

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

CRR-121-2016

Date of decision: 14.02.2024

Jaswant Kaur

....Petitioner

Versus

Sadhu Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nand Lal Sammi, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM-6431-2024

This is an application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking recalling of order dated 06.12.2013 passed by this Court. As per the said order, the petition was dismissed as withdrawn. The petitioner has claimed that she had not given any instruction to her counsel to withdraw the said petition and hence has prayed that the order be recalled.

For the reasons mentioned in the application, the same is allowed. The petition is ordered to be restored to its original number. Main case is taken on board for final disposal on merits.

CRR-121-2016

1. The present revision petition is preferred against judgment dated 26.11.2015 passed by learned Additional Sessions Judge, Patiala whereby appeals against judgment of conviction and the order of sentence dated 28.10.2014 passed by learned Judicial Magistrate 1st Class, Rajpura in FIR No. 117 dated 21.05.2007 registered at Police Station City Rajpura, District Patiala and complaint no.

458/2013, both arising from the same set of facts, under Sections 323, 325, 34 of

the IPC, were dismissed.

2. Briefly, the facts are that on 14.05.2007, the petitioner/complainant was preparing a meal in her courtyard when her neighbours i.e., the respondents, armed with deadly weapons, barged in to the petitioner's house and started assaulting her. Jaswinder Singh (respondent no. 3) dealt a blow with a kirpan on the petitioner's left thumb, while Bhupinder Singh (respondent no. 5) struck her head with a stick and other respondents gave kick and fist blows to the petitioner. On hearing the commotion and alarm, the petitioner's son and her sister arrived at the spot and she was rescued by them. This brawl allegedly emanated from a previous dispute between the petitioner's son and his neighbours which was compromised. Consequently, FIR was lodged and police proceedings were initiated. The petitioner/complainant also filed a private complaint on the same facts and allegations against all the respondents.

3. After assessing all material on record, the learned trial Court convicted all the respondents and sentenced them to undergo rigorous imprisonment for one year under Sections 323, 325, 506, and 452 read with Section 149 of IPC vide judgment dated 28.10.2014. Aggrieved by the same, the petitioner preferred an appeal before the learned Lower Appellate Court seeking enhancement of quantum of sentence awarded to the respondents and further prayed that the respondents also be convicted under Section 324 of the IPC. Correspondingly, the respondents filed appeals as well, challenging the judgement of conviction passed against them. The Lower Appellate Court vide judgement dated 26.11.2015 dismissed all the appeals on merits and upheld the judgement of conviction and the order of sentence passed by the learned Trial Court.

4. Learned counsel for the petitioner argues that the order of sentence ought to be modified and the sentence imposed on the respondents should be

enhanced, on the ground that the respondents were awarded simple imprisonment for 1 year under both Section 323 and Section 325 of IPC, when clearly the offence of voluntarily causing grievous hurt under Section 325 IPC is more dire and grave than voluntarily causing hurt, punishment for which is spelled out in Section 323 IPC. Clearly thus, the Trial Court and the Lower Appellate Court erred in maintaining parity in the sentences awarded under the two sections of IPC as mentioned above.

5. Learned counsel further submits that the fact that the respondents were armed with deadly weapons has clearly been established. Further, Jaswinder Singh (respondent no. 3) used a kirpan, which is a sharp edged weapon, to assault the petitioner. Thus, even if we rely on the opinion of the doctor i.e., all the injuries on the person of the complainant were simple in nature, still the ingredients of Section 324 of IPC are made out owing to the use of a sharp edged weapon.

6. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, at the very outset, it must be stated that the learned Lower Appellate Court committed an oversight by entertaining the appeal of the petitioner with reference to the prayer seeking enhancement of sentence awarded to the respondents as well as seeking conviction of the respondents under Section 324 of IPC. It is well settled that an appeal flows from a statute. In the present case the provision of appeal is governed by the language of Section 372 Cr.P.C., which states in no uncertain terms, that no appeal shall lie until and unless specifically provided for. Section 372 Cr.P.C. reads as under:—

“372. No appeal to lie, unless otherwise provided.- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

7. The proviso to Section 372 Cr. P.C. confers upon the victim, as defined in Section 2(wa) of Cr.P.C., who is the petitioner in the instant case, the right to prefer an appeal against an order of the criminal Court in the following three cases only i.e.,

1. Acquittal of the accused person;
2. Conviction of the accused person for a lesser offence; and
3. Imposition of inadequate compensation.

In the present case, the petitioner, in appeal, sought the enhancement of quantum of sentence awarded to the respondents, which falls in neither of the three instances as abovementioned. Thus, no appeal by the victim against the adequacy of sentence awarded is envisaged by the Criminal Procedure Code. Only the State Government is empowered under Section 377 of Cr.P.C. to prefer an appeal against the adequacy of the sentence awarded and seek enhancement of the same. Reference in this regard is made to case titled, **Parvinder Kansal v. State (NCT of Delhi), (2020) 19 SCC 496 : (2022) 1 SCC (Cri) 469**, wherein a 2 Judge bench of the Hon’ble Apex Court observed as follows:

“A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision

*for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377 CrPC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377 CrPC but similarly no appeal can be maintained by victim under Section 372 CrPC on the ground of inadequate sentence. It is fairly well-settled that the remedy of appeal is creature of the statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in **National Commission for Women v. State (NCT of Delhi)**[**National Commission for Women v. State (NCT of Delhi)**, (2010) 12 SCC 599 : (2011) 1 SCC (Cri) 774] has rightly relied on the same and dismissed the appeal, as not maintainable.”*

8. Further, with regard to the petitioner’s averment that the respondents should also be convicted under Section 324 of IPC, this Court is of the opinion that since the respondents have already been convicted for offences under Sections 325, 452, 506 of IPC, whose prescribed maximum sentences exceed that of what is prescribed under Section 324 IPC, the claim of the petitioner falls outside the scope of the proviso to Section 372 of Cr.P.C. Proviso to Section 372 categorically states that an appeal can be preferred by the victim if the accused person is convicted for a lesser offence and the victim believes that there are grounds and material on record available to convict the accused for another greater offence. The proviso to Section 372 Cr.P.C. must be strictly construed and in the present case, none of the conditions provided therein have been satisfied. As a result, the appeal by the petitioner under Section 372 Cr.P.C. was not maintainable before the learned Lower Appellate Court.

9. Furthermore, PW2- Dr. Tarsem Khurana and PW7- Dr. Naveen

Kaushik have categorically deposed that none of the injuries on the person of the complainant were inflicted using a sharp-edged weapon. As such, offence under Section 324 IPC is not made out against the respondents-accused.

10. Accordingly, the present petition is dismissed.

14.02.2024

Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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