

2023:PHHC:111091
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

254 CRR-645-2023
Date of decision: 24.08.2023.

PURAN SINGH AND OTHERS ...PETITIONERS

Versus

STATE OF HARYANA AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J.S. Yadav, Advocate for the petitioner.
Mr. Rajiv Sidhu, DAG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This criminal revision is filed aggrieved of release of the accused (private respondents) on probation in case of FIR No. 200, dated 10.09.2008, under Sections 148, 149, 323, 325 of the IPC, registered at Police Station Khol, Rewari.
2. On 09.09.2008, report was received from the Government Hospital, Rewari that the petitioners (in the present petition) had sustained injuries in quarrel. Incident took place on 08.09.2008 when the wife of Puran Singh went to throw garbage and she was stopped by the family members of Hemraj. There was an altercation, injuries were inflicted with lathi and stones. The accused were convicted on 30.10.2017 and vide order dated 01.11.2017 were sentenced to undergo:-

Under Section	Imprisonment RI	Payment of fine	In default of fine (SI)
323/149 of IPC	6 Months	500/- each	7 days
325/149 of IPC	2 Year	1000/- each	10 days

3. Aggrieved of the order of conviction and quantum of sentence, appeal was preferred. In appeal, restricted prayer was made with regard to quantum of sentence.

4. The appellate Court took into consideration that the private respondents faced the agony of trial for more than 14 years. Raj Kumar one of the private respondent had undergone major surgery. No record was produced by the prosecution regarding previous conviction of the private respondents. It was further considered that private respondents had no regular source of income. Relying upon the decision of the Supreme Court of India in Chhanni Vs. State of Uttar Pradesh 2006(3) RCR (Criminal) 753, the private respondents were released on probation on furnishing probation bond to the sum of Rs.30,000/- each. A fine of Rs.15,000/- was ordered to be deposited and to be treated as compensation.

5. Learned counsel for the petitioner submits that the accused had inflicted 22 injuries to the complainant-party. The compensation amount is meager.

6. 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 negatived 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.”

7. In case in hand the appellate Court having conspectus of the facts and considering the background of the private respondents as also that they were not having regular source of income had released them on probation and awarded the compensation of Rs.15,000/-. The contention that the fine is meager lacks merits, in view of the finding of fact recorded by the appellate Court that the accused had no regular source of income. There is no legal or factual error in the impugned order, no case is made out for interference by this Court.

8. The petition is dismissed.
9. Since the main case has been dismissed, pending application, if any, rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

24.08.2023.
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |