IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

201 **CRR-3146-2010 (O&M)**
Date of decision : 29.01.2026

OMBIR SINGH & ORS

..... Petitioner

VERSUS

STATE OF HARYANA

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present: Mr. Kulvir Narwal, Advocate &
Ms. Prerna Aggarwal, Advocate
for the petitioner.

Ms. Deepali Verma, Asst. A.G. Haryana.

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SURYA PARTAP SINGH, J.

1. For the commission of offence punishable under Sections 148, 323, 342, 447, 506, 427, 324, 325, 326 & 149 of Indian Penal Code, the FIR No.32 dated 19.02.1999 was lodged in Police Station Badhra, Bhiwani. Once the FIR was lodged, the investigation was taken up by the police, and as an outcome of abovesaid investigation, the petitioners were sent to the Court of learned Sub Divisional Judicial Magistrate Bhiwani, hereinafter being referred to as 'trial Court' only, to face trial for the commission of abovementioned offence.

2. The petitioners participated in the abovementioned trial, which by virtue of judgment dated 23.12.2009 culminated into his conviction of

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petitioners and therefore, by virtue of order on quantum of sentence, dated 23.12.2009, the petitioners were sentenced as under:-

Name of convicts	Offence under Sections	Sentence
Ombir Singh & Rajpal	323 read with Section 34 IPC	Rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- each and in default thereof to further undergo simple imprisonment for a period of 01 month.
	325 read with Section 34 IPC	Rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- each and in default thereof to further undergo simple imprisonment for a period of 01 month.

All the sentences were ordered to run concurrently.

3. Aggrieved of the abovementioned judgment of conviction and order of sentence, the petitioners preferred an appeal in the Court of Sessions. The abovementioned appeal has been decided by the Court of learned Sessions Judge Bhiwani, hereinafter being referred to as 'Appellate Court' only. The appeal preferred by the petitioners did not find favour in the Appellate Court, and the same had been dismissed by virtue of judgment dated 19.11.2010.

4. Feeling aggrieved of the judgment of conviction and order of sentence dated 23.12.2009, passed by the learned trial Court, and also of the judgment dated 19.11.2010 passed by the learned Appellate Court, the present revision petition has been preferred.

5. In nut-shell, the facts as contained in the record are that the FIR of this case came into being when on 19.02.1999 a complaint was received by Kela, hereinafter being referred to as complainant only, wherein she disclosed that on 18.02.1999 at 2.00 p.m. she and Bimla (her Jethani) had

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gone to the fields, when Sajjan Singh came on a tractor accompanied by Hawa Singh, Rajpal Dhanpati, Birmati, Rajesh, Ombir, Umed, Pardeep, Sandeep and Madan on Tata 407. The complainant further stated that Sajjan started destroying the Gram crop and took his tractor, attached with a harrow in the field. As per complainant when she & her Jethani tried to stop, Rajpal holding a rapri got down from Tata 407 and gave a rapri blow which hit her right hand and injured her little finger.

6. The complainant further stated that although Dhanpati, Birmati and Rajesh were not holding any weapons, they gave punches blow on her back, while Ombir, who was holding a lathi, gave a blow which injured the left hand of her Jethani. The complainant further stated that Umed, Pardeep, Sandeep and Madan slapped Bimla and they also destroyed the Gram crop which was sown in two acres of their land and three acres of the land owned by Mir Singh husband of Bimla.

7. It was stated by the complainant that civil suit regarding two acres of land was pending between her father-in-law Nanhar and Umed and on account of that enmity, the Gram crop was ruined. The complainant also stated that ten other persons were standing outside the field and were strolling, but they did not say anything and since they were far away, she could not recognize them. The complainant had further alleged that she shouted for help, on which Rajbir and Dharambir, owner of neighbouring fields arrived on the spot and rescued her from the accused, who fled from the spot on their vehicles.

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8. It is the case of the prosecution that on the basis of abovementioned statement, formal FIR of this case was lodged and the investigation taken up. As per prosecution, during the course of investigation, the Investigating Officer inspected the spot, prepared rough site plan of the place of occurrence and completed other usual formalities of investigation. Thereafter, the final report under Section 173 of Cr.P.C. was filed.

