



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

233 (02 cases)

**CRR-1441-2006 (O&M) &
CRR- 1493-2006 (O&M)
Date of decision: 05.05.2026**

1. CRR- 1441-2006

Sunil Kumar and another

....Petitioners

VERSUS

State of Haryana

....Respondent

2. CRR-1493-2006

Om Parkash and another

...Petitioners

VERSUS

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. R.S. Cheema, Senior Advocate assisted by
Ms. Simarjit Kaur, Mr. Satish Sharma and
Mr. Prince Bharol, Advocates for the petitioners
in CRR-1441-2006.

Mr. Deepender Singh, Senior Advocate assisted by
Mr. Ram Krishan Rana & Mr. Mayank Sarpal, Advocates,
for the petitioners in CRR-1493-2006.

Mr. Paras Talwar, Sr. DAG, Haryana.

VINOD S. BHARDWAJ. J.(Oral)

Both these revision petitions, having been preferred against
a common judgment of conviction and order of sentence dated
22.11.1999 passed by Judicial Magistrate First Class, Rewari arising out
of case bearing FIR No.141 dated 13.10.1988 registered under Sections
323, 324, 34 of the Indian Penal Code, 1860 at Police Station Sahlawas,
District Rewari, whereby the petitioners were convicted and sentenced to
undergo imprisonment as under:-

Name of accused(s)	Section(s)	Sentence	Fine	In default of payment of fine
Nar Singh, Arun Kumar, Sunil Kumar	323 read with Section 34 of IPC	1 year rigorous imprisonment	Rs.1,000/- each	6 months simple imprisonment
	324 read with Section 34 of IPC			
	325 read with Section 34 of IPC			
	326 read with Section 34 IPC	2 years Rigorous imprisonment	Rs.2,000/- each	
Om Parkash	326 of IPC	3 years rigorous imprisonment	Rs.3,000/-	6 months simple imprisonment

Both the revision petitions are hence being decided by a common order.

2. Further even the criminal appeals bearing No.70 RT of 2005 titled as “ Sunil Kumar and another Vs. State of Haryana” and 71 RT of 99/2005 titled as “Matu Ram and others Vs. State of Haryana” were also decided together vide judgment dated 17.07.2006 passed by the Additional Sessions Judge, Rewari whereby both appeals filed by the petitioners herein had been dismissed.

3. Briefly stated, the prosecution case, as emerging from the record, is that on 13.10.1998 i.e. the day of occurrence, at about 10:00 AM, the complainant along with his brothers, namely Ramavtar, Surender and Narender, was present outside their shop situated near the Railway Phatak, where they were carrying on the business of iron and fertilizers (“Khad”). It is alleged that while they were so present, accused Nar Singh son of Matu Ram, resident of Kosli, arrived at the spot carrying a stone in their hand and struck Surender, brother of the complainant, with the said stone, resulting in an injury on the left thumb of Surender. The

prosecution further alleges that shortly thereafter, accused Arun son of Chanderbhan and Nar Singh son of Matu Ram, both armed with Kulharis, also reached the spot. Arun inflicted a Kulhari blow on the left thigh of the complainant, whereas Nar Singh dealt another Kulhari blow on the head of the complainant. It is further the case of the prosecution that in the meantime, accused Om Parkash alias Billu son of Matu Ram arrived at the spot armed with a knife and inflicted two knife blows on the left side of the chest of Ramavtar and another knife blow on his back. Thereafter, accused Sunil son of Amar Singh, armed with a Saria, also reached the spot and inflicted three blows with the same on the waist of the complainant. According to the prosecution, accused Arun thereafter inflicted another Kulhari blow and Surender dealt a Saria blow to the complainant. It was further alleged that accused Matu Ram, armed with a lathi, struck the complainant on his right hand, whereas accused Sunil inflicted a Saria blow on the left thumb of Narender. The prosecution case further reveals that Moti Lal, Radhey Shyam, Lal Chand and Krishan Kumar intervened and rescued the complainant party from the assault at the hands of the accused persons. The motive attributed to the occurrence was stated to be previous animosity and business rivalry, the allegation being that the accused persons bore a grudge against the complainant party on account of customers frequenting their business establishment. On the basis of the aforesaid allegations, the present FIR came to be registered against the accused persons.

4. The police thereafter took up investigation in the matter and upon completion of investigation presented the challan against the accused

persons for offences punishable under Sections 323, 324 and 34 of the Indian Penal Code before the Ilaqa Magistrate.

