

CRR-2436-2022 (O&M)

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

Sr. No.119

CRR-2436-2022 (O&M)

Date of decision : 11.11.2022

Shishpal @ Pappu and another

.....Petitioner(s)

VERSUS

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.CR Olla, Advocate for the petitioners

AMAN CHAUDHARY, J.

Challenge in the present revision petition is to the judgment of conviction and order dated 22.01.2019/25.01.2019 passed by Sub Divisional Judicial Magistrate, Tohana, as well as the judgment dated 11.10.2022 passed by learned Sessions Judge, Fatehabad.

Facts in brief are that on 05.07.2014, complainant/injured Dhani Ram made statement to the police to the effect that he is a mason and he had obtained tender from Gram Panchayat Luluwal for constructing cemented naliyes (Drains) streets in village. On 04.07.2014 at about 10:30/11:00 a.m. he along with co-masons Kala Ram and Bakhtawar was doing work near shop and house of Rampal. After some time, Shishpal alias Pappu and Vijay came there and asked him to stop construction work, but he (complainant) asked them that said work was given to him by Sarpanch and if they had any grievance, they would discuss the same with Sarpanch. Upon this, Vijay caught hold him through his neck and tried to push him. Shishpal alias Pappu gave blow of iron rod on his head. Thereafter, Vijay gave blow of lathi on his legs and when he raised his hand to save himself

then lathi blows hit on his right hand. When he raised he and cry, then his wife Bhani Devi came to rescue him. In the meantime, Banarsi Lal and Hardev sons of Vijay carrying dandas in their hands came there and they have lathi blows on him and his wife. When his wife tried to rescue him, then Shishpal gave iron rod blow on left hand of his wife and Vijay gave lathi blow on left thigh of his wife. When he and his wife raised hue and cry and tried to go to their house, then accused persons restrained their way and extended threats to kill them in future. On seeing several persons coming to spot, all the assailants along with their respective weapons fled away from spot. His nephew Ramesh Kumar shifted them to General Hospital, Tohana. On the basis of the aforesaid statement, FIR in question was registered against the accused-petitioners. After completion of investigation, challan was presented and charges were framed against them.

To prove its case, the prosecution had examined as many as seven witnesses. After closure of the prosecution evidence, statements of the accused-petitioners under Section 313 Cr.P.C. were recorded, wherein they pleaded their false implication. No defence witnesses was produced by them.

After appreciating the evidence on record and hearing the learned counsel for the parties, vide judgment /order dated 22/25.01.2019, the trial Court convicted and sentenced the accused- petitioner as under:

Offence u/s	Imprisonment	Fine	In default of payment of fine
323/34 IPC	SI for 6 months each	Rs.500/-each	SI for 15 days

325/34 IPC	SI for 2 years each	Rs.2000/-each	SI for 30 days
506/34 IPC	SI for 6 months each	Rs.500/-each	SI for 15 days

All the sentences were ordered to run concurrently.

Against the said judgment and order, the petitioners had filed an appeal, wherein the learned Sessions Judge, vide judgment dated 11.10.2022, maintained the conviction of the petitioners, whereas they were ordered to be released on probation of good conduct for a period of six months, subject to their furnishing requisite probation bonds in the sum of Rs.50,000/- with one surety each in the like amount and they were also directed to pay a sum of Rs.37,500/- each to be paid to the injured -complainant as compensation, under Section 357 Cr.P.C.

Hence, the present revision petition.

Learned counsel for the petitioners submits that the learned Courts below committed a grave while convicting the petitioners by ignoring the material discrepancies and improvements made in the statements of the prosecution witnesses. He states that the benefits of doubt should be given to the petitioners. As the petitioners are facing the trial more than 8 years, he prays for grant of benefit of probation to the petitiones and reduce the amount of compensation as ordered by learned Sessions Judge, Fatehabad.

Heard.

It is apposite to refer to the judgment of learned Sessions Judge, Fatehabad whereby the appeal was dismissed vide order dated 11.10.2022, while granting the benefit of probation to the petitioners. The

para relevant in this regard reads thus:-

12. Keeping in view the entirety of facts and circumstances of the case as also the provisions of Section 360 and 361 Cr.P.C., this Court is of the considered opinion that this is a fit case for releasing the appellant on probation. As per Section 360 Cr.P.C., a person not under the age of 21 years being convicted of an offence with fine only or with imprisonment for a term of seven years or less should be released on probation of good conduct keeping in view his age, character etc. and if it is expedient to do so.

