

243 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-269-2017 (O&M)

Date of Decision: 26th May, 2022

Ramesh and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Shaveta Sanghi, Advocate for the petitioners.
Mr. Gurmeet Singh, AAG, Haryana.

AVNEESH JHINGAN , J.(Oral)

1. This criminal revision is filed aggrieved of release of the respondents No. 2 and 4 (accused) on probation in case of FIR No. 118, dated 21st August, 2009, under Sections 323, 325 read with Section 34 IPC, registered at Police Station Bamal, Rewari.

2. The brief facts are that the respondents faced trial and were convicted on 5th September, 2013 under Sections 323 and 325 read with Section 34 IPC and vide order dated 6th September, 2013 were sentenced to undergo imprisonment as under:-

Under Section	Punishment	Fine	In default of payment of fine
323 read with Section 34 IPC, 1860	Rigorous imprisonment for one year	Rs.1,000/-	Rigorous imprisonment for two months
325 read with Section 34 IPC, 1860	Rigorous imprisonment for one year	Rs. 2,000/-	Rigorous imprisonment for four months

3. Aggrieved of the conviction and quantum of sentence appeal was preferred. In appeal, the conviction was upheld, however, the

respondents were released under the probation of offender Act, 1958 on furnishing of surety bonds to the tune of sum of Rs. 50,000/- with one surety for like amount for a period of six months. Respondents were directed to pay Rs.51,000/- (Rs.17,000/- each) as compensation to the complainant Ramesh Kumar and his brother Anil.

4. Learned counsel for the petitioner submits that a grievous head injury was inflicted, the Appellate Court erred in releasing the respondents on probation.

5. The Supreme Court in **Chandreshwar Sharma v. State of Bihar, (2000) 9 SCC 245**, while considering such mandate, held as under:

“3. The appellant herein was convicted under Sections 379 and 411 I.P.C. and was sentenced to rigorous imprisonment for one year as 3.5 Kg. of non-ferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negated and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code should not be made applicable Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance. From the perusal of the judgment of the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forums below had considered the question of applicability of Section 360 of the CrPC. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then it shall record in its judgment the specific reasons for not having done so. This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the CrPC. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reasons not to apply the provisions of Section 360 of the

CrPC. We accordingly, while maintain the conviction of the appellant, direct that he will be dealt with under [section 360](#), and as such, we direct that the appellant be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly.”

6. In the present case, the respondents were convicted for one year, their case was covered under Section 4(1) of the Probation of Offender Act, 1958.

7. The jurisdiction in the revision petition is limited, in the absence of any factual or legal error, no case is made out for interference by this Court.

8. The petition is dismissed.

9. Since the main case has been dismissed, pending applications, if any, are also disposed of.

**(AVNEESH JHINGAN)
JUDGE**

26th May, 2022

Parveen Sharma

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No