

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-1534-2019 (O&M)

Date of order: 06.10.2023

Gulwinder Singh

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rajiv Joshi, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG Punjab.

Nidhi Gupta, J.

Prayer in the present petition is to set aside order dated 17.05.2019 passed by learned Additional Sessions Judge, Jalandhar whereby the petitioner has been convicted and sentenced under Section 323 IPC.

2. Learned counsel for the petitioner inter alia submits that vide judgment-order dated 09.07.2018 passed by learned trial Court, Phillaur, the petitioner was convicted and sentenced to undergo 3 years' imprisonment for offence punishable under Section 354-B and to pay a fine of Rs.1,000/-, and 3 months' imprisonment under Section 186 IPC (both the sentences were ordered to run concurrently). Learned counsel states that in appeal filed by the petitioner against the said judgment of conviction dated 09.07.2018, the learned Appellate Court has rightly acquitted the petitioner vide judgment dated 17.05.2019 of charges under Sections 354-B and 186 IPC, however, has convicted the petitioner for rigorous

imprisonment of six months under Section 323 IPC and to pay a fine of Rs.500/-, and in default of payment of fine to further undergo rigorous imprisonment for 15 days.

3. Learned counsel submits that it has been rightly recorded by the learned Appellate Court that there were several contradictions in the evidence of various prosecution witnesses. It is submitted that in fact in their cross examination, PW4-Malkiat Singh, PW-5 Rashpal Singh and PW7-Kamaljit had categorically stated that they had not witnessed the occurrence. It is further submitted that there was no medical evidence whatsoever on record to corroborate the allegations leveled by the prosecutrix to lend any credibility to the prosecution case. It is submitted that accordingly, acquittal of the petitioner under Sections 354-B and 186 IPC was based on sound reasoning; however, conviction of the petitioner under Section 323 IPC is perverse and illegal. It is further submitted that once the learned Appellate Court had found that no offence was committed by the petitioner under Sections 354-B and 186 IPC, the entire case of the prosecution being centered around the allegations woven around Sections 354-B and 186 IPC, the petitioner could not have been convicted under Section 323 IPC either.

4. Learned counsel further submits that even immediately after the incident, the alleged prosecutrix had gone to the Civil Hospital, Phillaur for medical checkup, and the doctor did not record any injury on her person, which proves the falsity of the allegations made against the petitioner. Learned counsel further contends that it cannot be believed that the alleged prosecutrix who was only a Peon in the Bank, was given a

separate room for working where the incident is alleged to have occurred. It is submitted that even otherwise, after the registration of the FIR also, no medical of the prosecutrix was conducted and therefore, conviction of the petitioner under Section 323 IPC is liable to be set aside. It is also contended that admittedly, there were no eyewitnesses to the alleged act of molestation on part of the petitioner. Learned counsel further prays that in any event, present petition may be disposed of with the sentence of period already undergone by the petitioner.

5. Learned State Counsel does not oppose the aforesaid prayer made on behalf of the petitioner. Learned State Counsel files custody certificate dated 05.10.2023, which is taken on record. As per the custody certificate, out of sentence of 6 months, the petitioner has undergone total sentence of 2 months 3 days including remission.

6. I have heard learned counsel for the parties.

7. Though arguments have been made on merit, I find no reason to go into the same. I find force in the unopposed submission made by learned counsel for the petitioner to dispose of the present petition with the sentence of period already undergone by the petitioner. It may however, be noted that the petitioner has been convicted under Section 323 IPC, however admittedly, no charge was framed against the petitioner under Section 323 IPC; and the petitioner was charged only under Section 354-B and 186 IPC, of which he has been acquitted. The sentence undergone by the petitioner is not in dispute. As of now the petitioner has admittedly suffered incarceration of about 2 months 3 days out of total sentence of 6 months. There is no previous conviction rendered against him

and no case is pending. Thus, taking note of the aforesaid facts the sentence imposed may be reduced.

8. The sentence of the petitioner has already been suspended by Coordinate Bench of this Court vide order dated 04.07.2019. Considering the aforesaid aspects, I am inclined to modify the sentence to the one already undergone. Ordered accordingly.

9. The present petition is accordingly, **disposed of** by modifying the sentence of 6 months imposed by the Additional Sessions Judge, Jalandhar, to that of the period already undergone.

10. However, the petitioner is directed to deposit the fine of Rs.500/- within two months from today before the learned trial Court, failing which present petition will automatically be considered to have been dismissed.

11. Pending application(s) if any also stand(s) disposed of.

06.10.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No