitted from the charges for the commission of offence U/Sec.148/382/392 of IPC. After hearing on quantum of sentence, **all the convicts were convicted. U/Sec.323/326/120-B IPC but due to typographical mistake offence U/Sec.323 has been mentioned twice and offence U/Sec.326 IPC has not been mentioned in the column of conviction.** From the perusal of the judgment as well as index of the file clearly reveals that all of accused persons were convicted U/Sec.323/326/120-B IPC read with section 149 IPC. Since it is just a typographical mistake, therefore, as per the provisions of section 362 Cr.P.C a clerical or arithmetical error can be corrected. Therefore, Reader attached to this court is hereby directed to make the necessary correction with red Ink on the judgment dated 22.9.2021. This order be read as part of judgment dated 22.9.2021. File be consigned to the record room, after due compliance.”

Learned counsel for the petitioner further submits that in the

aforesaid order, which was passed under the signatures of JMIC, Tarn Taran, there is no mention of sentencing the petitioner/accused persons for 02 years under Section 326 IPC and the only direction was that some corrections be made that the order on sentence was passed under Sections 323, 326 and 120-B of the IPC. Moreover, when the aforesaid order was passed, the accused persons including petitioner were not afforded any opportunity of hearing as no notice was issued to them.

Learned counsel further submits that in the corrections made in the original order, which was signed by Mr. Harpreet Singh Simak, JMIC, Tarn Taran, Section 326 read with Section 323 IPC was added and the sentence was enhanced to rigorous imprisonment for 02 years with a fine of Rs. 1000/- with default clause. This was done under the signatures of Mr. Vijay Kumar, Reader of the Court and not by the JMIC/trial Court.

Learned counsel further submits that in fact once the Judicial Magistrate has passed the order on sentence, the corrections in the original judgment, if any, was to be done under the signatures of the Judicial Magistrate only, though it will be a debatable issue whether subsequent to passing of any judgment, the same Judicial Magistrate can enhance the sentence from 02 months to 02 years.

Learned counsel for the petitioner relies upon order dated 01.02.2022 passed by the Sessions Judge, Tarn Taran, vide which the appeal was adjourned to 16.03.2022 for awaiting the further report from the trial Court/Judicial Magistrate regarding supply of corrected judgment dated 22.09.2021.

It is further submitted that since in the meantime, concerned Judicial Magistrate Mr. Harpreet Singh Simak has resigned and gone

abroad, therefore, there is no possibility of delivering the corrected copy under the signatures of the same Judicial Magistrate.

Though all these points need to be decided by the Sessions Judge, Tarn Taran, who herself is administrative head of the Sessions Division, Tarn Taran and on the face of it, it requires an inquiry as to how the corrections were made under the signatures of the Reader of the Court concerned, thereby enhancing the sentence, though in the original order, passed by the trial Court, it was only directed that instead of Section 323 IPC, which is mentioned at two places, Section 326 IPC be substituted at one place and there was no such direction to enhance the sentence from 02 months to 02 years.

Therefore, keeping in view the aforesaid facts and circumstances, it is directed that the lower appellate Court will allow the amendment in the grounds of appeal assailing the aforesaid order and after conducting an inquiry on administrative side will decide the appeal in accordance with law.

While deciding the appeal, the lower appellate Court will also record the findings whether in terms of Section 362 Cr.P.C., such modification was permissible under law or not.

23.05.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No