

247 (2 cases)

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

(1)

CRR-906-2022

SHER SINGH

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

(2)

CRR-907-2022

Date of decision: 27.03.2023

SHER SINGH

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Radhe Shyam Sharma, Advocate
for the petitioner(s).

Mr. Ram Kumar Singla, D.A.G., Haryana.

HARSH BUNGER, J.

The present order shall dispose of two criminal revision petitions i.e.

- (i) **CRR-906-2022** titled as “**Sher Singh versus State of Haryana & others**” challenging the judgment dated 02.09.2021 passed by the Court of learned Sessions Judge, Fatehabad in Criminal Appeal No. 16 of 2018 filed by respondents – convicts, whereby the judgment of conviction dated 09.04.2018 passed by trial court was upheld, however the respondents – convicts were ordered to be released on probation;
- (ii) **CRR-907-2022** titled as “**Sher Singh versus State of Haryana & others**” challenging the judgment dated 02.09.2021 passed by the Court of learned Sessions

Judge, Fatehabad in Criminal Appeal No. 17 of 2018 filed by petitioner (Sher Singh) against the judgment of conviction and order of sentence dated 09.04.2018 passed by trial court; seeking awarding of maximum prescribed rigorous imprisonment to respondents and for awarding compensation to petitioner (Sher Singh), was dismissed.

2. Briefly, a case FIR No. 185 dated 29.05.2015 was registered under Sections 323, 341, 506, 148, 149 and 325 of Indian Penal Code (in short “IPC”) at Police Station Bhattu Kalan; on the complaint of petitioner (Sher Singh), wherein he had alleged that on 28.05.2015 from 8:15 p.m. to 9:45 p.m., it was his turn of canal water and he went to the fields alone for irrigating his fields with canal water. As per the complainant, he gave his turn of canal water to Motu son of Ram Kumar on borrowing basis and while he was coming back to his house, then Chhotu son of Tulsi Ram, Dalbir son of Chhotu Ram, Balwan son of Tulsi Ram, Pardeep son of Balwan and Ram Bhagat son of Jai Kishan were giving water in his fields. It was alleged that at about 9:00 p.m., when the complainant asked them not to give the water to his fields, then all of them ran towards him. Chhotu Ram allegedly caught hold of the complainant and Balwan gave a *gandasi blow* on him and in order to save himself, complainant raised his hand and then he received injuries on the finger of his left hand. Dalbir was alleged to have given a *danda blow* on right shoulder of the complainant. Pardeep and Ram Bhagat are alleged to have given slap and fist blows to the complainant. It was further alleged that when the complainant tried to ran away, then all the five accused restrained and gave beatings to him, whereupon the complainant raised noise '*Mar Diya Mar Diya*' then people from nearby fields came there. On seeing them coming, all the

assailants were stated to have ran away from the spot along with *lathi* and *gandasi* and while leaving the spot, all the assailants allegedly extended threats to kill him in future. As per the complainant, his neighbours made a telephonic call to his son Kuldeep who took him to CHC Bhattu Kalan for treatment, from where he was referred to Government Hospital, Fatehabad.

3. As per the complainant, the motive behind the occurrence is that there was some dispute between him and his brother Ram Bhagat regarding the partition of land for the last several days. Accordingly, the above-said case FIR was registered.

4. After investigation, challan was presented in Court and upon finding a *prima facie* case, respondents herein were charged sheeted for the offences punishable under Sections 148 and 341, 323, 325 and 506 read with Section 149 of IPC by the trial Court, to which they pleaded not guilty and claimed trial.

5. Trial Court after appreciating the evidence/material on record, convicted the respondents vide its judgment of conviction dated 09.04.2018 and vide a separate order of sentence dated 09.04.2018, the respondents were awarded the following sentence: -

<i>Offence u/s</i>	<i>Sentence</i>
<i>148 of the Indian Penal Code</i>	<i>Simple imprisonment for one year</i>
<i>323 read with Section 149 of the Indian Penal Code</i>	<i>Simple imprisonment for a period of six months.</i>
<i>325 read with Section 149 of the Indian Penal Code</i>	<i>Simple imprisonment for a period of one year, besides payment of fine of Rs.200/- and in default thereof, further undergo simple imprisonment for one month.</i>

6. Being aggrieved with the aforesaid judgment of conviction and order of sentence dated 09.04.2018, the respondents – convicts filed a Criminal Appeal No. 16 of 2018 before the Court of learned Sessions Judge, Fatehabad. A perusal of the paper-book reveals that one of the convicts namely Balwan, expired and proceedings against him were dropped vide order dated 28.11.2019.

