

CRA-S-849-SB-2010 &
CRR-1634-2010

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 30, 2023

1. CRA-S-849-SB-2010

Vijay Kumar and others

...Appellants

Versus

State of Punjab and others

...Respondents

2. CRR-1634-2010

Suman Kumar

...Petitioner

Versus

Vijay Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. K.S. Dadwal, Advocate,
for the appellants in CRA-S-849-SB-2010, and
for respondent Nos. 1 to 4 in CRR-1634-2010.

Mr. S.S. Brar, Advocate,
for the petitioner in CRR-1634-2010, and
for respondent Nos. 2 and 3 in CRA-S-849-SB-2010.

Mr. J.S. Arora, Deputy Advocate General, Punjab.

SANJAY VASHISTH, J.

1. This judgment shall dispose of Criminal Appeal No. CRA-S-849-SB-2010 and Criminal Revision No. CRR-1634-2010, as the same have been filed against the judgment of conviction and order of sentence dated 18.03.2010, passed by learned Additional Sessions Judge, Ferozepur, in Sessions Case No. 96, dated 08.10.2008, arising out of FIR No. 173, dated

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31.05.2008, under Sections 307, 323, 506 and 34 IPC, registered at Police Station City, Abohar.

Criminal appeal has been preferred by four convicts/appellants, namely, (i) Vijay Kumar, (ii) Gauri Shankar, (iii) Sohan Lal and (iv) Ashok Kumar, challenging their conviction and sentence, whereas revision petition has been instituted by the complainant – Suman Kumar, for enhancement of sentence of imprisonment and fine imposed by the learned Trial Court.

FACTS:

2(i). As per prosecution version, aforementioned FIR was lodged on the basis of statement dated 31.05.2008, got recorded by the complainant – Suman Kumar, wherein he stated that:-

“he is resident of village Alamgarh and all the three brothers are doing the work of agriculture jointly. Yester-night they were having their turn of water and when his brother Jatinder along with Khiali Ram son of Mainpal had gone to irrigate their field, Subhash etc. were trying to get their fields irrigated from personal khal of the complainant and when they were refrained by Jatinder and Khiali Ram from doing so, they inflicted injuries on the persons of Jatinder and Khiali Ram. About this fight at about 10.30 p.m. they were informed by Narinder on telephone and then he along with his father Duni Chand, Sat Parkash son of Devi Lal and Madan Lal son of Main Pal, on a Jeep reached the place of occurrence (fields of Jhalwale) where they found that Jatinder and Khiali Ram had suffered injuries and then they were removed to Civil Hospital, Abohar in the Jeep and they were got admitted where doctor started their treatment. He (complainant) and his father were standing outside Emergency Ward of the Civil Hospital, Abohar, where at about 12.15/12.30 in the intervening night on 30/31.05.2008, accused Vijay Kumar armed with a knife, accused Ashok Kumar and Gauri Shankar armed with dangs each and accused Sohan Lal empty handed came there on a Jeep. They started abusing and Sohan Lal accused raised a lalkara that Duni Chand etc. be caught hold and they be taught a lesson for not

letting them to irrigate their fields through the khal. Sohan Lal then caught hold of his father and Vijay Kumar gave a blow of the knife aiming towards abdomen of his father with an intention to kill him. His father suffered injury and fell down and when he came forward to rescue his father, accused Gauri Shankar gave a dang blow on his head and Ashok Kumar also gave a dang blow on his right ankle. When he and his father raised rousa saying 'Na-mar-o-na-mar-o', Sat Parkash son of Devi Lal came at the spot and he witnessed the entire occurrence and then other people also gathered at the spot and the accused fled away from the spot along with their weapons in their Jeep. Cause of fight was that Sohan Lal and his brother Subhash etc. were attempting to irrigate their land from the personal khal of the complainant forcibly and illegally and when Jatinder has refrained them from doing so, they committed the offence earlier in the field of village Alamgarh and when complainant and his father, after getting Jatinder and Khiali Ram admitted in the Emergency Ward of the Hospital were standing outside the Ward, they were inflicted injuries by the accused with an intention to kill them. Since condition of his father was serious, so he was referred to D.M.C & Hospital, Ludhiana by the doctor."

