

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

CRR-154-2021 (O&M)
Date of Decision:-**14.9.2022**

Amir Chand

... Petitioner

Versus

Tony and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Sumit Kalyan, Advocate for
Mr. G.S. Madaan, Advocate
for the petitioner.

Mr. Shivam Chaudhary, Advocate
for the respondents.

KARAMJIT SINGH, J.

The present revision petition has been filed by the petitioner-complainant against the judgment dated 22.07.2015 passed by the Court of learned Additional Sessions Judge, Pathankot, whereby the appeal filed by the respondents/accused against the judgment and order dated 20.11.2013 passed by the Court of Additional Chief Judicial Magistrate Pathankot was partly allowed and conviction of the respondents under Section 148 and Sections 323, 325 read with Section 149 IPC was upheld but the

respondents were given benefit of probation while setting aside order of sentence dated 20.11.2013 passed by the aforesaid trial Court.

The brief facts of the case are that petitioner-complainant filed criminal complaint against the respondents alleging that he was owner of some land situated in village Bheri Bajurg Tehsil Pathankot, where he had planted mulberry trees and on 7.12.2007 he was present in his field and at that time respondent No.1-Tony started cutting the branches of mulberry trees with the help of 'Darat', to which the petitioner objected and then respondent No.1 went away after extending threats to the petitioner. Then on 8.12.2007 at about 8.00 am respondent No.1 Tony armed with iron rod, respondent No.2 Vicky, respondent No.3 Parbodh Chander and respondent No.4 Minka armed with dangs and respondent No.5 Dass (empty handed) trespassed into the field of the petitioner and then respondent No.5 raised lalkara and exhorted the other respondents to teach lesson to the petitioner for insulting his son Tony, on which respondent No.1 gave iron rod blows on the right leg and back side of the head of the petitioner, as a result of which he fell on the ground and then respondent Nos.2 to 4 started beating the petitioner with wooden dangs and the petitioner raised hue and cry and on hearing the same Ravi Kumar, Balbir and Darshan reached the spot and rescued the petitioner from the hands of respondents and then the respondents fled away from there after destroying the crop sown by the petitioner in his field. The petitioner was medico legally examined in civil hospital Madhopur on the same very day and the matter was reported to the police. However, the police failed to take any action against the respondents.

Finally, the petitioner filed private criminal complaint under Sections 323, 325, 447 read with Section 149 IPC and under Section 148 IPC.

The complainant was called upon to lead preliminary evidence and after conclusion of the preliminary evidence, all the respondents were summoned by the trial Court to face trial under Sections 323, 325 read with Section 149 IPC and under Section 148 IPC.

Pursuant to the said summoning order the respondents appeared in the trial Court. In the pre-charge evidence the petitioner himself appeared in the witness box as CW6 and also examined CW1 Dr. Kamla who proved MLR of the petitioner Exhibit CW1/B and also the relevant entry of her register Exhibit CW1 and report regarding injury Exhibit CW1/C. CW2 PHC Tarsem Lal proved the copy of DDR No.16 dated 9.12.2007 Exhibit PW2/1. CW3 Dr. Harsh Mahajan proved X-ray film Exhibit CW1/E, x-ray report Exhibit CW1/F and relevant entry of his register Exhibit CW1/D. CW5 Darshan Kumar corroborated the statement of petitioner. MLRs of Shakuntala and Darshan Kumar and document Mark C1 were also produced by the petitioner in his evidence.

On conclusion of pre-charge evidence the trial Court framed charges under Sections 323, 325 read with Section 149 IPC and under Section 148 IPC against the respondents to which they did not plead guilty. After conclusion of the post charge evidence, the respondents were examined under Section 313 CrPC and the entire incriminating evidence was put to them, but they denied the same and pleaded false implication and innocence. In their defence, respondents examined DW1 Dr.Tarsem Singh who proved MLR Exhibit D1 of Balwinder Kumar.