9. To discharge its burden with regard to charge against the petitioners, the prosecution in the instant case had relied upon documentary as well as oral evidence. The documents relied upon, and marked with exhibits, by the prosecution were as under:-

Ex.PW1/A	-	Copy of MLR.
Ex.PW1/B	-	Copy of MNLR.
Ex.PW1/C	-	Ruqqa.
Ex.PW1/D	-	Endorsement.
Ex.PW5/A	-	V.T.
Ex.PW5/B	-	Endorsement
Ex.PW5/C	-	FIR.
Ex.PW5/D	-	Site Plan.
Ex.PW5/E & Ex.PW5/F	-	Recovery Memo
Ex.PW5/G	-	Statement of Kela and Bimla.
Ex.PW5/H	-	Application qua injury No.1.
Ex.PW6/1 to Ex.PW6/8	-	Photographs and its negatives
Ex.PW9/A	-	Recovery Memo

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10. To provide support and corroboration to the above-mentioned documentary evidence, as many as nine witnesses had been examined by the prosecution. Those witnesses were:-

PW-1	-	Dr. Kundan Kumar Mittal.
PW-2	-	Dr. H.L. Beniwal, who conducted the x-rays.
PW-3	-	Complainant.
PW-4	-	Bimla (eye witness).
PW-5	-	HC Mahender Singh, who proved the FIR.
PW-6	-	Surender Singh, who proved the negatives and photographs of place of occurrence.
PW-7	-	Rajbir.
PW-8	-	Dharambir.
PW-9	-	SI Rameshwar Dass.

11. Once the prosecution evidence was completed, the learned trial Court completed the essential formalities as enshrined under Section 313 CrPC. Thereafter, opportunity of defence evidence was afforded to the petitioner. In his defence evidence, the petitioner had not examined any witness.

12. Once the evidence of both the parties was complete, the learned trial Court gave an opportunity to the petitioners, as well as the prosecution, to address arguments, and thereafter, returned the judgment of conviction against the petitioners, which has been upheld by the learned Appellate Court.

13. The instant petition has been filed by the petitioners by alleging that the petitioners have been wrongly prosecuted and held guilty, despite the fact that there was no fault on their part. According to petitioners, the

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learned trial Court, vis-à-vis the learned Appellate Court, have failed to appreciate the evidence available on record, which was not sufficient and good enough to meet the standard prescribed for proving a charge in a criminal case. As per petitioners, merely on the basis of conjectures and surmises, the learned trial Court, vis-à-vis the learned Appellate Court have observed that the charge against them with regard to commission of aforesaid offences had been proved.

14. It has been further pleaded by the petitioners that the evidence adduced by the prosecution was deficient and inconsistent, and that on the basis of abovementioned evidence, the finding of conviction should not have been returned, but the learned trial Court on the basis of presumptions and assumptions believed the evidence adduced by the prosecution and the erroneous view of learned trial Court has been affirmed by the learned Appellate Court. The petitioners have sought for intervention and indulgence of this Court in both the judgments.

15. Heard.

16. During the course of arguments, the learned counsel for the petitioners have come forward with a plea that the petitioners are already suffering from the agony of trial in a criminal case for the last more than 27 years, and that the petitioners Ombir Singh and Rajpal, were about 40 and 23 years old, respectively, at the time of incident.

17. The learned counsel for the petitioners has also argued that in view of abovementioned developments in the instant revision petition, the petitioners are not inclined to challenge the findings of conviction recorded

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by the learned trial Court, duly affirmed by the learned Appellate Court. The learned counsel for the petitioners has specifically contended that at this stage, by virtue of present petition, the petitioners are only challenging the order on the quantum of sentence. It has been further contended by learned counsel for the petitioners that since the petitioners are around 66 years and 49 years old, and they have clean record, they are entitled for the benefit of probation/admonition.

18. As per learned counsel for the petitioners, the petitioners are not habitual offender, and that the instant prosecution is the only prosecution faced by the petitioners in their entire life. According to learned counsel for the petitioners, the instant case is a fit case, wherein in view of the nature of offence committed by the petitioners, they are entitled for the benefit of probation/admonition, firstly because of their old-age, secondly because of their conduct subsequent to the present offence, as they have not indulged in any kind of criminal activity.