2(ii). During investigation, Sohan Lal and Ashok Kumar (appellant Nos. 3 and 4) were placed in Column No. 2 of the report under Section 173 Cr.P.C., whereas Vijay Kumar and Gauri Shankar (appellant Nos. 1 and 2) were charged for the offences punishable under Sections 307/323/506/34 IPC, to which they pleaded not guilty and claimed trial.

After examination of the complainant – Suman Kumar, as PW-1, on an application, under Section 319 Cr.P.C., moved by the prosecution, Sohan Lal and Ashok Kumar (appellant Nos. 3 and 4) were summoned to face trial and later on they were also charged for the same offences.

2(iii). After evaluating the evidence and hearing both the sides, learned Trial Court has concluded in para No. 32 of the judgment of conviction, dated

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18.03.2010, as under:-

“32. In the light of what has been discussed above, it stands duly proved that accused Vijay Kumar armed with a knife, Gauri Shankar and Ashok Kumar armed with dangs and Sohan Lal empty handed with their common intention committed the offence and in pursuance of their common intention accused Vijay Kumar gave a knife blow on the abdomen of Duni Chand and which injury was declared to be dangerous to life and accused Gauri Shankar and Ashok Kumar gave one dang blow each on the person of Suman Kumar, which injuries were declared to be simple in nature and since all the accused done so with the common intention, so all the accused are held guilty. As such accused Vijay Kumar is convicted under sections 307, 323/34, and 506 IPC; whereas, accused Gauri Shankar and Ashok Kumar are convicted under sections 307/34, 323, 323/34 and 506 IPC and accused Sohan Lal is convicted under sections 307/34, 323/34, and 506 IPC. Let they be heard on the quantum of sentence to be awarded to them.”

2(iv) Vide separate order dated 18.03.2010, passed by learned Trial Court, all the four convicts (appellants herein) were ordered to undergo sentence as under:-

Name of convict/ appellant	Under Section	Sentence	Fine	In Default
Vijay Kumar	307 IPC	7 years R.I.	10,000	2 months R.I.
	323/34 IPC	2 months each count	--	--
	506/34 IPC	6 months	—	--
Gauri Shankar	307/34 IPC	4 years R.I.	Rs.2,000/-	30 days R.I.
	323 IPC	2 months	--	--
	323/34 IPC	2 months for each count	--	--
	506/34 IPC	6 months	--	—
Sohan Lal	307/34 IPC	4 years R.I.	Rs.2,000/-	30 days R.I.
	323/34 IPC	2 months for	--	--

		each count		
	506 IPC	6 months	--	--
Ashok Kumar	307/34 IPC	4 years R.I.	Rs.2,000/-	30 days R.I.
	323 IPC	2 months	--	--
	323/34 IPC	2 months for each count	--	--
	506/34 IPC	6 months	--	--

All the substantive sentences have been ordered to run concurrently.

3. Criminal appeal was admitted and recovery of fine during pendency of appeal was stayed, vide order dated 01.04.2010. Sentence of Gauri Shankar (appellant No. 2) was suspended vide order dated 31.08.2010, whereas sentence of remaining three appellants, i.e. Vijay Kumar, Sohan Lal and Ashok Kumar, was suspended vide order dated 27.01.2011.

Revision petition filed by the complainant – Suman Kumar, was ordered to be heard with the criminal appeal, vide order dated 24.08.2011.

4(i). During the pendency of the appeal and revision petition, the appellants filed Criminal Miscellaneous Application Nos. CRM-23418-2022 & CRM-23419-2022 in CRA-S-849-SB-2010, for impleading injured – Duni Chand and complainant – Suman Kumar, as respondent Nos. 2 and 3, and to decide the appeal in view of compromise (Annexure A-1) as well as affidavits of the victims (Annexures A-2 & A-3) in the appeal.

4(ii). While allowing the aforementioned applications, and taking up the main appeal for consideration, a Co-ordinate Bench of this Court passed the

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following order on 01.05.2023:-

“CRM No.23418 of 2022

This is an application under Section 482 Cr.P.C to implead Duni Chand son of Roop Chand; and Suman Kumar son of Duni Chand, residents of Village Alamgarh, Tehsil Abohar, District Fazilka as respondents No.2 and 3, they being the victims of crime having suffered injuries.