7. On the other hand, petitioner (Sher Singh) also filed a Criminal Appeal No. 17 of 2018 before the Court of Learned Sessions Judge, Fatehabad against the judgment of conviction and order of sentence dated 09.04.2018 passed by trial court; seeking awarding of maximum prescribed rigorous imprisonment to respondents and further seeking compensation.

8. Both the afore-stated appeals were heard and decided by the Court of Sessions Judge, Fatehabad vide separate judgment(s) dated 02.09.2021. Criminal Appeal No. 16 of 2018 filed by respondents – convicts, against the judgment of conviction dated 09.04.2018 passed by trial Court was dismissed and the judgment of conviction was maintained, however the respondents – convicts were ordered to be released on probation. On the other hand, Criminal Appeal No. 17 of 2018 filed by petitioner (Sher Singh) against the judgment of conviction and order of sentence dated 09.04.2018 passed by trial court; seeking awarding of maximum prescribed rigorous imprisonment to respondents and for awarding compensation to petitioner (Sher Singh), was dismissed.

9. Accordingly, the petitioner (Sher Singh) has preferred the above-said two Criminal Revision Petitions before this Court.

10. I have heard learned counsel for the parties and perused the paper book with their able assistance.

11. It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge.

12. As regards the issue of extending benefit of probation to respondents-accused in Criminal Appeal No.16 of 2018 is concerned, it would be apposite to refer to Section 360 Criminal Procedure Code, which reads as follows :

"360. Order to release on probation of good conduct or after admonition:- (1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender; if it appears to the Court before which he is convicted, regard being had to the age, Character or antecedents of the offender; and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that, where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the

Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code, 1860, punishable with not more than two years, imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of

Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu, thereof pass sentence on such offender according to law :

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of Sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant shall be brought forthwith before the Court issuing warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1951), the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders."

13. Under Section 361 Criminal Procedure Code, special reasons are to be recorded in certain cases. Section 361 Criminal Procedure Code reads as under :

"361 Special reasons to be recorded in certain cases. - Where in any case the Court could have dealt with - (a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or (b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so."

14. The provisions of Section 361 Criminal Procedure Code are mandatory in nature and enjoin upon the court to give special reason if convict is not dealt with under Section 360 Criminal Procedure Code.

15. In ***Chandreshwar Sharma v. State of Bihar [2000(9) SCC 245]***, Hon'ble Apex Court observed as under:

"The appellant herein was convicted under sections 379 and 411 Indian Penal Code and was sentenced to rigorous imprisonment for one year as 3.5 kg of non-ferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negatived and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the

provisions of Section 360 of the Criminal Procedure Code should not be made applicable. Pursuant to the said notice, Mr. Singh, the learned Standing Counsel for the State of Bihar has entered appearance. From the perusal of the judgment of the learned Magistrate as well as the court of appeal, and that of the High Court, it transpires that none of the forums below had considered the question of applicability of Section 360 of the Code of Criminal Procedure. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then it shall record in its judgment specific reasons for not having done so. This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the Code of Criminal Procedure. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reason not to apply the provisions of Section 360 of the Code of Criminal Procedure. We accordingly, while maintaining the conviction of the appellant, direct that he will be dealt with under Section 360, and as such, we direct that the appellant be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly."

16. In the instant case, learned Sessions Judge, Fatehabad, while considering the appeal (Criminal Appeal No.16 of 2018) filed by the

respondents herein, upheld the conviction and has further directed their release on probation by holding as under:

“10. I have heard, learned counsel for the appellants and learned Public Prosecutor for the State-respondent and have gone through the case file carefully.

11. While relying on the oral as well as documentary evidence referred above, learned counsel for the appellants has argued that it is a quality and not quantity of evidence which is required to be proved by the prosecution against the accused. Learned counsel for the appellants further argued that the entire prosecution version is false and accused have been roped in a false case. However, during the course of arguments, the appellants have made joint statement in writing that they do not press the appeal qua the judgment of conviction and are only claiming leniency regarding quantum of sentence. The appellants have submitted that they are poor persons and not previously convicts. They have repented their attitude. Lastly, it has been prayed that the appellants be released on probation.

