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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-142-2023 (O&M)

Date of decision : 10.03.2023

Ashok Kumar

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Ms. Pooja Arora, Advocate
for the applicant-petitioner.

Mr. P.S.Grewal, DAG, Punjab.

DEEPAK MANCHANDA, J.(Oral)

CRM-1672-2023

This application has been filed under Section 5 Limitation Act, 1963 for condonation of delay of 226 days in filing the revision petition.

For the reasons mentioned in the application, same is allowed and delay of 226 days in filing the revision is condoned.

Main case

Petitioner-Ashok Kumar has filed this revision petition to challenge the judgment dated 27.09.2021 passed by appellate Court, whereby the judgment dated 04.01.2020 passed by the trial Court convicting the petitioner for the offence punishable under Section 228 of Indian Penal Code, 1860 and releasing him on probation on his furnishing personal probation bond in the sum of Rs.5,000/- for a period of two months as per Section 4 (1) of Probation of Offenders Act, 1958 with the condition that he would maintain

peace and good behaviour during the aforesaid period, was upheld.

The facts in brief as noticed by learned Additional Sessions Judge, Rupnagar in his order dated 27.09.2021 are as under:-

“2.The facts in brief of the case of prosecution are that one case titled as State Vs Sarabjit Singh was pending in the Court of Shri Kanwaljit Singh Bajwa, the then learned Additional Sessions Judge, Ropar. On 25.7.2013, during proceedings of the said case, appellant Ashok Kumar who was complainant in another case titled as State Vs Yashpal Kaushal started creating interruption in the proceedings of the case titled as State Vs Sarabjit Singh. As per case of the prosecution, the appellant insisted the Court to leave his case, otherwise get recovered his two months salary from the accused of the case Yashal Kaushal. The Court apprised the appellant that the said Court has no jurisdiction to direct the accused to make payment and he can initiate proceedings before the appropriate authority. The appellant then showed a document and asked the Presiding Officer to sign the same and to leave his case. An effort was made to pacify him but to no effect. Accordingly, a notice under section 228 of IPC was issued to which the appellant refused to sign. The said notice was ordered to be registered as Criminal Miscellaneous and appellant was asked to submit his reply to the same. The reply was filed to the application and the appellant Ashok Kumar also suffered a statement to contest the case and case was then fixed for evidence of prosecution. However, an application was filed by the appellant before the said Court wherein it was submitted that the Court of Additional Sessions Judge has no jurisdiction to try the case and on the basis of said application, case was then forwarded to the learned Illaqa Magistrate for disposal in accordance with law.”

Learned counsel for the petitioner contends that both the Courts have failed to appreciate the facts that PW-4, who is Additional Sessions Judge, Rupnagar official of the Court has issued the notice under Section 228 of the IPC just to satisfy his whims, which is evident from the notice itself, which was served upon the petitioner and that too when the case titled as “*State Vs. Sarabjit Singh*” was taken up and not when the case titled as “*State Vs. Y.P.Kaushal*” in which the petitioner is complainant. He further contends that none of the prosecution witness supported that the alleged incident took place in the Court of Additional Sessions Judge, Rupnagar. Further, neither any independent witness nor any advocate was examined as prosecution witness. He submits that both the Courts below also failed to appreciate the evidence as none of the prosecution witness stated that how the petitioner interrupted the Court proceedings rather only admitted about the interruption of judicial proceedings. Hence, the conviction under Section 228 of the IPC is bad in law and Court below without application of mind and appreciating the evidence available on record upheld the conviction. Hence the present petition has been filed against the judgments dated 04.01.2020 and 27.09.2021.

On the other hand, learned State counsel submits that the prosecution against the petitioner was initiated on the orders of the Court as he had interrupted the Court proceedings where witness of the prosecution has supported the case and keeping in view the conduct of the petitioner, he does not deserve any concession and also prayed that the present revision petition be dismissed with the costs.

I have heard learned counsel for the parties and have gone through the case file carefully.

The trial Court while passing the judgment dated 04.01.2020, convicted the petitioner for commission of offence punishable under Section 228 of the IPC, but accepted the prayer of the petitioner on the ground that being a poor person, who is only bread winner of his family and a first time offender, took a lenient view and clarified that the object of punishment is not only retributive, but reformative and accordingly granted the benefit of probation to accused/petitioner under Section 4 (1) of The Probation of Offenders Act, 1958 and granted him an opportunity of reformation and of leading a normal life in social mainstream. The petitioner was ordered to be released on probation on furnishing personal probation bond in a sum of Rs.5,000/- within a period of two months subject to giving an undertaking therein to maintain peace and good behaviour during that period and to appear to receive sentence, whenever called upon during such period.

