

CRR-2761-2022

2023:PHHC:054919

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

CRR-2761-2022

DATE OF DECISION:-19.04.2023

Ram Bhagat

...Petitioner.

Vs.

State of Haryana and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashwani Gaur, Advocate,
for the petitioner.

HARKESH MANUJA, J. (Oral)

By way of present revision petition, challenge has been made to the judgment dated 01.11.2022 passed by the court of learned District and Sessions Judge, Hisar, wherein while upholding the judgment of conviction and order of sentence dated 27.04.2017 passed against respondent No.2, benefit of probation has been granted to him being first offender by enhancing the amount of compensation from Rs.10,000/- to Rs.50,000/-.

2. Learned counsel for the petitioner submits that before exercising the discretion of granting probation in favour of respondent No.2, the first appellate court did not call for the report from the probation officer, which was *sine qua non*. He also points out that in the wake of serious injuries inflicted upon the complainant, the discretion of granting probation in favour of respondent No.2 was rightly declined by the trial court.

3. I have heard learned counsel for the petitioner and gone through the paper-book.

4. As regards calling of report from probation officer before granting the benefit of probation in favour of an accused, the same has been contemplated under sub-section 2 of Section 4 of the Probation of Offenders Act, 1958 (herein after referred to “ 1958 Act) before granting probation in exercising powers under sub-Section 1 to Section 4 of the 1958 Act.

5. A perusal of the impugned order shows that though a reference has been made to the provisions of the 1958 Act coupled with the provisions of Cr.P.C. in the discussion part, however, while granting relief and concluding the judgment, no specific mention of exercise of powers under Section 4 of the 1958 Act has been stated and thus, apparently, power of granting probation has been exercised under the provisions of Section 360 of the Code of Criminal Procedure, 1973, which nowhere contemplates calling upon of or considering the report called from the probation officer. Moreover, while granting the benefit of probation, the character, antecedents and complete circumstances have been taken into consideration being expedient to release respondent No.2 on probation.

6. As regards prayer of probation having been declined by the trial court, considering the nature of injuries inflicted upon the person of victim, having perused the discussion about the injuries, which have been delineated at page 27 of the paper book, the relevant portion thereof is reproduced hereunder:-

“The prosecution has examined Dr. Reena Jain as PW-7, who has radiologically examined the injured Ram Bhagat on 21.03.2014 and found fracture of right index finger MC of right hand. She has also proved the

*fracture of MC of ring finger on the left hand of injured
Ram Bhagat.”*

7. One can see that receipt of injuries was on right and left hand and there was no injury inflicted upon any vital part of the body of the victim, besides the fact that respondent No.2 happened to be a first offender and applying reformatory theory, which is the fundamental basis of the criminal jurisprudence, I do not see any reason to interfere in the discretion exercised by the first appellate court while granting probation in favour of respondent No.2

8. In view of the discussion made above, I do not find any illegality or perversity in the judgment passed by the first appellate court, as such, the present revision petition is dismissed being devoid of merits.

19.04.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned:	Yes/No
whether reportable:	Yes/No