

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

CRM-A-112 of 2020 (O&M)

Date of decision: 31st August, 2023

Harbans Lal

Applicant

Versus

Jaswinder Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajesh K. Dadwal, Advocate for the applicant.

AVNEESH JHINGAN, J (Oral):

1. This application under Section 378(3) Cr.P.C. is filed seeking leave to appeal aggrieved of release of respondents No. 1 to 3 on probation and acquitting respondents No. 4 and 5.

2. The brief facts are that the applicant filed a complaint under Sections 323, 341, 352, 355, 120-B, 506 and 149 IPC alleging that on 7.10.2009, there was a road rage and the accused inflicted injuries, used filthy language and threatened to kill him. The trial court vide judgment dated 10.2.2014 convicted the private respondents under Section 323 read with Section 149 IPC. Vide order of even date, they were sentenced to undergo rigorous imprisonment for one year.

3. In the appeal, vide judgment dated 23.3.2015 Jaswinder Singh, Naresh Kumar and Swaran Singh were released on probation on furnishing of probation bond in the sum of Rs.15,000/- each. They were directed to pay compensation of Rs.6,000/- to the complainant. Subash Chand and Sanjeewan Lal were acquitted.

4. The limited grievance raised by learned counsel for the applicant is with regard to the release of respondents No. 1 to 3 on probation. The contention is that eight injuries were inflicted upon the complainant.

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 IPC 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.”

6. It cannot be lost sight that underlining object of punishing the accused is reformation. The appellate court considering that the accused and the complainant belonged to the same village, the antecedents of the accused were clean and they had faced the agony of trial, modified the quantum of sentence and released respondents No. 1 to 3 on probation.
7. The conclusion arrived at by the Appellate Court suffers from no factual or legal error and it was in consonance with the provisions of the Probation of Offender Act, 1958 and Section 360 Cr.P.C.
8. It would be appropriate to note that respondents were released on probation in March, 2015 and there are no allegations that they have not mended their way and were involved in a criminal case thereafter. In other words the steps for reformation of accused were successful.
9. No ground is made for interference. Dismissed.
10. Since the main application is dismissed, consequently the pending application is also dismissed.

[AVNEESH JHINGAN]
JUDGE

31st August, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |