

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

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CRM-M-13236-2022 (O&M)

Date of decision: 24.04.2023

Balbir Singh @ Balvir Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Pradeep Singh, Advocate for
Mr. Mohd. Yousaf, Advocate for the petitioner

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside of the judgment dated 25.03.2021 passed by Additional Sessions Judge, Jalandhar, whereby revision preferred by the petitioner against order dated 15.11.2019 passed by learned Sub-Divisional Judicial Magistrate, Phillaur had been dismissed.

2. The facts, as per the prosecution case, are that on 19.02.2015, when complainant Parminder Singh was going to his village Bhaini and had reached Ahlowal turn, then Balvir Singh and his son Tejinder Singh came on a bullet motorcycle from behind and struck him. They were also accompanied by some unidentified persons, who started abusing him. Accused-Balvir Singh gave a sword blow and in order to save himself, the complainant raised his right hand, as a result of which, he sustained an injury. Thereafter, accused-Tejinder Singh gave three blows of stick continuously, two of which hit him on his back and one on his forehead. When the complainant raised hue and cry, accused persons fled from the

spot. In the meantime, Varinder Kumar @ Tony came at the spot and took him to Civil Hospital. He had received four injuries, out of which injury no.1 was found to be inflicted with sharp edged weapon and remaining were inflicted with blunt weapon. On the basis of said statement, FIR was registered. After completion of the investigation and other necessary formalities, challan was presented before the Court. The charges were framed against the accused persons under Sections 323/324/34 IPC, to which they pleaded not guilty and claimed trial.

3. In support of its case, prosecution examined PW1 Dr. Yashpal Sharma, PW2 Parminder Singh, PW3 ASI Prithi Raj and PW4 Varinder Kumar. Thereafter, statements of the accused under Section 313 Cr.P.C. was recorded, wherein all the incriminating evidence appearing were put to them. They denied all the allegations and pleaded false implication.

4. The learned trial Court convicted and sentenced the accused-petitioner, to be released on probation vide its judgment and order dated 15.11.2019.

5. Aggrieved, he preferred a revision, which was dismissed by the learned Additional Sessions Judge, Jalandhar vide order dated 25.03.2021.

6. Hence the present petition.

7. Learned counsel for the petitioner submits that the Courts below have committed grave error in ignoring the fact that there was a delay of 3 days in lodging the FIR. There were discrepancies in the statements of the PWs. The complainant had concealed the genesis of the occurrence, wherein even the petitioner had received injuries by the complainant party. No recovery had been

effected from him. The prosecution has failed to prove its case beyond reasonable doubt.

8. Heard learned counsel for the petitioner.

9. It is apposite to make a reference to the judgment of the Revisional Court that affirmed the judgment of conviction by categorically recording its findings as under:

“12. In order to appreciate the rival contentions, it has become obligatory to analyze the testimony of PW 2 Parminder Singh, complainant and PW4 Varinder Kumar, eye witness. Parminder Singh while appearing in the witness box as PW2 has categorically stated on oath that he is a student of DAV College. On 19.02.2015, he is on his motorcycle bearing registration no.PB-37-A-9875 was going to his village Bhaini from Phillaur via Talwan Road. When he reached Allowal turn then Balbir Singh and Tajinder Singh came on a Bullet motorcycle from behind and it was being driven by Tajinder Singh. They struck their motorcycle into his motorcycle. They were also accompanied by an identified person, who were driving Platina motorcycle. Altercation took place between them. At this, accused Balbir Singh gave a blow of sword and in order to save himself, he raised his right hand and as a result of the same, he sustained injuries on the outer side of his right hand. He further stated that he raised hue and cry. Accused Tajinder Singh gave three continuous blows of stick which struck on his back and one of them struck on his forehead. Thereafter, accused fled away from the spot. The entire occurrence was witnessed by Varinder Kumar @ Tony. He further identified the accused present in the Court and proved on record his statement Ex.PA. His version was fully supported and corroborated by PW4 Varinder KUMar @ Tony. These witnesses were cross-examined at length by the learned defence counsel during trial but he has failed to shatter their credibility. There is nothing on the file to doubt the veracity of these witnesses and to discard the oral and documentary evidence adduced on the file. It is further alleged that there are material contradictions in the evidence of these witnesses. This contrition is devoid of any merits. The minor discrepancies as pointed out by the learned defence counsel are not suffice to set aside the cogent and convincing evidence of complainant/injured Parminder Singh and eye witness Varinder Kumar.” (emphasis supplied)

10. It is pertinent to notice that on the basis of the statement of injured Balvir Singh, on the same very day of incident, a DDR No.44 dated 19.02.2015 was recorded in the Roznamcha. MLRs of the injured were handed over by MHC to ASI Pirthi Raj on 22.02.2015, as per which injured Parminder Singh received four injuries, which fully corroborated his ocular version and proved by PW-1 Dr.Yashpal Sharma, Medical Officer, Civil Hospital, Phillaur. PW-4-Varinder Kumar @ Tony, an eye witness, identified the accused-petitioner in the Court and supported the testimony of PW2-Parminder Singh. The prosecution had thus brought home the guilt of the petitioner, based on firm evidence, leading to his conviction, however, considering the nature of offence and plea for taking a lenient view, being a poor person and the only bread winner of his family, the trial Court granted him the benefit of probation. The revisional Court has considered all aspects of the matter and rightly affirmed the judgment of the trial Court, which was well founded as the prosecution was successful in proving the case against the petitioner beyond reasonable doubt. Learned counsel for the petitioner has not been able to demonstrate that there is any glaring defect in the procedure or a patent error is committed in ignorance of law, which has resulted in flagrant miscarriage of justice.

11. The petitioner in the present case has otherwise already availed of the remedy of filing a criminal revision petition, though unsuccessfully before the Additional Sessions Judge, Jalandhar, thus, this petition would amount to a second revision petition under the guise of petition under Section 482 Cr.P.C., as per Section 397(3) Cr.P.C., is the view of this Court, which finds support from the judgment in the case of **Krishnan vs. Krishnaveni and another** 1997(4) SCC

241, passed by Hon'ble The Supreme Court.

12. The High Court can entertain a petition under Section 482 of Cr.P.C. when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when it is felt that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court [See: **Kailash Verma vs. Punjab State Civil Supplies Corpn.,** (2005) 2 SCC 571]

13. No infirmity or perversity in the judgments of the Courts below has been found, thus, the same require no interference. Still further, on the prayer made by the petitioner, already a lenient view had been taken by releasing him on probation by the trial Court.

14. For the foregoing discussion, the present petition being devoid of merits, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

24.04.2023
M.Kamra

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