



220

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-680-2021 (O&M)
Date of decision: 30.09.2024

Jogender

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Neeraj Gupta, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition has been preferred against the judgment dated 29.04.2021 passed by learned Additional Sessions Judge, Narnaul, vide which two separate appeals (*one filed by the petitioner and second filed by the complainant against the judgment of conviction and order of sentence dated 04.05.2017*) were dismissed and the judgment of conviction dated 04.05.2017 and the order of sentence of even date passed by learned Sub Divisional Judicial Magistrate, Mahendergarh, in FIR No.76 dated 24.02.2014 under Sections 323, 354-A, 452, 506 of the Indian Penal Code,



1860 (for short 'IPC'), registered at Police Station Mahendergarh, whereby the petitioner was convicted under Sections 323, 354-A, 452, 506 of IPC and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,500/- along with default mechanism, were upheld.

2. Brief facts of the case are that on 24.02.2014 at about 08.00 a.m., when the complainant was alone at her house, the accused entered her house and embraced her, as he pressed her breast and did obscene act with her. On raising the alarm by the complainant, wife of the accused reached at the spot and she assaulted the complainant and both of them threatened her with dire consequences, if she disclose about the matter to anyone. On the basis of aforesaid statement, FIR (*supra*) was registered.

3. Learned counsel for the petitioner submits that the judgment passed by learned trial Court is based on conjectures and surmises. It is further submitted that the petitioner does not have any criminal antecedents and has old parents and family to look after. Learned trial Court failed to appreciate the material available on record. The petitioner is facing trial for the last more than 10 years and therefore, learned trial Court ought to have considered the case of the petitioner for releasing him on probation under Section 361 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [now Section 402 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')]/ read with Sections 3 & 4 of the Probation of Offenders Act, 1958 (for short 'Act of 1958').



4. *Per contra*, learned State counsel supports the judgment passed by learned trial Court, while contending that the petitioner had misused and abused the process of law by giving false evidence on oath before learned trial Court and therefore, he was rightly convicted and sentenced by learned Court below.

5. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

6. Sections 3 & 4 of Act of 1958 empower the Courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 & 361 of Cr.P.C. (*now Sections 401 & 402 of BNSS*) 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 petitioner, 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 petitioner, it is directed that the petitioner shall be released on probation of good conduct.....”

7. 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.”

8. In view of the aforesaid facts and circumstances, judgments passed by both the Courts below, convicting the petitioner, are upheld, however, having regard to the fact that there are no criminal antecedents against the petitioner and he has actually undergone sentence of 01 month and 03 days out of total sentence of one year, this Court is inclined to extend him the benefit of probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the petitioner, it is directed that he will be released on probation for good conduct on furnishing a personal bond of Rs.10,000/- with surety 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 learned trial Court concerned. The petitioner will remain under the supervision of the concerned Probation Officer during the aforesaid period. It is further directed that if the petitioner fail to comply with the said directions or commit breach of the undertaking

2024:PHHC:129713



given by him, he will be called upon to undergo the sentence imposed upon him by learned Sub Divisional Judicial Magistrate, Mahendergarh and upheld by learned Additional Sessions Judge, Narnaul.

9. With the aforesaid directions, instant revision petition stands allowed.

10. All the pending miscellaneous application(s), if any, shall also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

30.09.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No