Learned counsel for the complainant has no objection.

Application is allowed.

Duni Chand and Suman Kumar are permitted to be impleaded as respondents No.2 and 3.

Amended Memo of Parties is taken on record.

CRM No.23417 of 2022

This is an application to permit the applicants-appellants to place on record documents Annexures A.1 to A.3 along with Amended Memo of Parties and also to exempt from filing the certified copies of Annexures A.1 to A.3.

Annexures A.1 is the copy of compromise dated 04.04.2022 stated to have been effected between the parties. Annexures A.2 and A.3 are the duly sworn affidavits of injured Duni Chand and Suman Kumar, in respect of the compromise.

Learned counsel for the complainant has no objection.

Annexures A.1 to A.3 are taken on record.

Disposed of.

CRM No.23419 of 2022

By way of this application, prayer is made to decide the appeal by keeping in view the compromise dated 04.04.2022 (Annexure A.1) and the affidavits (Annexures A.2 and A.3) of the

victims.

Disposed of. The main appeal is being taken up today itself for consideration.

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1. *In Sessions Case No.96 of 2008 arising out of FIR No.173 dated 31.05.2008 registered at Police Station City Abohar under Sections 307/323/506/34 IPC, the four appellants have been convicted and sentenced vide judgment of conviction and order of sentence both dated 18.03.2010, as under: -*

<i>Name of the convict</i>	<i>Convicted U/s</i>	<i>RI for</i>
<i>Vijay Kumar</i>	<i>307 IPC</i> <i>323/34 IPC</i> <i>506/34 IPC</i>	<i>7 years + fine of ₹10,000/- + default sentence of RI for 2 months</i> <i>2 Months</i> <i>6 Months</i>
<i>Ashok Kumar & Gauri Shanker</i>	<i>307/34 IPC</i> <i>506/34 IPC</i> <i>323 IPC</i> <i>323/34 IPC</i>	<i>Four years + fine of ₹2,000/- each + default sentence of R.I for 30 days each</i> <i>6 Months</i> <i>2 Months</i> <i>2 Months</i>
<i>Sohan Lal</i>	<i>307/34 IPC</i> <i>323/34 IPC</i> <i>506 IPC</i>	<i>4 years + Fine of ₹2,000/-</i> <i>2 Months</i> <i>6 Months</i>

However, all the substantive sentences were ordered to run concurrently.

2. *Against the above-said judgment of conviction and order of sentence, the present appeal was filed on various grounds. The appeal was admitted and recovery of fine was stayed vide order dated 01.04.2010. The sentence of all the appellants was also suspended from time to time.*

3. *During pendency of the appeal, compromise is stated to have been effected amongst the parties. It is submitted by learned counsels that parties are residents of same village. They*

were locked up in various civil and criminal litigation. All the disputes, civil as well as criminal, have been amicably settled and the compromise was reduced into writing on 01.04.2022, copy of which is Annexure A.1. Both the injured of the case Duni Chand and Suman Kumar, have submitted affidavits, as per which they have been duly compensated and so they have no objection for accepting this appeal by setting aside the conviction.

4. *Although learned counsel for the complainant has no objection to accept the appeal on the basis of compromise and to set aside the impugned judgment of conviction and order of sentence but learned State Counsel has pointed out that conviction has also been recorded under Section 307 IPC, which is a heinous crime and so judgment of conviction cannot be set aside on the basis of compromise.*

5. *In **Ramgopal and another Vs. State of Madhya Pradesh, 2021 SCC Online SC 834**, it has been held that criminal proceedings involving non-heinous offences or where offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has been concluded and appeal stands dismissed against conviction, under extraordinary powers enjoined upon the High Court under Section 482 Cr.P.C.*

6. *Thus, quashing can be allowed under Section 482 Cr.P.C. on the basis of compromise, even after recording the conviction.*