19. The abovementioned arguments have been controverted by the learned State Counsel. According to learned State Counsel, in the present case the allegations against the petitioners are with regard to commission of offence punishable under Sections 148, 323, 342, 447, 506, 427, 324, 325, 326 & 149 of Indian Penal Code. As per learned State Counsel the loss caused to the complainant cannot be compensated by any compensation etc. According to learned State Counsel, the sentence awarded to the petitioners, i.e. imprisonment for a period of one year each, is already on lower side, and that the petitioners are not entitled for a sentence of imprisonment for a

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period of less than one year. The learned State Counsel has further contended that the gravity of offence committed by the petitioners renders them ineligible for any lenient view, and therefore, the petitioners are not entitled for the benefit of probation/admonition.

20. The arguments addressed on behalf of both the parties have been duly considered and the record has been perused carefully.

21. As far as the present revision petition is concerned, there are two points, which are supposed to be determined by this Court:

i) Whether the finding recorded by the learned trial Court with regard to proving of charge against the petitioners, needs interference and indulgence of revisional jurisdiction of this Court.

ii) If first point is answered against the petitioners, whether the petitioners are entitled for benefit of probation/admonition.

POINT NO.I

22. As far as this point is concerned, at the threshold it is relevant to mention here that the findings recorded by the learned trial Court with regard to judgment of conviction, have not been challenged by learned counsel for the petitioners during the course of arguments. Otherwise also, the record has been perused carefully and a perusal of evidence adduced by the prosecution before the learned trial Court shows that the abovementioned evidence was thoroughly consistent, reliable and good enough to bring home guilt of the petitioners, for the commission of offence punishable under Sections 148, 323, 342, 447, 506, 427, 324, 325, 326 & 149 of Indian Penal Code. It is also relevant to mention here that the findings recorded by the learned trial Court, vis-à-vis the learned Appellate Court, are well-reasoned.

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Thus, it is hereby held that there is no scope for interference or indulgence in the finding recorded by the learned trial Court with regard to conviction of petitioners under Sections 148, 323, 342, 447, 506, 427, 324, 325, 326 & 149 of Indian Penal Code, affirmed by the learned Appellate Court.

23. Accordingly, the abovementioned finding is hereby affirmed, and as an outcome of abovementioned finding, the point of determination No.1 framed in this petition is hereby answered against the petitioners.

POINT NO.II

24. As far as the benefit of probation is concerned, the relevant principles have been propounded by the Hon'ble Supreme Court of India in the case of 'Jugal Kishore Prasad v. State of Bihar' (1972) 2 SCC 633. The Hon'ble Supreme Court of India while considering the scope of the Probation Act held as under: -

> *"The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognises that no one is a born criminal and that a good many crimes are the product of socioeconomic milieu. Although not much can be done for hardened criminals, considerable stress has been laid*

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on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective. It is, therefore, provided that youthful offenders should not be sent to jail, except in certain circumstances. Before, however, the benefit of the Act can be invoked, it has to be shown that the convicted person even though less than 21 years of age, is not guilty of an offence punishable with imprisonment for life. This is clear from the language of Section 6 of the Act. Sub-section (1) of that section reads as under: -

> *"When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so."*

25. The similar question was considered by the Hon'ble Supreme Court of India in a subsequent case, i.e. in the case of 'Chellammal and Another v. State' 2025 SCC OnlineSC 870. In the abovementioned case, the Hon'ble Supreme Court of India observed as under: -

> *"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,*

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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 subsection 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.

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.

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

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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."

26. Since facts and circumstances of the present case are squarely covered by the principles of law propounded in the abovementioned cases, it is hereby held that instant case, too, also is a fit case, wherein the petitioners, who are almost 66 and 49 years old, respectively, having no history of other conviction of similar offence, and facing agony of trial for the last almost 27 years, are entitled for the benefit of probation/admonition. As an outcome of abovementioned observations, the point of determination No.II framed in this petition is hereby answered accordingly, i.e. in favour of petitioners.

CONCLUSION:

27. As a sequel to abovementioned observations, the plea of the petitioners with regard to benefit of probation deserves to be accepted. Consequently, by partly accepting the present revision petition, the sentence awarded to the petitioners is hereby modified and the benefit of probation is accorded to the petitioners. They are directed to furnish the requisite bonds of good behaviour to the satisfaction of learned Chief Judicial Magistrate Bhiwani. Once the bonds are executed, the petitioners would be released on probation for a period specified by the learned Chief Judicial Magistrate Bhiwani. Obvious to say that in case of any offence committed by the petitioners during the period of probation, they shall have to undergo the sentence awarded in this case.

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28. The revision petition stands disposed of, accordingly. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(SURYA PARTAP SINGH)
JUDGE

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

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