While convicting the petitioner, both the Courts below had mentioned that on 25.07.2013, the matter of the petitioner was called, who requested the Court that one accused, namely, Y.R.Kaushal be asked to pay two months salary, which the concerned school has not paid to him and during Court proceedings, the petitioner intentionally interrupted and tried to create disturbance/ruckus in the Court. Resultantly, the Court served a notice under Section 228 of IPC and also sent him to (Bakshi Khana). Thereafter, the petitioner was apprised about the fact that the case pending before the said Court was criminal in nature and he could avail the remedy before the competent court in accordance with law. However, the petitioner did not relent and started shouting in the Court, thereafter, PW-4-Sh.K.S.Bajwa, the then Additional Sessions Judge, Rupnagar vide his detailed order dated 25.07.2013

initiated the process under Section 228 of the IPC by issuing the notice, which was not signed by the petitioner and the matter was adjourned to 13.08.2013 for filing the reply to the said notice. It is further observed that the zimni order dated 25.07.2013 passed by the then Additional Sessions Judge, Rupnagar, wherein detailed occurrence having taken place in the Court has been discussed and the same is reproduced in the trial Court's judgment at page No.12 para 15. Thus, as per Section 190 (c) Cr.P.C, the Court took cognizance by initiating proceedings under Section 228 of IPC on the basis of occurrence, which had taken place and well recorded in the zimni order. It is also mentioned that issuance of notice has not been denied by the petitioner. Though, the petitioner did not append his signatures on the said notice served under Section 228 of IPC, but had filed reply, who admitted that no FIR was registered against the petitioner, which is also not necessary for taking cognizance in view of the Section 190 (c) of the Cr.P.C. It has also been observed that the case titled as "State Vs. Y.R.Kaushal" and "State Vs. Sarabjit Singh" were listed on the same date i.e.25.07.2013 and the said case i.e."State Vs. Y.R.Kaushal" was already adjourned and the proceedings of the case titled as "State vs. Sarabjit Singh" were being conducted when the petitioner started interrupting the Court and asked to sign a document. Further with regard to sending the petitioner into Bakshi Khana, the petitioner sought information under RTI and placed as Ex.D-9 but there was nothing on record to show that petitioner was ever taken into custody. Moreover, none of the prosecution witnesses i.e.PW-1 to PW-3 endorsed the stand with regard to custody as alleged by the petitioner. The only fact, which is proved that petitioner was made to sit in the Court as to why the notice under Section of 228 IPC was not served upon him. Further, the

petitioner did not examine any of the officials from Bakshi Khana to prove his defence with regard to custody. But Court has power under Section 345 Cr.P.C to detain the offender in custody in the matters pertaining to Sections 175, 178, 179, 180 and 228 IPC. It is also mentioned that PW-1 Sansar Chand Attri, Deputy District Attorney, who was representing the State tried to pacify the petitioner as he was stranger to the case titled as “State Vs. Sarabjit Singh” at the time of occurrence. In the judgments, it is mentioned that the lenient view initiating proceedings under Section 228 of IPC was taken by the Additional Sessions Judge for the reason that the petitioner himself had been contesting his case without engaging any counsel and it is also observed that lack of his legal knowledge permitted the Court to only initiate proceedings under Section 228 of IPC, which was summary in nature, whereas in case the petitioner would have signed the notice, then the Court would have fined him not exceeding Rs.200/- in terms of Section 345 Cr.P.C. But since the petitioner refused to sign the notice, the Court was left with no other option, but to treat this notice as a criminal miscellaneous and to initiate the process against him which led to a lengthy trial i.e. issuance of notice of accusation, evidence by the prosecution, recording of statement under Section 313 Cr.P.C etc.

A perusal of the judgment dated 27.09.2021 passed by the appellate Court shows that every aspect has been gone into and a well reasoned judgment has been passed by the Appellate Court, while upholding the judgment dated 04.01.2020 passed by the trial Court, whereby the petitioner was convicted under Section 228 of IPC, but was granted concession of probation under Section 4 (1) of the Probation of Offenders Act, 1958, considering his family circumstances.

In view of the above, no interference is warranted in the judgments passed by the Courts below.

Consequently, the present revision petition is hereby dismissed.

(DEEPAK MANCHANDA)
JUDGE

10.03.2023

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No