7. *Further, in **State of Madhya Pradesh V. Laxmi Narayan and others, (2019) 5 SCC 688**, it has been held by Hon'ble Supreme Court that offence under Section 307 IPC falls in the category of heinous and serious offences and, so, is to be treated as crime against society and not against the individual alone. However, the High Court would not raise its decision merely because there is a mention of Section 307 IPC in the FIR or the charges framed under this provision. It is open to the High Court to examine as to whether the incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. In the same manner, it is required to be seen by the High Court as to whether power under Section 482 Cr.P.C. should be exercised to quash the proceedings on the basis of compromise or not.*

8. *In the present case, perusal of the impugned judgment would reveal that injury attracting Section 307 IPC was caused on the person of Duni Chand. The said injury was caused with knife in the abdomen of Duni Chand. The measurements of the solitary injury was just one and half centimeter into half centimeter. Its depth was not probed. The injuries given on the person of other injured, namely, Suman Kumar by the other appellant- accused were simple in nature.*

9. *Apart from the fact that solitary injury in the abdomen of Duni Chand was caused by only one of the petitioners- accused – Vijay, it is important to notice that occurrence had taken place way back on 31.05.2008 i.e., almost 15 years back. Custody certificate placed on record by learned State Counsel also reveal that appellant Vijay Kumar has earlier undergone actual sentence of 02 years 06 months and 17 days. He or the other convicts- appellants have no criminal antecedents.*

10. *Having regard to the above facts and circumstances of the case, it will not be in the fitness of things to send any of the appellants behind bars, particularly when the parties have buried their hatchet and have compromised the matter with their sweet will. Amicable settlement amongst the parties had taken place not only qua this criminal dispute but also about their civil disputes. Since both the parties are residents of the same village, it will be in the interest of justice that they are allowed to remain in harmony with each other.*

11. *Keeping in view all the above-said facts and circumstances, let both the parties appear before the Court of learned trial Court/Area Magistrate for making the statements regarding the compromise, on or before 04.05.2023 or any other date which may be fixed by it. The trial Court/Area Magistrate shall report to this Court regarding the genuineness of the compromise*

Adjourned to 30.05.2023.”

5. In compliance of the order dated 01.05.2023, both the parties appeared before learned Trial Court on 11.05.2023, and got recorded their statements. Report regarding genuineness of the compromise has been

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received from learned Additional Sessions Judge, Ferozepur, vide Memo. No. 226, dated 15.05.2023, relevant portion of which says as under:-

“ On 11.05.2023, accused Vijay Kumar, Gauri Shankar and Ashok Kumar sons of Faqir Chand along with Sohan Lal son of Hanuman Dass appeared and made joint statement to the effect that due to intervention of the respectables of both the sides, they have voluntarily arrived at a compromise with Duni Chand son of Ram Chand and Suman Kumar son of Duni Chand. Written compromise dated 04.04.2022 has already been submitted before Hon’ble High Court and copy of the same is Mark-C1. Their no other case of any nature with Duni Chand and Suman Kumar is pending in any court throughout India. This compromise is genuine.

On the same day, complainant Suman Kumar also appeared and made statement to the effect that FIR No. 173 dated 31.05.2008 under Sections 307, 323, 506, 34 IPC was registered at Police Station City Abohar at his instance. After investigation, the police presented report under Section 173 Cr.P.C., in which Vijay Kumar, Gauri Shanker, Sohan Lal and Ashok Kumar were convicted and sentenced by the learned court of Sh. Nirmal Singh, the then Addl. Sessions Judge, Ferozepur. Now due to intervention of the respectables of both the sides, he and his father have arrived at a compromise with Vijay Kumar and others. This compromise is genuine and he has no objection if CRA-S-849-SB of 2010 titled as ‘Vijay Kumar and others Vs State of Punjab and others’ is accepted.

Similar statement has been made by Duni Chand son of Ram Chand.

Keeping in view the statements of all above named accused, complainant Suman Kumar son of Duni Chand and Duni Chand son of Ram Chand, this Court submits the report that the complainant party and the accused have arrived at a compromise voluntarily and without any pressure from any side. Their compromise is genuine.”

