
(1996) 03 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 76 of 1996

Hans Raj and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-03-1996

Acts Referred:

Citation : (1996) 2 RCR(Criminal) 582

Hon'ble Judges : K.K.Srivastava, J

Advocate : Arvind Singh, R.S. Mamli, N.S. Bhinder, Y.P. Malik, Advocates for appearing Parties

Judgement

K.K. Srivastava, J.

1. These two connected criminal revisions arising out of the same judgment are being disposed of by this order.

2. The revisionists in both the criminal revisions were tried and convicted by the Judicial Magistrate Ist Class, Karnal for the offences punishable under Section 323 of Indian Penal Code read with Section 149 I.P.C., Section 506 and Section 148 I.P.C. They were sentenced to undergo six months S.I. under sections 323/149 I.P.C, two years S.I. under Section 506 I.P.C., one year S.I. under section 148 I.P.C. They were also awarded fine of Rs. 200/ under Section 148 I.P.C., further fine of Rs. 200/ under Section 323/149 IP.C. and fine of Rs. 200/ each under Section 506 I.P.C. In default of fine they were ordered to undergo further S.I. for two months. The substantive sentences were ordered to run concurrently. It was also directed that out of the total amount of fine, Rs. 1000/ were ordered to be paid to the injured complainant Tek Chand. The accused filed appeal against their conviction being criminal appeals No. 35 of 1993 filed by Hans Raj and Pirthi sons of Om Parkash and Manphul son of Puran Singh, accused appellants and No. 38 of 1993 filed by Sushil Kumar, Subhash and Suresh sons of Amar Nath. These two appeals were dismissed by a common judgment dated 2.2.1996 by Additional Sessions Judge, Karnal.

3. Feeling aggrieved against the dismissal of the appeals, these two criminal revisions have been filed by the aforesaid appellants accused.

4. At the time of admission of the criminal revisions, the criminal revisions were admitted only in regard to sentence and notice of the revisions was issued to the respondents only in respect of the limited point of sentence.

5. Respondents put in appearance through counsel.

6. I have heard learned counsel for the revisionists and learned counsel for opposite parties.

7. The learned counsel for the revisionists contended that the revisionists are the first offenders and looking to their age and antecedents as also the offence under which they have been convicted, they should be given benefit of Section 4 of Probation of Offenders Act and be ordered to be released on probation. The prayer for probation was seriously opposed by the learned appearing for the complainant who submitted that these revisionists had been teasing the young girl of the complainant and threatening the complainant with dire consequences. He further submitted that these revisionists were summoned in a Panchayat and after participating in the Panchayat and assuring the Panchayat of their improved conduct, they committed this occurrence. He further pointed out that the revisionists also filed a false complaint and in the event of their being released on probation they are likely to harass the complainant. These allegations of the complainant were refuted by the learned counsel for the revisionists who contended that the plea of the revisionists about probation was raised in the two Courts below but both the Court turned down their request on relevant considerations.

8. After hearing the learned counsel for the parties and perusing the judgment of the learned Sessions Judge and also perusing the provisions of Section 4 of the Probation of Offenders Act, I find that the revisionists have been convicted for the offences under Sections 323, 148, 149 and 506 I.P.C and the maximum sentence awarded to them is two years S.I. for their conduct they were tried for committing offence and have been convicted and the same should not be taken as a ground for denying the benefit of Section 4 of the Probation of Offenders Act.

