

CRR-3899-2014
CRR-353-2015

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

Sr. No.229

CRR-3899-2014 (O&M)
Date of decision : 21.02.2023

Kuldeep

.....Petitioner(s)

Versus

State of Haryana

..... Respondent(s)

CRR-353-2015 (O&M)

Ram Kishan

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.JP Sharma, Advocate for the petitioner(s)
in CRR-3899-2015

Mr.Sushil Sheoran, Advocate
for the petitioner in CRR-353-2015
for the complainant in CRR-3899-2015

Mr.Tanuj Sharma, AAG, Haryana

Mr.PK Parmar, Advocate for respondent No.2
in CRR-353-2015

Mr.DPS Bajwa, Advocate for respondent No.3
in CRR-353-2015

AMAN CHAUDHARY, J.

This order shall dispose of both the abovementioned petitions
arising out of the same judgment.

Challenge in CRR-3899-2014 is by the convict petitioner-
Kuldeep, is to the judgment dated 21.11.2014 passed by learned Additional
Sessions Judge, Bhiwani, dismissing the appeal filed against the judgment

of conviction/order of sentence dated 25/26.11.2011 passed by learned Sub Divisional Judicial Magistrate, Siwani Camp, whereby he was convicted and sentenced to undergo RI for 6 months and to pay a fine of Rs.300/-, in default to further undergo RI for 15 days for the offence under Section 323/34 IPC; to undergo 1½ years and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo RI for one month for the offence under Section 325/34 IPC and further sentenced to undergo RI for 6 months and to pay a fine of Rs.300/-, in default of payment of fine, to further undergo RI for 15 days for the offence under Section 506/34 IPC; whereas accused Pawan who was also convicted for the offence under Sections 323/325/505 IPC read with Section 34 IPC, but was released on probation.

Challenge in CRR-353-2015, is by the complainant petitioner-Ram Kishan to the judgment dated 21.11.2014 passed by learned Additional Sessions Judge, Bhiwani affirming the release of respondent No.2-accused Pawan on probation by the trial Court.

Briefly put, the facts of the case are that Ram Singh complainant made a statement to the police stating therein that on 04.01.2007 at about 6.30/7 am, when he alongwith his wife Roshni Devi after milching the cattle were returning home and reached near the house of Prithvi, where Prithvi, Azad Pati and Kuldeep, Babli, Dharmo, Pawan were present. Pawan caught hold of him and Prithvi gave several blows on his left hand. Dharmo caught hold his wife Roshni and Kuldeep gave kick blows to her, upon which she fell down, despite that, she was kicked by him.

She received injuries on left eye. Thereafter, Babli, Dharmo and Azadpati also gave fist blows and kick blows to his wife. When they made noise, his brother Bijender and his brother-in-law Bhim Singh, came and rescued them. The accused left the place by giving threats to them. They were rushed to Hospital at Bawanikhera for treatment. On the said statement, a case was registered against the accused and after the completion of all the formalities, challan was presented against them. Finding a prima facie case, learned trial Court framed the charges against the accused for commission of offences punishable under Sections 147, 148, 323, 325, 506 read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

The prosecution, with a view to prove its case, produced 8 prosecution witnesses, besides placing on record other documentary evidence.

On close of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material was put to them but they denied the allegations and claimed themselves to be innocent. However, no evidence in defence was led by them.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has proved its case, bringing home guilt against Kuldeep, petitioner in CRR 3899 of 2014 and Pawan-respondent no.2 in CRR 353 of 2015, whereas Azadpati was acquitted, as the prosecution has failed to prove its case against her. Accused Kuldeep was

convicted and sentenced as mentioned above, whereas Pawan was released on probation by the trial Court.

Feeling aggrieved, convict-petitioner Kuldeep had filed an appeal before the learned Additional Sessions Judge, Rewari which was dismissed vide impugned judgment dated 15.02.2021, whereas the appeal filed Ram Kishan-complainant was partly allowed and Azadpatti was also convicted under Sections 323, 325, 506 read with Section 34 IPC but released on probation. However, appeal qua Pawan was dismissed.

Hence, the present revision petitions.

Learned counsel for petitioner-Kuldeep at the outset submitted that he does not wish to challenge his conviction and prays for his release on probation as the incident pertains to the year 2007; he and the complainant are the residents of the same village; he never misused the concession of bail granted by the Court, has not repeated any such offence, which shows improvement in his behaviour and conduct. He is a poor person, the only breadwinner in the family and has school going children. The petitioner has already undergone 5 months and 27 days as per the custody certificate dated 23.01.2023 produced by the learned State counsel. Further that no common intention in the present case was not proved. The allegations were on Prithvi having got cut the Neem tree in the 'Gher' of his house, which had fallen in the residential house of Ram Kishan-PW5 and caused cracks in the wall, that led to the confrontation. There was no enmity between the parties. Azadpati was wife of Prithvi and they were issueless. Prithvi owned 10 acres of land was given for cultivation to his brother-in-law (sala), which

complainant-Ram Kishan, being his nephew wanted to grab and thus, falsely registered the present case to put pressure on Prithvi, who died during pendency of the case. The petitioner being in Government job and the sole bread earner in his family, having liabilities of 5 members of the family was falsely implicated to affect his job, fearing which he, also being a nephew, may leave his claim over the land of Prithvi. Pawan was son of petitioner's sister (bhanja) and a student, as such was involved.