SUBMISSIONS:

6. Mr. K.S. Dadwal, learned counsel for the appellants submits that

he has got instructions from his clients, not to challenge the judgment of conviction dated 18.03.2010, passed by learned Additional Sessions Judge, Ferozepur. However, on the question of quantum of sentence, learned counsel for the appellants submits that occurrence/fight had taken place way back on 31.05.2008, i.e. almost 15 years back, between co-villagers, over the dispute to irrigate their land. Further submits that since the appellants have already undergone sufficient period of substantive sentence, no useful purpose will be served by sending them behind the bars again. Referring to the report dated 15.05.2023, received from learned Additional Sessions Judge, Ferozepur, learned counsel submits that now better sense has prevailed, and with the intervention of well wishers of both the sides & respectable persons of the area, all the affected parties have decided to resolve the dispute amicably by entering into compromise (Annexure A-1), and both the parties are living peacefully with mutual respect and care for each other. Learned counsel for the appellants, thus, prayed that the appeal filed by the appellants may be disposed of by keeping in view the intent of the compromise, and resultantly all proceedings arising from FIR No. 173, dated 31.05.2008, under Sections 307/323/506/34 IPC, registered at Police Station City, Abohar; including the impugned judgment of conviction and order of sentence, dated 18.03.2010, passed by learned Trial Court may be quashed or appellants may be acquitted/discharged of the charges levelled against them.

7. In Criminal Revision No.1634 of 2010, Mr. S.S. Brar, learned

counsel for the petitioner/complainant – Suman Kumar, and injured Duni Chand, who are also respondents in criminal appeal, has not opposed the submission made by learned counsel for the appellants as regards the compromise (Annexure A-1) and stated that the complainant/victim/injured have no objection in allowing the prayer made by learned counsel for the appellants. Further submits that he has been informed telephonically that an amount of Rs.6,50,000/-, as mentioned in the compromise dated 04.04.2022 (Annexure A-1), has already been received by injured - Duni Chand, through Cheque No. 150076, Punjab and Sind Bank, Branch VPO Alamgarh, Tehsil Abohar, District Fazilka, A/c No. 12911000000021. Learned counsel also stated that he has no objection, if the revision petition filed by the petitioner/complainant – Suman Kumar is disposed of as not pressed, in view of the compromise arrived at between the private parties.

SUBMISSIONS ADDRESSED BY LD. D.A.G. PUNJAB:-

8(i). Mr. J.S. Arora, learned Deputy Advocate General, Punjab, after going through the statements of affected parties and the report dated 15.05.2023, received from learned Additional Sessions Judge, Ferozepur, very fairly admits that the matter has been compromised between the private parties. However, learned State counsel objects the prayer of the appellants for disposal of appeal in view of the compromise (Annexure A-1).

8(ii). While opposing the submissions addressed on behalf of the appellants, learned State counsel submits that the prosecution has been able to

prove that occurrence did take place and for the role attributed to respective appellants, they have been convicted and sentenced by the learned Trial Court by passing well reasoned judgment of conviction and order of sentence for the offences punishable under Sections 307, 323 and 506 read with Section 34 IPC, because it has been proved that they were members of unlawful assembly with common object of causing injuries on the person of injured – Duni Chand.

8(iii). Learned State counsel also produced copies of the custody certificates dated 30.05.2023, showing the period of sentence undergone by the appellants in the present case. Said custody certificates, dated 30.05.2023, are taken on record and Registry is directed to tag the same at an appropriate place of the file.

8(iv). Learned State counsel, thus, submits that the appellants deserve no leniency and the appeals filed by them cannot be disposed of by compounding of offences/quashing the FIR and all other consequential proceedings, as also acquittal/discharge of the appellants on the basis of compromise between the complainant and appellants.

ANALYSIS OF ARGUMENTS & CONCLUSION:

9. I have heard learned counsel for the parties and with their able assistance gone through the record.

10. Since, the appellants have chosen not to assail the judgment of conviction dated 18.03.2010, passed by learned Trial Court; findings recorded therein are affirmed. Consequently, Criminal Appeal No. CRA-S-849-SB-

2010, *qua* conviction part, stands dismissed.

