

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

Sr. No.239

CRR-812-2014 (O&M)

Date of reserve: 25.8.2022

Date of pronouncement: 28.9.2022

Jagbir Singh

.....Petitioner(s)

VERSUS

U.T. Chandigarh

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Satyender Kumar, Advocate for
Mr.Gaurav Mohunta, Advocate for the petitioner

Mr.Shashank Bhandari, Addl.PP, UT, Chandigarh

AMAN CHAUDHARY, J.

This criminal revision petition has been filed by the petitioner way back in the year 2014 against the judgment of conviction and order of sentence dated 31.10.2013 passed by learned Additional Sessions Judge, Chandigarh for the offence punishable under Section 336 IPC to undergo simple imprisonment for three months and to pay fine of Rs.250/- and in default of payment of fine to further undergo simple imprisonment for seven days, in case FIR No. 62 dated 12.3.2012, registered under Sections 307, 506, 120-B IPC at Police Station Sector 17, Chandigarh.

Aspect, at first re:maintainability:-

Notice was issued in this revision petition on 8.9.2014, pursuant to which, in the order dated 5.12.2018, the objection was raised by learned counsel appearing on behalf of UT, Chandigarh regarding non-maintainability of the revision petition, in view of the fact that against the

judgment/ order passed by learned Additional Sessions Judge, Chandigarh, whereby the petitioner has been convicted for the offence under Section 336 IPC and sentenced as above, in view of Section 376(B) Cr.P.C., the remedy of appeal was available.

Faced with this, the learned counsel for the petitioner submits that the present revision petition having been filed in the year 2014, is maintainable in view of the provisions of Section 401(5) Cr.P.C., inasmuch as, the sentence awarded to the petitioner was three months, which is less than already undergone by him.

However, this Court is unable to persuade itself to accept the aforesaid argument of learned counsel for the petitioner, as the aforestated provision does not permit filing of revision petition, as is being projected by the learned counsel for the petitioner. Finding the Court's view being firm, he further states that the present revision petition has been filed by the petitioner under an erroneous belief that no appeal lies against the judgment of conviction and order of sentence in the present case and that revision was the only remedy available to him. He, however, makes a prayer to treat this revision as appeal, it having been filed way back in the year 2014 and if he is relegated to the remedy of appeal, a lot more time will be consumed and he has sought instructions from his client, who stated that his conviction may be upheld and his release on probation for good conduct be considered, which may help him get retiral/ pensionary benefits, he being a government servant.

It may be accentuated at the outset, the view of Hon'ble the Supreme Court of India on this issue, in the case of **Joseph Stephen and**

others vs. Santhanasamy and others Criminal Appeal Nos. 90-93 of 2022, decided on 25.1.2022, wherein it has held that the High Court has jurisdiction to treat the application for revision as an appeal as per Sub Section 5 of Section 401 Cr.P.C. on being satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interest of justice to do so. The relevant para of the judgment is reproduced as under:

“However, in a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to reappraise the evidence in light of the observation of the Revisional Court and take an independent view uninfluenced by any of the observations of the Revisional Court on the merit of the case. By way of abundant caution, we may herein observe that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice. The High Court may also interfere in those cases of acquittal caused by shutting out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. In such an exceptional case, the High Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial.”

Now adverting to the facts of the case in hand, the present revision petition had been filed in the year 2014 before this Court on the erroneous belief that no appeal lies. At this stage after a passage of 8 long years and the fact that the petitioner is willing to accept his conviction and is only seeking consideration of release on probation, it may not be in the

interest of justice to require the petitioner for withdrawal of the present petition, in order to file an appeal.

The learned counsel appearing for the UT, Chandigarh is unable to distinguish the above judgment.

Keeping in view of the aforesaid peculiar facts and circumstances of the case, this Court is satisfied that the present revision was filed under the erroneous belief that no appeal lies and it is deemed necessary in the interest of justice to treat this revision as appeal, in view the law laid down by Hon'ble the Supreme Court of India in the case of **Joseph Stephen** (supra).

Ordered accordingly.