5. Copies of challan were supplied to the accused free of costs under Section 207 Cr.P.C.

6. Finding a prima facie case, on consideration of the documents contained in the challan, trial court initially framed charge under Sections 323, 324, 325/34 IPC, however, on 01.02.1995 on consideration of medical evidence, the Trial Court again framed charge against the accused persons under Sections 323, 324, 325, 326/34 IPC, to which they pleaded not guilty and claimed trial.

7. The prosecution examined as many as five witnesses in support of their case during trial. Thereafter, learned Public Prosecutor closed the evidence on behalf of the State by making statement to said respect.

8. After conclusion of the prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, wherein all incriminating circumstances appearing against them in the prosecution evidence were put to them. The accused persons denied the allegations levelled against them and pleaded innocence. They further stated that the prosecution witnesses were interested and false witnesses and that they had deposed falsely against them.

9. After considering the arguments advanced, the testimonies of witnesses and the evidence placed on record, the Judicial Magistrate First Class, Rewari, vide judgment of conviction and order of sentence

dated 22.11.1999, sentenced the petitioners as mentioned above.

10. Aggrieved against the aforesaid judgment of conviction and order of sentence passed by the trial Court, separate appeals were preferred by the accused persons before the Appellate Court. However, upon reappraisal of the evidence and consideration of the submissions advanced on behalf of the parties, the Additional Sessions Judge, Rewari, vide common judgment dated 17.07.2006, dismissed the said appeals and affirmed the findings of conviction and sentence recorded by the trial Court. Aggrieved thereof, the present revision petitions have been filed.

11. Learned Senior counsel for the petitioners contend that since both the Courts have concurrently recorded the findings of fact against the petitioner, hence, they do not intend to raise any challenge to the conviction on merits and would confine their prayer only to the grant of benefit of probation of the petitioners as perquisites for the same have duly made out. They submit that out of the 05 accused persons tried for commission of offence in the year 1988, Matu Ram son of Surat Singh died during the pendency of case while Arun Kumar son of Chander Bhan died on 23.06.2020. There are thus only 03 surviving accused. He submits that the dispute is nearly 38 years old. Learned Senior Counsel accordingly pray that the present revision petitions may be considered limited to the aspect of sentence alone and points out following mitigating circumstances:

A. The occurrence in question pertains to the year 1988 and nearly four decades have elapsed since the registration of the FIR. The

petitioners have thus remained entangled in criminal proceedings for an extraordinarily prolonged period and have faced the agony, uncertainty and mental trauma of protracted litigation for 38 years.

- B. The petitioners were in their late thirties and forties at the time of conviction in the year 1999 and by passage of time, are now nearing 70 years of age.
- C. There is nothing on record to suggest that the petitioners were ever involved in any other criminal case either prior to the present occurrence or during the pendency of the proceedings. Their antecedents and subsequent conduct is clean and unblemished.
- D. No material has been placed on record by the prosecution indicating that the petitioners ever misused the concession of bail granted to them during the pendency of trial, appeal or revision proceedings.
- E. The conduct of the petitioners during the prolonged pendency of the proceedings appears to have remained satisfactory and law-abiding, thereby reflecting a reformatory tendency and successful reintegration into the mainstream of society.
- F. The occurrence appears to have arisen out of a sudden altercation and village rivalry and does not disclose involvement of the petitioners in any organized or habitual criminal activity.
- G. The petitioners have already suffered the social stigma, humiliation and psychological burden associated with criminal

prosecution for nearly two decades, which itself operates as a substantial punitive consequence.

H. The possibility of reformation of the petitioners no longer remains merely speculative but stands reinforced by their conduct over the intervening years during which they have not been shown to have indulged in any unlawful activity.

I. At this distant point of time, sending the petitioners back to custody after lapse of nearly twenty six years would serve no meaningful penological purpose and may instead disrupt the social and familial stability attained by them over passage of time.

12. On the other hand, the learned State counsel, while opposing the submissions advanced on behalf of the petitioners, has argued that the prosecution has successfully established the guilt of the petitioner through cogent, reliable, and convincing evidence brought on record during trial. It is further contended that the offence committed by the petitioner is of a serious nature and, therefore, calls for imposition of a stringent sentence. The learned State counsel submits that leniency in such cases would send a wrong signal to society and undermine the administration of criminal justice. Hence, it is imperative that adequate and deterrent punishment be imposed to ensure that such acts do not recur and to maintain public confidence in the rule of law.

13. I have heard learned counsel representing the parties and have gone through the case record.

14. Before considering the plea of the petitioner for grant of probation, the legal position for availing the benefit of probation needs

to be kept in mind.

