



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

124

**CRM-M-39183-2017 (O&M)
Date of decision: 29.04.2026**

SHAKIR HUSSAIN

.....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

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

Present: - Mr. Sandeep Verma, Advocate
for the petitioner.

Ms. Chhavi Sharma, Asstt. A.G. Haryana.

Mr. Sarfraj Hussain, Advocate,
for respondent No.2.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed challenging the order dated 14.09.2017 passed by the Judicial Magistrate, 1st Class, Faridabad in FIR No. 44 dated 03.03.2007 registered under Sections 323/325/341/506/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') at Police Station Sadar Ballabgarh, directing the petitioner herein to refund the compensation amount of Rs. 60,000/- that had been given to him.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner-Shakir Hussain, is the complainant in the above-said FIR

that had been registered at the first instance against four persons, namely Usman, Aabid, Sajid and Ishub. He contends that after the completion of the investigation, a final report was filed, and the accused persons were put on trial. The Judicial Magistrate, 1st Class, Faridabad, convicted Usman for the commission of the offence vide judgment dated 24.09.2014 and acquitted the other three persons, namely Aabid, Sajid and Ishub. Subsequently, he was released on probation vide order dated 26.09.2014. The said order reads thus:-

“1. Arguments on the point of quantum of sentence heard. Learned Public Prosecutor has argued that the very manner in which the offence has been committed by the convict shows his reckless disregard to the process of law and his daredevilry. Accused was himself a police personnel who was entrusted with the duty to uphold and protect law. Whereas the accused intoxicated by the power he enjoyed by virtue of his position misused this power and hurt the complainant. Learned APP has requested that exemplary punishment should be meted out to the accused to send a strong signal to the other offenders that their misdeeds shall not remain unpunished.

2. Learned counsel for the accused on the other hand requested that the accused has been in service for last more than 21 years. He further pointed out that no other criminal case is pending against the accused. He also stated that accused has duly compensated the complainant for his litigation expenses. Compensation of Rs. 60,000/- has been paid to the complainant and his statement has been recorded in the court. He stated that the convict has suffered a prolonged and protracted trial for last more than 7 years. He argued that the ordeal of suffering the trial is punishment enough.

3. I have heard the arguments of the learned APP and learned counsel for the accused very carefully.

4. *Convict is a government servant. No past rivalry is alleged between the convict and the complainant. Convict has duly compensated the complainant amount of Rs. 60,000/- Complainant/ victim has suffered only minor injuries. Complainant has also stated that he does not have any objection if accused is released. Any imprisonment would mean a definite end to the promising career of the convict. In absence of any past rivalry the offence committed might have as well been committed on the spur of the moment.*

5. *In my opinion the present case is fit one to proceed under the Prohibition of Offenders Act, 1958. I admonish him for his misdeed and reprobate him for the reckless disregard he has shown towards his duties. I direct that convict be released Needless to mention that as per Section 12 of the Probation of Offenders Act, 1958, no disqualification attached to conviction shall be suffered by the accused. After due compliance, file be consigned to record room.*

3. Learned Counsel contends that after the release of the respondent-accused Usman on probation, he preferred an appeal before the Court of Sessions wherein the said appeal was allowed, without affording any opportunity to the petitioner-complainant, and the judgment of conviction dated 24.09.2014 was set aside by the Sessions Judge, Faridabad vide judgment dated 04.03.2016 passed in Criminal Appeal No. 317 dated 22.10.2014.

4. Learned Counsel contends that after passing of the aforesaid judgment of acquittal, respondent No.2-accused moved an application before the Judicial Magistrate 1st Class, Faridabad, for issuance of directions to the complainant to refund the amount of Rs. 60,000/- that had been paid as compensation to him. Vide the impugned order dated 14.09.2017, the said application was allowed, and the petitioner was directed to refund the

compensation amount of Rs. 60,000/- after noticing that the respondent No.2-accused had already been acquitted by the Court. Counsel for the petitioner has argued that the Judicial Magistrate 1st Class, Faridabad committed an error in directing refund of the aforesaid amount of Rs. 60,000/- by computing as if the quantum of compensation paid was part of compensation as ordered under Section 357(3) Cr. P.C. He contends that the said assumption on the part of the Judicial Magistrate 1st Class, Faridabad was erroneous in as much as there was no such direction by the Court to pay any compensation under Section 357(3) Cr. P.C. As a matter of fact, the said compensation was a settlement beyond the Court and the respondent No.2-accused had paid the aforesaid amount to the petitioner towards litigation expenses, on his own accord. He contends that since the amount in question had not been paid pursuant to any directions/instructions issued by the Court or as a part of compensation awarded by the Court in exercise of the powers under Section 357(3) Cr. P.C., hence, the Court did not have any domain for directing a refund of any amount which arose on account of a voluntary settlement amongst the parties whereby the respondent No.2-accused had agreed to pay certain compensation. It is argued vehemently that the domain of the Court is only restricted to undo what has happened as a result of an order passed by the Court so as to put parties in the same position.