Main case

Factual aspect:

In brief, the facts are that as per the prosecution, on the intervening night of 11/12.3.2012, Baleer Singh, Jagbir Singh and Volunteer Gurjeet Singh were on duty on PCR vehicle ECHO-15. Inspector Satpal received a phone call at his residence from police control room that the police official on PCR vehicle ECHO-15 have consumed liquor and they are creating a scene in the police control room, Police Head Quarter, Sector 9, Chandigarh. When Inspector Satpal alongwith two other police officials reached at Sector 9, well before that the accused left the premises. When Inspector Satpal got ECHO-21 stopped near house No.224, Sector 16, Chandigarh and alighted from vehicle and asked accused Baleer Singh to come to him and sit in PCR vehicle ECHO 21. In the meantime, Constable Jagbir Singh, who was also alighted from ECHO 15, started

hurling abuses at Inspector Satpal and pointed his service pistol directly at him and fired a shot, which did not hit him. He threatened to kill Inspector Satpal. He fired another shot at Inspector Satpal, which also did not hit him. Thereafter, SI Sarita Roy, Incharge Police Post, ISBT, Sector 17, Chandigarh came there alongwith other police officials and overpowered Constable Jagbir Singh alongwith pistol.

Upon this, FIR in question came to be registered. After completion of investigation, challan for the offence under Sections 307, 506, 120-B IPC was presented in the Court. Charges were framed under the aforesaid sections against the petitioner/appellant alongwith his co-accused, to which they pleaded not guilty and claimed trial. In support of his case, the prosecution examined as many as 15 PWs. The accused were examined under Section 313 Cr.P.C. In defence, the accused examined Surinder Kumar as DW1.

After hearing the learned Additional Public Prosecutor and learned defence counsel and evaluating the evidence placed on record, the trial Court by observing that the prosecution failed to prove the charge for the offence under Sections 307, 506, 120-B IPC against the accused – petitioner/appellant but the petitioner was held guilty for having committing an offence under Section 336 IPC to which he was convicted and sentenced as stated above.

As per the prosecution story, the petitioner had fired two shots from his service revolver towards Inspector Satpal has been disbelieved by the learned trial Court and has rightly been acquitted him of the charges under Sections 307, 506, 120-B IPC. Accordingly, even co-accused Baleer

Singh has also been acquitted of the charges. He further submits that site plan produced by the prosecution, as per which, PW1 Inspector Satpal was fired upon by the petitioner/appellant does not tally with the facts and the site map Ex.PB and as per their investigation, 8 live cartridges and one empty cell were sealed in separate parcels. He further submits that during cross-examination the said witness had stated that he was standing in front of House No.224 and the present petitioner/appellant had parked the vehicle in front of House No.221, which is on the opposite side. However, PW1 had failed to clarify if any shot was fired at him, while he admitted that the petitioner/appellant had fired a shot in the air. The Investigating officer had not recovered any 2nd empty shell nor was any bullet recovered from the spot. No bullet marks were found on any of the houses. This fact shows that no shot was fired by the petitioner. He further submits that no independent witness was examined by the prosecution despite the fact that the local residents were present at the spot. He further submits that the petitioner/appellant and his co-accused had gone to the residence of SSP, Chandigarh at the late hours to request for going on duty as the immediate superior had not allowed the same. It is only account of the petitioner/appellant feeling upset of not being allowed to meet SSP, sharp exchange of words took place between him and guard on duty upon which police officials were called to the spot. In fact, SI Rajinder Singh and ASI Tarwinder Singh, who were on duty at PCR Headquarters at the time of the alleged incident were suspended for not properly handling the situation and departmental enquiry was initiated against them. He submits that the higher officers nourished a grudge against the petitioner/appellant, who had

approached the Central Administrative Tribunal in the year 2009 in connection with the dispute over the seniority of constables and sending of the constables for promotional course i.e. lower school course, wherein the petitioner/appellant was not allowed by the department as the seniority for the same was to be determined on the basis of joining and not on the basis of confirmation.

Learned counsel for the petitioner/appellant also submits that initially on account of his conviction, his services were terminated vide order dated 14.3.2012 by invoking Article 311 (2)(b) of the Constitution of India without holding enquiry. It, therefore, is unsuccessfully challenged before the learned Chandigarh Administrative Tribunal, Chandigarh Bench, Chandigarh and the same was upheld vide order dated 14.3.2014. The petitioner filed CWP-1061 of 2014 against the judgment of the CAT, which was allowed by this Court vide judgment dated 8.10.2015 on the ground that the impugned order passed by the appointing authority was found to be *ex-facie* illegal and the same was accordingly quashed. This Court had directed that the petitioner shall be placed under suspension during the course of departmental enquiry and regular departmental enquiry after framing of charges be initiated against the petitioner/appellant in accordance with law.