Learned State counsel affirms the aforesaid facts and states that he has no objection, if the prayer is allowed.

Learned counsel for the complainant-petitioner in CRR-353-2015, submits that Kuldeep has been rightly convicted, Azadpati should not have been granted probation considering she had put red chillies in the eyes of his wife-Roshni and has violated the condition of probation as he and his family due the fear of the accused have left the village and they were not being allowed to cultivate their land. Accused-Pawan Kumar had played an active role in the incident and failed to prove that he was a student of B.Tech. Further that the petitioner has not been awarded any compensation, despite it coming on record that he had suffered a fracture on his left arm. Thus, he prays for the cancellation of their probation.

Heard and perused.

In the case of **Paramjit Singh vs. State of Haryana** 2011(2) RCR (Crl.) 855, this Court allowed probation to the appellant, who was a Haryana Govt. servant, remained in custody for 11 days, suffered agony of protracted trial for more than 16 years, was not a previous convict, had not

misused the concession of bail, had 5 children, wife and old aged parents to support. Likewise, in CRR-444-2019, titled as **Sunil Kumar vs. State of Haryana**, decided on 22.07.2019, this Court ordered the release of the petitioner on probation of good conduct, in view of the mitigating circumstances, he being not a previous convict had shown substantive improvement in his character after 7 years had passed by, was sole bread earner and a driver in Haryana Roadways. In the case of **Umed Singh and Others versus Azad Singh and another**, CRR-2734-2015 decided on 04.04.2019 also the conviction of the petitioner was upheld and the sentence was modified and the petitioners were directed to be released for probation of 2 years. In all the above cases, the accused were held entitled to benefit of probation which may not have effect on their career in terms of Section 12 of the Probation of Offenders Act.

In CRR-353-2015, while sentencing accused Pawan Kumar and releasing on probation the learned trial Court has observed that he is studying in B.Tech and is a young boy and if he is sent to the jail, it would make him to accompany hardcore jail inmates and there would be no chance of his reformation, seems justified. After his release, he did not misuse the same, which shows his improvement in his character. In the case of **Rajiv Kumar versus State of Haryana** in CRR-2515-2018 decided on 01.08.2018, the petitioner who had passed his B.tech and was preparing for his competitive examination for procuring a Govt. job was allowed to be released on probation of one year by observing that the judgment of conviction and sentence may not affect his service career in view of Section

12 of the Probation of Offenders Act. The learned Appellate Court while releasing accused Azadpati on probation observed that she is an issue less widow aged 65 years and usually remains ill. Moreover, after her release, she did not misuse the same. The learned counsel for the complainant has not been able to point out any specific instance of misuse except general allegations, that too not qua the respondents-Azadpati and Pawan or demonstrate that any complaint was made in that regard. Therefore, this Court finds no substance in the arguments raised by learned counsel for the complainant-petitioner in CRR-353-2015.

Considering the facts and circumstances of the case that the parties are residents of the same village, the dispute being fall of a tree on the wall of the complainant leading cracks, the allegations regarding cutting of the same being on co-accused Prithvi, who had since died, nature of offence, no instance of petitioner having repeated any of the alleged offences or rebuttal to the fact that he has shown improvement in his behaviour and conduct during the period from the date of incident till date, his character, the petitioner is a Govt. servant, first offender, sole bread winner of his family, having two daughters of marriageable age, a school going son and has faced the pangs of protracted trial for last about 15 years, there being no previous enmity, is entitled to be granted the benefit of probation of good conduct, as Hon'ble The Supreme Court of India has held in the case of **Hari Singh vs. Sukhbir Singh**. 1988 SCC (Cri) 984, that extending the benefit of probation to first-time offenders is generally not inappropriate. Still further that the humanising principle was extended

even to a conviction under Part II of 304 IPC in **State of Karnataka vs. Muddappa** 1999 SCC (Cri) 1046, in which case the benefit of release on probation was granted to the convict.

Keeping in view the aforesaid discussion, judgments referred to above, CRR-3899-2014 stands disposed of with a direction to release petitioner- Kuldeep on probation for a period of one year subject to the deposit of Rs.15,000/- as compensation under Section 357 CrPC to complainant-Ram Kishan and he is entitled to the benefit of Section 12 of the Probation of Offenders Act, 1958, so as to not effect his service career, on the following conditions:-

- (1) He shall execute a bond for good behaviour with two solvent sureties in a sum of Rs.25,000/- and the bond shall be executed before the trial Court within one month from today.
- (2) The said bond shall be in force for a period of two years.
- (3) He shall be subject to the supervision of the Probation Officer and subject to the conditions laid down in the Probation of Offenders Act.

Insofar as, CRR-353-2015 filed by the complainant-petitioner is concerned, the same is dismissed for reasons mentioned above.

Photocopy of the judgment be placed on the file of the connected case.

21.02.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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