After hearing both the parties, the trial Court convicted and sentenced the respondents as follows vide judgment and order dated 20.11.2013:-

Convict Tony:	
Offence under Section(s)	Sentence Awarded
148 of IPC	To undergo RI for a period of 3 years.
323 of IPC read with Section 149 of IPC	To undergo RI for a period of 1 year.
325 of IPC	To undergo RI for a period of 3 years and to pay a fine of ₹200/- In default of payment of fine to undergo RI for a period of 30 days.
Convict Vicky:	
148 of IPC	To undergo RI for a period of 3 years.
323 of IPC	To undergo RI for a period of 1 year.
325 of IPC read with Section 149 of IPC	To undergo RI for a period of 3 years and to pay a fine of ₹200/- In default of payment of fine to undergo RI for a period of 30 days.
Convict Parbodh Chander:	
148 of IPC	To undergo RI for a period of 3 years.
323 of IPC	To undergo RI for a period of 1 year.
325 of IPC read with Section 149 of IPC	To undergo RI for a period of 3 years and to pay a fine of ₹200/- In default of payment of fine to undergo RI for a period of 30 days.
Convict Minka:	
148 of IPC	To undergo RI for a period of 3 years.
323 of IPC	To undergo RI for a period of 1 year.
325 of IPC read with Section 149 of IPC	To undergo RI for a period of 3 years and to pay a fine of ₹200/- In default of payment of fine to undergo RI for a period of 30 days.
Convict Dass:	
148 of IPC	To undergo RI for a period of 3 years.
323 of IPC read with Section 149	To undergo RI for a period of 1 year.

IPC	
325 of IPC read with Section 149 of IPC	To undergo RI for a period of 3 years and to pay a fine of ₹200/- In default of payment of fine to undergo RI for a period of 30 days.

All the sentences were ordered to run concurrently.

Being aggrieved the respondents-accused filed appeal against the aforesaid judgment and order passed by the learned trial Court.

The Appellate Court vide judgment dated 22.07.2015 partly allowed the appeal filed by the respondents while upholding the judgment of conviction but set aside the order of sentence while granting benefit of probation to the respondents.

Petitioner being aggrieved has filed the present revision petition against the aforesaid judgment passed by the Appellate Court. The petitioner has also filed an application under Section 5 of Limitation Act to condone delay of 1946 days in filing the present revision petition.

I have heard the counsel for the parties.

The counsel for the petitioner submitted that the petitioner is aged about 70 years and he engaged counsel to challenge the judgment passed by the Appellate Court. However, the said counsel did not file any revision and kept the petitioner in dark. Then the petitioner engaged another counsel to enquire about the status of the revision, on which he came to know that the earlier counsel had not filed any revision-petition against the impugned judgment. Thereafter, the petitioner supplied the concerned documents to his new counsel and then the present revision petition was

filed. The counsel for the petitioner further submitted that delay in filing the revision petition has been fully explained by the petitioner.

The counsel for the petitioner has further contended that the respondents who were armed with deadly weapons, constituted an unlawful assembly and injury caused by respondent No.1-Tony on the right leg of the petitioner with iron rod, was found to be grievous in nature as is evident from the perusal of testimony of CW1 and CW3 coupled with the MLR and x-ray report of petitioner. The counsel for the petitioner further submitted that as such it stands proved that respondent No.1 committed an offence punishable under Section 325 IPC while the remaining accused committed offence punishable under Section 325 read with Section 149 IPC and the same is punishable with 7 years imprisonment and fine. The counsel for the petitioner further submits that the aforesaid offence being of grave nature, no ground was made out to grant concession of probation to the respondents. The counsel for the petitioner further submits that all the respondents were more than 30 years of age and as such, there was no occasion for the Appellate Court to give them benefit of probation.

In the end, the counsel for the petitioner made prayer that the impugned judgment passed by the Appellate Court to the extent whereby the said Court modified the judgment and order dated 20.11.2013 passed by the Court of Chief Judicial Magistrate, Pathankot, deserves to be set aside and the respondents be sentenced to imprisonment, as per law.

The counsel appearing on behalf of the respondents while supporting the impugned judgment dated 22.07.2015 has submitted that the Appellate Court took into consideration the nature of the injuries sustained

by the petitioner and other victims, the antecedents of respondents, the fact that the respondents were having no criminal history and previous conviction. The counsel for the respondents further contended that the Appellate Court also took into consideration the fact that the respondents faced protracted trial. The counsel for the respondents further contended that after taking into consideration the above stated facts and circumstances of the case, the Appellate Court rightly gave concession of probation to the respondents and at the same time, the respondents were also burdened with cost of ₹50,000/- which was to be disbursed to the petitioner as a compensation. That the trial Court also imposed litigation cost of ₹3,000/- each to the respondents.