Learned counsel further relied upon the order dated 4.4.2016 passed by Hon'ble the Supreme Court in SLP (CC) No. 5652 of 201 filed by the Chandigarh Administration against the order passed by this Court in the aforesaid writ petition, wherein operation of the impugned order was stayed. The said case is stated to be still pending adjudication.

As per the custody certificate dated 25.8.2022 produced by the learned counsel for UT, Chandigarh, the petitioner/appellant has undergone 1 year, 4 months and 24 days, during the trial, out of which post conviction period is one day.

Discussion:

The case in hand is regarding an incident that took place on the intervening night of 11/12.3.2012. The FIR was lodged under Sections 307, 506, 120-B IPC. Though, the prosecution had failed to prove the charges against the petitioner/appellant and his co-accused for the offence punishable under Sections 307, 506, 120-B IPC but he came to be convicted under Section 336 IPC. The trial Court had scrutinised the entire evidence and found that the case against the petitioner/appellant stood proved beyond reasonable, which this Court is in agreement with.

Conclusion:

In view of the finding recorded by the trial Court as upheld by the appellate court which were based on the proper evidence, it is the considered view of this Court that no interference is required, accordingly, the conviction of the petitioner/appellant is affirmed.

Prayer in alternate:

Now for considering the prayer made on behalf of the petitioner/appellant, for letting him off on probation reliance is made on a judgment of Hon'ble the Supreme Court of India in the case **B.S. Narayanan vs. State of A.P.**, 1987 (Sup) SCC 172 and of a Coordinate Bench of this Court in the case of **Tejiwinder Singh vs. State of Punjab** reported as 2009 (5) RCR (CrL.), 526.

Adverting to facts in hand, for considering the prayer made on behalf of the petitioner /appellant, it is deemed apposite to notice that the petitioner has been facing the agony of protracted trial since 2012, he has been convicted for the offence punishable under Section 336 IPC for which three months simple imprisonment has been awarded to him, however, as per the custody certificate, it is evident that he has already undergone 1 year 4 months and 24 days during the trial itself, way more than the prescribed punishment for offence under Section 336 IPC, for which maximum sentence prescribed is three months.

In the cases of **B.S. Narayanan** and **Tejwinder Singh** (supra), both were also government employees involved in criminal cases and were convicted but released on probation of good conduct.

Further in **Chuni Lal vs. State of Haryana** reported as 2006 (1) RCR (Crl.) 844, the Court was pleased to observe that accused may be released on probation on following grounds:

- “(i) having remained on bail for sufficiently long time;
- (ii) accused not previous convict and did not indulge in any criminal activity during the post conviction period;
- (iii) faced agony of trial for a considerable long time and
- (iv) being a sole bread earner.

In the case of **Roshan Lal vs. State of Punjab** 2006 (1) RCR (Crl.) 795, the occurrence being 17 years old, the accused was released on probation.

A reference in this regard is required to be made to Section 12 of the Probation of Offenders Act, 1958, which reads thus:-

“12. Removal of disqualification attaching to

conviction .- Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:
Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence.”

Nothing has been brought out in the present case by the learned State counsel that the petitioner/ appellant was a previous conviction or had indulged in any criminal activity during the post conviction period or that he had ever misused the concession of bail. In fact, the learned counsel for the petitioner/ appellant had submitted that the petitioner /appellant is the sole bread winner of the family and will abide by all conditions, which may be imposed. In the peculiarity of the facts and circumstances of this case as also in view of the judgments afore referred, the petitioner / appellant deserves to be released on probation of good conduct.

Accordingly, the petitioner/ appellant be released on his furnishing a bond of good behaviour for one year with one surety to the satisfaction of the Duty Magistrate/ CJM concerned under the Probation of Offenders Act, 1958. He will during his probation period, he will keep the peace and be of good behaviour.

Disposed of accordingly.

28.9.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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