15. As per the settled principles of law governing the grant of probation, the benefit of probation is ordinarily extended to cases where the circumstances indicate a deviation from the law, rather than a demonstration of inherent criminal propensity or conduct reflecting a hardened or incorrigible disposition. The object of the Probation of Offenders Act is reformatory and rehabilitative not punitive and aims to reintegrate an offender into the mainstream of society where such reintegration appears feasible. The aims and object of the Probation Act came to be decided by the Hon'ble Apex Court in the case of ***Jugal Kishore Prasad v. State of Bihar*** reported as (1972) 2 SCC 633 and reiterated in the case of ***Chellammal and Another v. State*** reported as 2025 SCC Online SC 870. The relevant extract of the judgment is as under: -

“26. On consideration of the precedents and based on a comparative study of Section 360, Cr. P.C. and subsection (1) of Section 4 of the Probation Act, what is revealed is that the latter is wider and expansive in its coverage than the former. Inter alia, while Section 360 permits release of an offender, more twenty-one years old, on probation when he is sentenced to imprisonment for less than seven years or fine, Section 4 of the Probation Act enables a court to exercise its discretion in any case where the offender is found to have committed an offence such that he is punishable with any sentence other than death or life imprisonment. Additionally, the non-obstante clause in sub-

section gives overriding effect to sub-section (1) of Section 4 over any other law for the time being in force. Also, it is noteworthy that Section 361, Cr. P.C. itself, being a subsequent legislation, engrafts a provision that in any case where the court could have dealt with an accused under the provisions of the Probation Act but has not done so, it shall record in its judgment the special reasons therefor.

27. What logically follows from a conjoint reading of sub-section (1) of Section 4 of the Probation Act and Section 361, Cr. P.C. is that if Section 360, Cr. P.C. were not applicable in a particular case, there is no reason why Section 4 of the Probation Act would not be attracted.

28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event,

the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.

12. In the present case, there is nothing on record to reflect that the petitioner possesses a criminal bent of mind or that his conduct poses any threat to society. Hence, by the broader principles of criminal jurisprudence, no adverse presumption can be drawn against him.”

16. Further, this court vide order dated 07.11.2025 passed in CRR-1438-2025 titled as ***Ravneet Singh v. State of Punjab*** while examining the provisions of the Probation of Offenders Act and also the judicial precedent on the subject has held as under:

“The objective behind sentencing is required to be kept in mind while passing an order of sentence. The underlying object may be retributive, preventive, punitive or reformative.

While ‘retributive’ object of sentencing is seen regressive, in modern day sentencing jurisprudence, since it focuses on punishing proportionally to the harm done and caters to the senses of spite and anger against a wrongful act, the rehabilitative/reformative approach examines the circumstances surrounding the offender, on social, economical, physical and psychological level so as to reintegrate the offender in the social mainstream. The law extends the benefit of doubt and perceives a

probability and possibility of reform. It aims at capitalising a social liability. The expectation of law is based on the surrounding circumstances to distinguish between a 'criminal' and an 'offender'.

While the pre-requisites of crime do not distinguish two persons, on the above scale, this aspect is significant for sentencing. A mere involvement of a person in crime may not necessarily make a 'criminal.' 'Criminality' in mind and action has to be determined from the totality of circumstances including the mode and manner in committing an offence, the conduct pre and post the offence, the criminal antecedents, involvement, peers etc. and not just from commission of an offence.

The 'deterrent' and 'punitive' aspects tend to discourage and 'punish' for the offence committed, albeit the objects do change.

A Court of law would not assume every offender to be beyond reform and differentiate in punishment arising out of offences due to human error compared to offences that stem from actions propelled by mens rea.

The case in hand is yet another where interest of justice would warrant a reformatory approach in precedence to a punitive or retributive approach."

16. Taking into consideration the facts and circumstances of the present case and the mitigating circumstances enumerated above, I deem it appropriate to direct release of the petitioner on probation on

furnishing an undertaking of keeping peace and good behaviour for a period of 6 months, to the satisfaction of the Illaqa Magistrate. The petitioner shall also remain under the supervision of the concerned probation officer during the aforesaid period.

17. In the event of the petitioner failing to comply with the said direction or committing breach of the undertaking given by them, they shall be called upon to undergo the remaining period of sentence imposed upon them in the present case.

18. The instant petitions are accordingly *partly allowed*.

19. Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

05.05.2026
Sumit Gusain

(VINOD S. BHARDWAJ)
JUDGE

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