5. Counsel for respondent(s) No.2, on the other hand, contends that as a matter of fact, the aforesaid amount was paid under intimation to the Court and weighed with the Court while granting probation to respondent No.2. Since the order of acquittal has been passed in appeal, hence, he was no longer liable to pay any compensation. Resultantly, the order has been rightly passed by the Judicial Magistrate 1st Class, Faridabad.

6. I have heard learned Counsel appearing on behalf of the parties and have gone through the documents appended along with the present petition as well as the order impugned herein.

7. The operative part of the order under challenge reads thus:

“2. It is averred in the application that the abovenamed case was decided by Sh. Mohit Mishra the then Ld. JMIC, Faridabad on 24.9.2014/26.9.2014 vide which the applicant was hold guilty under Section 323 only and the applicant was released on probation whereas remaining three accused were acquitted. It is further averred that at the time of passing the order of probation, the applicant was directed by the Court to compensate the complainant Shakir Hussain to the tune of Rs. 60,000/- and in compliance of the said order the applicant gave the said amount to the complainant Shakir Hussain immediately.

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6. After hearing the contentions raised by the Ld. Counsels for both the parties, this court is of the considered view that the application in hand deserves to be allowed as the applicant/accused was acquitted by the Ld. Appellate Court in Criminal Appeal 317 of 22.10.2014 vod 4.3.2016 and the impugned judgment of conviction and order of sentence were set aside. It is observed that acquittal is a decision of the Court that a person prosecuted for a criminal offence is not guilty and it means the prosecution that against the accused is not proved. It simply means that the legal and formal certification of the innocence of a person who has been charged with a crime. In these circumstances, when the applicant has already been exonerated by the Ld. Appellate Court vod 4.3.2016 then the judgment and order dated 24.9.2014/26.9.2014 stands nullified and again, the order of the Ld. Appellate Court has attained finality and therefore, the order for compensation to

victim/complainant also stands set aside. In these circumstances the complainant namely Shakir Hussain (sic) is directed to refund the amount of Rs. 60,000/- to the applicant namely Usman within 15 days from today. Now to come up on 29.9.2017 for compliance.”

8. It is evident from perusal of the above that the Judicial Magistrate 1st Class, Faridabad, had directed to refund the amount of Rs. 60,000/- while noticing that respondent No.2-accused had already been acquitted by the Appellate Court vide judgment dated 04.03.2016; consequently, the order dated 26.09.2014 stood nullified. It was further recorded that, as a necessary corollary, the order of compensation to the victim/complainant also stood set aside on account of the setting aside of the conviction. The Court, however, failed to notice that the order of the trial Court dated 26.09.2014 nowhere directed payment of any compensation. Rather, it notices the compensation that had already been paid by the accused as one of the factors that weighed in the mind of the Court while granting probation to the accused. Once the aforesaid payment was not a part of an order or a determined compensation directed to be paid by the Court, hence, it was not appropriate for the Court to have assumed that the payment of such compensation was pursuant to an assessment made by it and paid under its order under Section 357 (3) Cr. P.C. In such circumstances, the act of payment of compensation of Rs. 60,000/- would be assumed to be a voluntary act on the part of respondent No.2-accused in anticipation of the consequences of conviction and wanting to secure a favourable order of probation for himself. Such a voluntary act cannot be equated to a direction determining compensation and payment thereof pursuant to an order passed by the Court. Consequently, as the payment of compensation did not flow

from any order passed by the competent Court, hence, it did not lie within the domain of the Judicial Magistrate 1st Class, Faridabad, to direct a refund thereof. The present petition is accordingly allowed, and the impugned order dated 14.09.2017 passed by the Judicial Magistrate, 1st Class, Faridabad in FIR No. 44 dated 03.03.2007 registered under Sections 323/325/341/506/34 of the IPC at Police Station Sadar Ballabgarh, is set aside. The respondent No.2-accused would, however, be at liberty to pursue his alternative remedies in the Civil Court, if so advised.

APRIL 29, 2026
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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