The counsel for the respondents further submitted that now after more than 15 years of occurrence, the interference on the part of this Court is uncalled for. The counsel for the respondents further submitted that the present revision petition is completely time barred being filed after more than 5 years of passing of impugned judgment dated 22.07.2015. The counsel for the respondents further submitted that no plausible explanation has been given by the petitioner with regard to delay in filing of the revision petition. The counsel for the respondents further submitted that in view of the matter no ground is made out to condone the delay in filing of the revision petition, which is even otherwise devoid of merits.

I have considered the submissions made by counsel for the parties.

The impugned judgment was passed by the Appellate Court on 22.07.2015 in presence of the counsel for the petitioner. The present

revision petition to challenge the said judgment was filed in the month of February, 2021, meaning thereby, that there was delay of more than 5 years in filing the present revision petition. Filing of the revision petition within a period of limitation is the rule and condonation of delay is an exception. So, while condoning the delay, the Courts must be cautious and only on genuine reasons, the Courts are empowered to condone the delay. The discretionary power to condone the delay is to be exercised judiciously and there must be reasonable grounds to condone the delay. In the instant case there was huge delay in filing the revision petition. The reasons furnished by the petitioner in his application seeking condonation of delay are not convincing and candid. This Court is of the view that the reasons for the delay given by the petitioner are not genuine reasons and thus, are not acceptable.

This apart, the occurrence in question took place on 8.12.2007 and thereafter as the police failed to take any action, the petitioner filed private criminal complaint and after conclusion of the trial the respondents were convicted and sentenced to imprisonment vide judgment and order dated 20.11.2013, as has been detailed in the earlier part of this judgment. The respondents filed appeal against the said judgment and order and the same was partly accepted by the Appellate Court vide judgment dated 22.07.2015 and the conviction of the respondents was upheld but there sentence was modified and the respondents were given concession of probation and were also burdened with cost and to pay a compensation as has been described below:-

“17. The appellants are also burdened to pay ₹3,000/- each as costs of litigation within such period

with the ld. Trial Court/Duty Magistrate. The appellants shall also deposit an amount of ₹50,000/- i.e. ₹10,000/- each in the trial court for disbursing the same to complainant Amir Chand son of Sh.Ram Chand as compensation. In case, the appellants failed to fulfill these conditions, their appeal against the impugned sentence order shall be dismissed automatically and ld. Trial Court/Duty Magistrate shall be at liberty to take necessary steps in accordance with law for sending the appellants to jail to serve their sentence.”

It is not the case of the petitioner that the respondents have failed to deposit aforesaid costs and amount of compensation. The Appellate Court while granting benefit of probation to the respondents, took into notice their age, criminal antecedents, the nature of injuries caused by the respondents and the manner in which the crime was committed and further the fact that the respondents faced trial for almost 8 years including the time taken for disposal of the appeal.

Section 360 Cr.P.C and Sections 3 & 4 of Probation of Offenders Act provide for grant of concession of probation to the offenders. The main object of the said statutory provisions is to give an opportunity to offenders to reform themselves rather than turning into hardened criminals. Also forgiveness can change the behavior of criminal and give the scope of repentance and reformation to him. This purpose could be achieved through probation, which has been accepted as a modern technique of reforming the offenders.

Now reverting to the facts of the present case, the respondents were convicted under Sections 325, 323, 148 IPC and Sections 323/325 read with Section 149 IPC as has already been detailed above. The maximum punishment for the said offences is upto 7 years. So the provisions of Section 360 Cr.P.C. are applicable to the present case and the First Appellate Court while taking into consideration the facts and circumstances of the case, antecedents and criminal history of the respondents and the manner in which the offences were committed, granted concession of probation to the respondents. The Appellate Court also awarded compensation to the petitioner and further imposed litigation cost of ₹3,000/- to be paid by the respondents.

The counsel for the petitioner has failed to point out any patent illegality or irregularity in the impugned judgment to the extent it is under challenge. Further after lapse of more than 15 years of the occurrence, no ground is made out for this Court to interfere specially when the challenge has been laid after more than 5 years of the passing of the impugned judgment.

For the foregoing reasons, the application moved by the petitioner for condonation of delay and the revision petition are hereby dismissed being devoid of merits.

(KARAMJIT SINGH)
JUDGE

14.9.2022

Gaurav Sorot/P.Chawla

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No