

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-4398-2015 (O&M)
Date of decision: 28.02.2023

MOHINDERJIT SINGH

....Petitioner(s)

Versus

UT OF CHANDIGARH

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. J.S. Mehndiratta, Advocate for the petitioner

Mr. J.S. Toor, Additional PP for UT Chandigarh

AMAN CHAUDHARY. J.

Challenge in the instant revision petition is to the judgment dated 20.10.2015 passed by the learned Additional Sessions Judge, Chandigarh whereby this appeal against the judgment dated 07.07.2015 passed by learned JMJC, Chandigarh convicting and sentencing the petitioner for the offence under Sections 279/304-A of the IPC has been dismissed.

Briefly put, the facts of the case are that on 12.07.2011, the car bearing No. PB-65 K-6559 driven by the accused-petitioner in a rash and negligent manner while coming from the chowk of Sector 29-30-28-27 towards light point of Sector 29-30, hit the scooter bearing No.CH01W-5917 and due to impact of the accident, the rider of the scooter fell on the bonnet of the car and fell on the left side of the road. The driver stopped the car and disclosed his name as Mohinderjit Singh to the complainant-HC Palwinder Singh. On the basis of this statement, a ruqa was sent to the police station and FIR got registered against the

accused-petitioner. Rough site plan of the place of incident was prepared and the accused-petitioner was arrested, the statements of witnesses under section 161 of Cr.P.C were recorded and after completion of the investigation, the challan was presented before the Court.

Thereafter, finding a *prima facie* case for commission of offences punishable under Sections 279, 304-A IPC, the accused was charge sheeted under the said Sections, to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined as many as 8 prosecution witnesses.

The statement of accused Mohinderjit under section 313 Cr.P.C. was recorded in which all the incriminating evidence appearing against the accused was put to him to which he pleaded innocence and false implication.

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, and accordingly convicted the petitioner-accused under Sections 279 and 304-A IPC and sentenced him for a period of 02 years.

Aggrieved convict-petitioner filed an appeal before the learned Additional Sessions Judge, Chandigarh which was dismissed vide impugned judgment dated 20.10.2015

Hence, the present revision petition.

Learned counsel at the outset submits that the petitioner does not wish to challenge his conviction and prays for his release on probation in view of the mitigating circumstances being that, the incident pertains to the year 2011; he has already undergone about 7 months out of 02 years of sentence awarded; had deposited a sum of Rs.70,000/- as compensation to be paid to the LRs of the

deceased as directed by this Court order dated 07.04.2016; he is a first offender, government employee and the only breadwinner of his family.

Learned Additional Public Prosecutor submits that the petitioner to have undergone a sentence of 6 months and 23 days and states that he has no objection if the prayer made by the learned counsel for the petitioner is allowed.

Heard and perused.

It would be profitable to make a reference to the judgments in the cases of **Aitha Chander Rao V/s State of Andhra Pradesh**, 1981 (Supp) SCC 17, 1995 Supp (2) SCC 385 **A.P.Raju V/s State of Orissa** and **Om Prakash v. State of Haryana** [(2001) 10 SCC 477 : 2003 SCC (Cri) 799] **State of Karnataka vs. Muddappa** 1999 SCC (Cri) 1046, wherein Hon'ble The Supreme Court of India extended the humanizing principle to a conviction where *mens rea* remains absent as in a case of rash and negligent driving under Section 279 read with Section 304-A IPC and convict is first-time offender, who has faced protracted trial, no purpose would be served to suffer the sentence imposed.

In **Paul George vs State of N.C.T. of Delhi** 2008(2) RCR (Crl.) 478, the appellant, who was Head Constable Driver, had come- face on the incoming traffic, which was the factor that caused the accident, Hon'ble The Supreme Court of India though found that it was clearly not a matter within the colour of duty, thus he was not be covered by Section 140 of Delhi Police Act, however, observed that ends of justice would be met, if he is directed to be released on probation, he having faced and fought the litigation tenaciously that lasted for 20 years and throughout had good service career, but for this one aberration.

This Court also in the case of **Ajaib Singh Vs State of Punjab and another**, CRR 2851 of 2009, decided on 03.03.2022, wherein the petitioner had

been convicted under Sections 304A and 279 and 427 IPC, granted probation as he had undergone a sentence of 3 months and 06 days out of 2 years of the sentence and faced the protracted trial for approximately 09 years.

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 view of the afore-referred judicial pronouncements and considering the peculiarity of facts and circumstances of the present case, the petitioner having undergone about 7 months out of 02 years of sentence awarded to him; first offender; government employee; sole breadwinner of the family and faced the pangs of protracted trial for the last 12 years, is entitled to be granted the benefit of probation of good conduct.

As a corollary to above, the present petition stands disposed of with a direction to release the petitioner on probation for a period of one year subject to the deposit of fine already imposed, which shall be released to the LRs as compensation under Section 357 CrPC 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/- which shall be executed before the trial Court within a period of one month from today.
- (2) The said bond shall be in force for a period of one year.
- (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.

(AMAN CHAUDHARY)
JUDGE

February 28, 2023

S.Sharma(syr)

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