

**CRR-363-2019 (O&M)****1****909 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-363-2019 (O&M)
Date of Decision: 27.09.2024****NANU****.....Petitioner****Versus****UT CHANDIGARH****.....Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: Ms. Ishani Goyal, Advocate (Amicus Curiae)
for the petitioner.****Mr. Ankur Bali, Addl. PP UT Chandigarh.************HARPREET SINGH BRAR, J. (ORAL)**

1. The present revision is preferred against the judgment dated 04.12.2018 passed by the learned Sessions Judge, Chandigarh whereby the judgment of conviction and order of sentence dated 18.01.2017/20.01.2017 passed by the Judicial Magistrate Ist Class, Chandigarh has been upheld.

2. Case of the prosecution in brief was that on 12.8.2016, at about 11.15 p.m., SI Prem Singh received a wireless message having quarrel taken place near Chief Auditor Society, Sector 50, Chandigarh and subsequently reached at the spot where complainant/prosecutrix met him and handed over a complainant, in which she alleged that she was returning from Elante Mall, after shopping and hired an auto rickshaw bearing No. HR-68-A-6940 outside the Elante Mall for her residence in Sector-43, Chandigarh, but on the way he took turn towards main road and reached near the Chief Auditor Society, upon noticing this, the complainant asked the driver to stop his auto rickshaw, but he

didn't stop the same and she jumped out of auto rickshaw to save herself but

the driver of the auto rickshaw caught hold of her hair besides molesting her and also hit her due to which she fell on the road and shouted for help, which attracted two Sikh boys who came for her help and in the meantime, driver on getting a chance, the auto rickshaw fled away from the spot leaving behind his auto rickshaw at the spot and one of the Sikh boy was Gurbaj Singh. She can recognize the aforesaid auto driver if brought before her and legal action be taken against the culprit. On the basis of aforesaid allegations, the FIR of the present case was registered and the investigation was initiated.

3. The learned trial Court, after assessing the material on record, held the petitioner guilty vide judgement dated 18.01.2017 and awarded the following sentence vide order of even date on quantum of sentence: -

Offence	Sentence
Section 354 of IPC	Rigorous imprisonment for one year with fine of Rs. 1000/-.
Section 323 of IPC	Rigorous imprisonment for six months

4. Aggrieved by the same, the convict preferred an appeal before the lower Appellate Court, which was dismissed vide judgment dated 04.12.2018.

5. Case was called twice, but there was no representation on behalf of the petitioner. In view thereof, Ms. Ishani Goyal, Advocate (PH-6465-2023 M.No. 97282-58074) is appointed as *amicus curiae* in the present case, to assist this Court.

6. Learned counsel for the petitioner vociferously contends that the prosecution has failed to examine any independent witness despite categorical stand of the complainant that two Sikh boys saw the incident and came to her

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help. When the complainant was examined as PW-4 before the learned trial Court, she deposed that she jumped from the auto of the petitioner and sustained injuries on her body. Thereafter, two Sikh boys came there to help her and one of them, namely Gurbaj Singh, took the complainant to his house where she was given first-aid by his mother. But for some inexplicable reason, the concerned police officials neither recorded the statement of Gurbaj and his mother nor the prosecution examined them as witnesses, thereby creating a serious dent in their case. She further contends that the testimonies of the prosecution witnesses are marred by material discrepancies. Learned counsel also submits that considering the fact that petitioner is a poor person who is shouldering the responsibilities of his wife and four children, the learned Courts below ought to have shown leniency while sentencing him.

7. Per contra, learned State counsel opposes the prayer of the petitioner on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record which has also been upheld by the learned lower Appellant Court and as such, he does not deserve any leniency. However, he could not controvert the fact that the petitioner is not involved in any other case.

8. I have heard learned counsel for the parties and perused the paper book with their able assistance. It has come to the fore that the petitioner has undergone 4 months and 13 days of custody out of 1 year of sentence awarded to him in the present case. As far as his antecedents are concerned, the petitioner has not been involved in any other criminal case. Having regard to the fact that the petitioner has been facing a protracted trial for the last 8 years,

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this Court is of the considered opinion that it would be in interest of justice if the petitioner is allowed to be released on probation.

9. Section 3 and 4 of the Probation of Offenders Act empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 and 361 of the Cr.P.C also empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in **Som Dutt and others Vs. State of Himachal Pradesh (2022) 6 SCC 722** speaking through Justice Bela M. Trivedi, has held as under:-

“6....having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct.....”

A two Judge Bench of the Hon'ble Supreme Court in **Lakhvir Singh Vs. State of Punjab (2021) 2 SCC 763** speaking through Justice Sanjay Kishan Kaul, has held as under:-

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

10. In view of the aforesaid facts and circumstances, the judgment of conviction and order passed by the learned Sessions Judge, Chandigarh awarding a substantive sentence of one year under Sections 354 and 323 of IPC to the petitioner is upheld, however, having regard to the fact that the petitioner

has no criminal antecedents, this court is inclined to give him the benefit of probation of good conduct.

11. Consequently, while maintaining the conviction and sentence imposed on the petitioner, he is ordered to be released on probation of good conduct on furnishing a personal bond of Rs. 10,000/- each with a surety each of the like amount, and on further furnishing an undertaking to keep the peace and good behaviour for a period of one year, to the satisfaction of the concerned trial court within a period of two weeks. The petitioner shall remain under the supervision of the concerned Probation Officer(s) during the aforesaid period. It is further directed that if the petitioner fails to comply with the said directions or commit breach of the undertaking given by him, he shall be called upon to undergo the sentence imposed upon him by the learned Sessions Judge, Chandigarh.

12. High Court Legal Services Committee is directed to pay the remuneration to the Amicus Curiae as per rules.

13. With the aforesaid directions, the instant petitions stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

27.09.2024
Ajay Goswami

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