11. Now coming to the sentence part, it is necessary to first notice the period of sentence undergone by the appellants, as per custody certificates available on record, and the same is compiled in a tabular form, as under:-

Name of Appellant	Age (as per their joint statement, dated 11.05.2023, recorded before learned ASJ, Ferozepur)	Actual undergone period
Vijay Kumar	42 years	02 years, 6 months & 17 days
Gauri Shankar	47 years	08 months, 22 days
Sohan Lal	65 years	09 months, 15 days
Ashok Kumar	47 years	09 months, 15 days

12. Admitted facts, necessary to be taken into consideration, for the purpose of deciding quantum of sentence in the present case are that:-

- I. Hon'ble the Supreme Court in the case of **Ramgopal and another v. State of Madhya Pradesh**, 2021 SCC Online SC 834, has held that '*criminal proceedings involving non-heinous offences or where offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has been concluded and appeal stands dismissed against conviction, under extraordinary powers enjoined upon the High Court under Section 482 Cr.P.C.*';
- II. In the case of **State of Madhya Pradesh v. Laxmi Narayan and others**, (2019) 5 SCC 688, it has been held by Hon'ble Apex Court that '*offence under Section 307 IPC falls in the category of heinous and serious offences and, so, is to be treated as crime*

against society and not against the individual alone. However, the High Court would not raise its decision merely because there is a mention of Section 307 IPC in the FIR or the charges framed under this provision. It is open to the High Court to examine as to whether the incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. In the same manner, it is required to be seen by the High Court as to whether power under Section 482 Cr.P.C. should be exercised to quash the proceedings on the basis of compromise or not.’;

- III. Injury attracting Section 307 IPC was caused with a knife in the abdomen of Duni Chand. The measurements of the said injury was just 1½ CM x ½ CM, and its depth was not probed. The injuries given on the person of other injured, namely, Suman Kumar were declared simple in nature;
- IV. The occurrence had taken place way back on 31.05.2008 i.e., almost 15 years back;
- V. Both the sides have amicably resolved their disputes. Amicable settlement amongst the parties has taken place not only qua criminal dispute, but also about their civil disputes, as is evident from compromise;
- VI. In terms of the compromise, dated 04.04.2022, injured – Duni

Chand has already received a sum of Rs.6,50,000/-;

VII. Report dated 15.05.2023, has been received from learned Additional Sessions Judge, Ferozepur, regarding genuineness of the compromise;

VIII. For the last about 15 years, the appellants are facing the agony, i.e. after registration of the case vide FIR No. 173. dated 31.05.2008;

IX. Since both the parties are co-villagers, it will be in the interest of justice that they are allowed to remain in harmony with each other; and

X. No fruitful purpose will be served by sending the appellants back to jail.

13. Accordingly, impugned order of sentence, dated 18.03.2010, passed by learned Trial Court, is modified, and the period of substantive sentence awarded by learned Trial Court is reduced to the extent of period already undergone by the appellants. However, there shall be no change in the fine amount imposed by the learned Trial Court.

All the four appellants are burdened with the cost amount of Rs.5,000/- each (total Rs.20,000/-), in addition to the fine already imposed by the learned Trial Court, to be deposited before the learned Trial Court/Area Magistrate/Duty Magistrate, within a period of four weeks from the date of receipt of a certified copy of this judgment.

14. With the above modification in the order of sentence dated

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18.03.2010, passed by learned Trial Court, **Criminal Appeal No. CRA-S-849-SB-2010 and pending criminal miscellaneous application(s), if any, stand disposed of.**

15. In view of statement made by Mr. S.S. Brar, learned counsel for the petitioner/complainant – Suman Kumar, Criminal Revision No. CRR-1634-2010, stands disposed of as not pressed.

16. Registry is directed to send back original lower court record alongwith a copy of this judgment to learned Trial Court/Area Magistrate/Duty Magistrate, for taking further steps with regard to the recovery of fine, if yet to be recovered from the appellants, as well as the cost amount imposed by this Court, in accordance with law.

**(SANJAY VASHISTH)
JUDGE**

May 30, 2023

Pkapoor

Whether Speaking/Reasoned: **YES/NO**

Whether Reportable: **YES/NO**