13. Section 361 Cr.P.C. further provides that where in any case the Court could have dealt with accused under section 360 Cr.P.C. or under the provisions of Probation of Offenders Act 1958 but if it has not done so then it shall record in its judgment the special reasons for not having done so.

14. In the present case, learned trial Court vide impugned judgment and order of sentence, convicted appellants in the terms mentioned in para no.1 of this judgment. No circumstance has been brought on record by prosecution that appellants/accused are previous convicts or that they are habitual offenders. Therefore, keeping in view the facts and circumstances of the case and nature of offence, it is a fit case where benefit of probation should be given to appellants. Further, appellants are facing the trial for the last more than eight years, hence, they are certainly entitled to the relief sought by them. Reliance in this regard can be placed upon case laws titled as Banwari vs. State of Haryana 2004(2) RCR (Criminal) 106, Manohar Lal vs. State of Punjab 2004(1) RCR (Criminal) 656 and Ram Pal vs. State of Punjab 2006(2)

RCR (Criminal) 784. In Banwari Lal's case, Manohar Lal's case and Ram Pal's case (supra) the accused was released on probation on the grounds that the accused was not a previous convict; that there was no evidence on record to show that before or after the registration of the case, the accused had indulged in any other criminal activity and that he had faced the agony of the trial for considerable long period and that he was the sole bread earner of the family.”

Pertinently, the petitioners had as a matter of fact had separately given their statements in writing that they do not press the appeal qua the judgment of conviction and are only claiming leniency regarding quantum of sentence and they were ready to pay compensation to the injured persons. They thus prayed for release on probation. The para relevant on the judgment of the Appellate Court reads thus:-

“11. While relying on the oral as well as documentary evidence referred above, learned counsel for appellants has argued that it is the quality and not quantity of evidence which is required to be proved by prosecution against accused. Learned counsel for appellants further argued that entire prosecution version is false and accused have been roped in a false case. However, during the course of arguments, appellants have made their respective separate statements in writing that they do not press the appeal qua the judgment of conviction and are only claiming leniency regarding quantum of sentence and they are ready to pay compensation to injured persons. The appellants have submitted that they are poor persons and not previously convicts. They have repented their attitude. Lastly, it has been prayed that

appellants be released on probation.

Accordingly, considering the aforesaid statements made by the petitioners; their willingness to pay compensation to the injured; petitioners not been previous convicts or habitual offenders; had faced the pangs of protracted trial for last more than eight years; were sole breadwinners of their families, the learned Appellate Court while placing reliance on the law laid down with regard to release on probation, had vide the impugned judgment ordered the appellants to be released on probation of good conduct for a period of six months while directing them to pay a compensation of Rs.37,500/- each i.e. a total of Rs.75,000/- to the two injured persons.

The petitioners before this Court have now sought to challenge the conviction that they ought to have been given benefit of the doubt. They should have been given the benefit of probation without the direction to pay compensation in favour of complainant/injured.

Hon'ble The Apex Court in the case of **Duli Chand v. Delhi Administration**, (1975) 4 SCC 649, held that jurisdiction of the High Court in Criminal Revisional jurisdiction is severely restricted. It is held that the High Court cannot embark upon re-appreciation of evidence in the exercise of Revisional jurisdiction. It is also well settled that the Revisional jurisdiction is normally to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error or patent error committed in ignorance of law which has resulted in flagrant miscarriage of justice.

Further, Hon'ble The Supreme Court of India in the case of **Raj**

Kumar vs. State of Himachal Pradesh (2008) 11 SCC 76 has held as under:-

“11. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* (1999)2 SCC 452, it was held that the revision jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. ”

Once the petitioners had themselves given up the challenge to their conviction and had expressed their willingness to pay compensation to the injured, it does not lie in their mouth to now turn around to either challenge the same or submit that the amount of compensation of Rs.75,000/- (Rs.37,500/- each) ought not to have been directed to be paid to the injured.

Even otherwise, the Appellate Court while considering the prayer made by the petitioners has released them on probation on their giving up the challenge to conviction made vide categorical statements, this Court would be hesitant to re-appreciate and do re-appraisal of the evidence moreso, when the judgment of the lower Appellate Court has not been shown to be perverse.

The compensation has justly been determined by the Court to

be payable under Section 357 Cr.P.C., in the ratio of Rs.50,000/- to injured Bhani Devi, who had suffered simple as well as grievous injuries and Rs.25,000/- to be paid to complainant-injured Dhani Ram who had suffered simple injuries. It in no way can be construed to be on the higher side

In view of the above, this Court finds no illegality or perversity in the impugned orders/ judgments passed by the Courts below. As such, the present petition being devoid of merit is dismissed.

11.11.2022
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No