12. Keeping in view the entirety of facts and circumstances of the case as also the provisions of Section 360 and 361 Cr.P.C., this court is of the considered opinion that this is a fit case for releasing the appellants on probation. As per Section 360 Cr.P.C., a person under the age of 21 years being convicted with an offence with fine only or with imprisonment for a term of seven years or less should be released on probation of good conduct keeping in view their age, character etc. and if it is expedient to do so.

13. Section 361 Cr.P.C. further provides that where in any case the court could have dealt with accused under section 360 Cr.P.C. or under the provisions of

Probation of Offenders Act 1958 but if it not done so then it shall record in its judgment the special reasons for not done so.

14. In the present case, learned trial court vide impugned judgment and order of sentence, convicted the appellants in the terms mentioned in para no.1 of this judgment. No circumstance has been brought on record by the prosecution that applicants/accused are previous convicts or that they are habitual offenders. Therefore, keeping in view the facts and circumstances of the case and nature of offence, it is a fit case where benefit of probation should be given to the appellants. Further, the appellants are facing the trial for more than six years, hence, they are certainly entitled to the relief sought by them. Reliance in this regard can be placed upon Banwari vs. State of Haryana reported as 2004(2) RCR (Criminal) 106, Manohar Lal vs. State of Punjab 2004(1) RCR (Criminal) 656 and Ram Pal vs. State of Punjab 2006(2) RCR (Crl) 784. In Banwari Lal's case, Manohar Lal's case and Ram Pal's case (supra) the accused was released on probation on the grounds that the accused was not a previous convict; that there was no evidence on record to show that before or after the registration of the case, the accused had indulged in any other criminal activity and that he had faced the agony of the trial for considerable long period and that he was the sole bread earner of the family.

15. Keeping in view the above discussion, while maintaining the judgment of conviction dated 09.04.2018, it is ordered that the appellants be released on probation of good conduct for a period of six months on their furnishing requisite probation bonds in the sum of Rs.50,000/- with one surety of like amount each to keep peace and be of good behaviour during the period

of probation, failing which they shall be liable to undergo the sentence awarded to them by learned trial court. Further, it is ordered that appellants/accused shall pay a sum of Rs.25000/- each (total Rs.1,00,000/-) as compensation to complainant/injured Sher Singh under Section 357 Cr.P.C. The requisite probation bonds and the amount of compensation be deposited with the learned trial court within one month from today failing which the present appeal shall be deemed to have been dismissed in toto and the appellants/accused shall have to undergo the sentence as awarded by the learned trial court. The compensation amount as and when deposited, shall be disbursed to injured Sher Singh as per rules by learned trial court after giving him requisite notice. The fine paid by the appellants/accused before learned trial court shall be treated as cost of the proceedings. The appeal is accordingly dismissed and impugned judgment of conviction and fine are maintained. Trial court record alongwith copy of this judgment be sent back. Appeal file be consigned to records after due compliance...”

17. Simultaneously, the Criminal Appeal No.17 of 2018 filed by petitioner (Sher Singh) seeking awarding of maximum prescribed rigorous imprisonment to the respondents and also for awarding compensation to the petitioner was dismissed, vide a separate judgment dated 02.09.2021.

18. Keeping in view the legal position as indicated in foregoing paras and upon considering the findings returned by lower Appellate Court, I do not find any illegality or infirmity with the impugned judgment(s)/order(s), apparent on the face of the same, which may call for any interference by this Court, while exercising its revisional jurisdiction. There is nothing on the record to show that the Court below had exceeded its jurisdiction or refused to exercise jurisdiction,

while passing the impugned judgment/order. The impugned judgment/order is certainly not perverse or having been passed in violation of settled principles of criminal jurisprudence. No procedural irregularity or illegality has been pointed out. Impugned judgment/order is based upon proper appraisal and appreciation of evidence and as per law.

18. Therefore, both the above-mentioned Criminal Revision Petitions are hereby dismissed.

19. All pending application/s, if any, shall stand closed.

20. A photocopy of this order be placed on the file of another connected case.

March 27th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No