9. The learned Additional Sessions Judge while dismissing the appeal against the judgment of conviction recorded by the Judicial Magistrate, considered the matter of parole and declined the same by observing as under:

"The prayer of the convicted appellants is for releasing them on probation of good conduct. Relying on *Harbans Singh v. State of Punjab*, 1990(1) RCR 571, it has been argued on behalf of the appellants that where a convict is a first offender the court should "ordinarily" release him on probation and in case the Court decides against probation, the court should state special reasons which means that it is not possible to reform and rehabilitate the offender. It is true that the convicts are first offenders but keeping in view their conduct I do not find it a fit

case to release them on probation of good conduct. They or some of them used to tease teenaged girl of the complainant while she travelled by bus and when they were called in a panchayat to advise them not to do so, some of them felt annoyed and one of them gave a threat to the complainant that they will see him and even the Rajput community of the village was afraid of them. The second reason for depriving such benefit is that despite the present case against them, they did not hesitate in filing a false complaint against Tek Chand and two more persons Rajinder and Surinder alleging that those Rajinder and Surinder were sons of Tek Chand. It has come in evidence that Tek Chand has no sons of the name of Rajinder and Surinder. The third circumstance is that the conscience of the accused does not appear to be clear and it appears that they have prayed for probation only when they have been convicted by the trial Court and even in this Court their prayer for probation is the last point of argument advanced on their behalf. It appears that the appellants are not repentant of their misconduct and their effort is only to succeed in obtaining probation and thereafter possibility of their harming the complainant party cannot be ruled out."

10. Out of the ground for declining the prayer of probation, the first ground is regarding the teasing of the teenaged girl of the complainant and about these accused revisionists attending Panchayat where they were summoned and advised to desist from such activity and then holding out threat to the complainant. This ground is practically the motive for committing the occurrence for which they were tried and they have been convicted. This ground, therefore, should not have been considered as a valid ground in law to decline the prayer for probation. The second ground considered by the appellate Court was that the accused did not hesitate in filing a false complaint against Tek Chand and two more persons Rajinder and Surinder alleging that those Rajinder and Surinder were sons of Tek Chand and the evidence showed that Tek Chand had no sons of the names of Rajinder and Surinder. This ground is wholly irrelevant for consideration of the prayer of probation. The third and the last ground is that the conscience of the accused does not appear to be clear that they have prayed for probation only when they have been convicted by the trial Court and even in the appellate court their prayer for probation is the last point of argument advanced on their behalf. It was also noticed that the appellants were not repentant of their misconduct and their effort was only to succeed in obtaining probation and thereafter possibility of their harming the complainant party could not be ruled out. So far as this reason for declining the prayer of probation is concerned it is presumptuous ground inasmuch as that the appellate Court had no material before him to record a finding that the conscience of the accused did not appear to be clear. In the absence of any material on record to that effect such a finding about the conscience of the accused could not be recorded and in any case the observation is wholly unwarranted. Apart from it, it is of no valid consideration as to whether the point of probation was taken in the beginning or in the end. All that is relevant is that such a point was raised on behalf of the accused appellants. The observation of the appellate Court that the appellants

were not repentant of their misconduct and they prayed for probation only after their conviction by the trial Courts, is also not a valid and legal reason. It is elementary to know that a person can pray for probation only after being convicted of an offence and being a first offender and no inference can be drawn that the accused were not repentant of their misconduct, from their prayer for seeking probation. The appellate Court could not reasonably and legally visualise the future apprehensive conduct on the part of the accused qua the complainant party. Resultantly, none of the reasons mentioned in the judgment of the appellate Court can be said to be valid and legal ground on which the prayer for probation could be declined.

11. I am of the considered opinion that having regard to the circumstances of the case including the nature of the offence and the character of the revisionists, it is expedient to release them on probation of good conduct. The revisionists be extended the benefits of Section 4 of Offender Act and they be ordered to be released on probation. The revision is allowed in part. The conviction and sentence passed against the revisionists for the offences mentioned above are maintained. The revisionists shall instead of being sent to jail for serving out the sentence, be released on probation for a period of one year subject to each one of them filing a personal bond for a sum of Rs. 10,000/ with one reliable surety each in the like amount within two weeks to the satisfaction of the Judicial Magistrate Ist Class, Karnal subject to condition that during the period of probation the revisionists shall keep peace and be of good behaviour. In the event of committing breach of any of the conditions, the revisionists shall appear before the Court of Judicial Magistrate Ist Class, Karnal and be sent to serve out the due sentence awarded to them.