

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

CRR-2380-2009 (O&M)

Date of Decision: February 16, 2023

Ashok Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Arun Singla, Advocate for
Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Vivek Khatri and Mr. Ram Kumar Saini,
Advocates for respondent Nos.2 and 3.

DEEPAK GUPTA, J.(Oral)

Petitioner is aggrieved by the order dated 17.04.2009 passed by the Court of learned Additional Sessions Judge, Panipat, whereby respondent Nos.2 and 3 have been extended the benefit of probation in a case arising out of FIR No.98, dated 03.04.2000, registered at Police Station Samalkha, District Panipat, under Section 148, 149, 323, 324 and 325 of IPC.

2. It is revealed that occurrence had taken place on 02.04.2000. FIR was lodged on the statement of petitioner Ashok Kumar, as per which he and his family members, namely, Pardeep, Sandeep, Kedar Nath and Krishna Devi were caused injuries with weapons by respondent Nos.2 and 3 and four of the other family members, namely, Atma Ram, Seema, Anguri and Pooja.

3. After investigation, challan was filed. Trial was held and learned Judicial Magistrate 1st Class, Panipat, vide judgment dated 27.02.2008 recorded in criminal case No.198-1 of 2005 convicted only respondent Nos.2 and 3, namely Rakesh Kumar and Radhey Shyam

under Sections 323, 324 and 325 IPC read with Section 34 of IPC,

CRR-2380-2019 (O&M)

though acquitted the other accused, namely Atma Ram, Seema, Anguri and Pooja. Vide separate order dated 29.02.2008, the two convicts i.e. respondent Nos.2 and 3 were sentenced to undergo varying period of imprisonment for committing the offences under Sections 323, 324 and 325 of IPC.

4. In the criminal appeal No.15 of 2008 preferred by respondent Nos.2 and 3, the Court of learned Additional Sessions Judge, Panipat, vide judgment dated 17.04.2009, though maintained the conviction but directed respondent Nos.2 and 3 to be released on probation for a period of one year on their furnishing probation bonds. They were also directed to pay amount of ₹20,000/- to the complainant party by way of compensation to be shared amongst the injured in equal shares.

5. Challenging the above said order, whereby the benefit of probation was extended to respondent Nos.2 and 3, it is contended by the petitioner that learned Additional Sessions Judge, Panipat wrongly observed that civil litigation was pending amongst the parties, though there was no such material on record. It has also been wrongly observed that respondent Nos.2 and 3 faced protracted trial till February, 2008, ignoring the fact that even the petitioner's side had also faced the agony of trial to get justice. The observation of learned Additional Sessions Judge, Panipat, to the effect that there is no complaint of any recurrence of any altercation, is also factually incorrect because later on, sister of the petitioner was caused injuries on 24.03.2007 regarding which FIR No.140 dated 02.04.2007 under Section 323/324 IPC was registered at Police Post Sector 29, Panipat. Learned Additional Sessions Judge, Panipat, also lost sight of the fact that numerous injuries were caused to the complainant party

CRR-2380-2019 (O&M)

including injury on the left parietal region on the person of Ashok Kumar (petitioner).

6. Although, learned State counsel appearing for respondent No.1 supported the case of petitioner, but counsel for respondent Nos.2 and 3 has defended the impugned order.

7. Having considered the submissions of both the sides, this Court is not inclined to interfere in the impugned order.

8. It is noticed that occurrence had taken place way back in April, 2000, i.e. almost 23 years back. Although, four injuries to Ashok Kumar (petitioner), four to Pardeep, three each to Sandeep, Kedar Nath and Krishna Devi were caused but except for one injury, all other injuries were simple in nature. Only one injury on the person of Kedar Nath was grievous, which was a fracture in the distal end of his left ulna i.e. not on the vital part of the body. It is not disputed that petitioner's and the respondents' party are closely related to each other. No purpose shall be served by sending the respondent Nos.2 and 3 behind the bars in the company of hardened criminals, after such a long time from the date of occurrence, without giving them opportunity to reform themselves. The probation period has already come to an end. The complainant party has already been allowed compensation.

9. Having regard to all the aforesaid facts and circumstances, the impugned order 17.04.2009 extending the benefit of probation to respondent Nos.2 and 3, is hereby maintained. This petition is dismissed.

February 16, 2023

sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No