

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

CRR No.276 of 2011 (O &M)

Date of decision:24.7.2012

Gurdip Chand

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Pankaj Jain, Advocate,
for the petitioner.

RAMESHWAR SINGH MALIK, J.

CRM NO.6167 of 2011

The applicant seeks condonation of delay of 14 days in filing the present petition.

Learned counsel for the applicant submits that the applicant is a poor person and was not having sufficient funds to file the present petition. He further submits that the applicant was not going to gain anything in delaying the matter.

Having heard learned counsel and after going through the record, the present application is allowed for the reasons stated therein. The delay of 14 days in filing the present petition is condoned.

Crl. Misc. application stands disposed of.

CRR No.276 of 2011

The instant criminal revision petition, at the instance of the complainant, is directed against the judgment dated 21.8.2010

passed by the learned Additional Sessions Judge, Gurdaspur, whereby respondent No.2-accused was ordered to be released on probation.

Facts first. The criminal law was set into motion by the petitioner by lodging FIR No.147 dated 23.10.2004 under Sections 323, 324 and 325 of the Indian Penal Code (for short 'IPC'), registered at Police Station Dinanagar, District Gurdaspur. Investigation was carried out and after conclusion thereof, report under Section 173 of the Code of Criminal Procedure (for short 'Cr.P.C.'), was presented by the investigating agency before the learned court of competent jurisdiction. Having found a prima facie case, charge was framed against the accused. The learned trial Court, after going through the evidence led by the parties, passed the judgment of conviction dated 17.7.2009. Consequently, accused-respondent No.2-Manjit Singh, was sentenced to undergo rigorous imprisonment for a period of three months and also with fine of Rs.200/- for the offence under Section 323 IPC. He was sentenced to undergo rigorous imprisonment for six months and also with fine of Rs.500/-for the offence under Section 324 IPC. He was sentenced for a period of one year's rigorous imprisonment and also with fine of Rs. 500/- for the offence under Section 325 IPC. In default of payment of fine, the convict was ordered to undergo further imprisonment for a period of 15 days under Sections 323 and 324 IPC, respectively, whereas in default of payment of fine, he was further ordered to undergo rigorous imprisonment for a period of one month under Section 325 IPC. However, all the sentences were

ordered to run concurrently.

Feeling aggrieved against the above-said judgment of conviction and order of sentence dated 17.7.2009 passed by the learned Judicial Magistrate Ist Class, Gurdaspur, the convict Manjit Singh-respondent No.2 herein, filed Criminal Appeal No.32 of 2009 before the learned court of Additional Sessions Judge, Gurdaspur. The convict did not challenge his conviction before the learned Additional Sessions Judge and prayed for a lenient view on the quantum of sentence. Thus, the conviction was rightly upheld by the learned Additional Sessions Judge.

The convict-respondent No.2, claiming himself as a first offender, made a prayer for his release on probation. The petitioner also appeared before the learned Additional Sessions Judge, alongwith his counsel and admitted that there was no other litigation pending between him and the convict. The petitioner deposed before the learned Additional Sessions on 17.8.2010 that in case, the convict was to be released on probation, then he may be granted compensation to the tune of Rs.1,00,000/-.

Consequently, the accused-respondent No.2 Manjit Singh, tendered before the court an amount of Rs.40,000/- by way of bank draft bearing no.BD-322616 dated 18.8.2010 (Mark 'A'). However, finally on 21.8.2010, the present petitioner-complainant gave a statement before the learned Additional Sessions Judge that he did not want to accept the compensation of Rs.40,000/-. He insisted for granting him compensation of Rs.1,00,000/-.

Learned Additional Sessions Judge, after hearing both

the parties, ordered the release of convict-respondent No.2 Manjit Singh, on probation on furnishing a probation bond to the tune of Rs.20,000/- for a period of one year alongwith one surety in the like amount, because the complainant-petitioner had no objection for release of respondent No.2 on probation, subject to grant of adequate compensation to him. After hearing the learned counsel for the parties, the learned Additional Sessions Judge ordered that the compensation of Rs.40,000/- was just and appropriate, in the facts and circumstances of the case. This amount of Rs.40,000/- was in addition to the fine already deposited by the convict, in compliance of the order of sentence dated 17.7.2009. Learned Additional Sessions Judge also ordered the release of the amount of compensation to the tune of Rs.40,000/- in favour of the petitioner, as and when he moves an application for the release of the said amount.

Dissatisfied with the above-said judgment dated 21.8.2010 passed by the learned Additional Sessions Judge, Gurdaspur, the petitioner has approached this Court by way of instant criminal revision petition.

Learned counsel for the petitioner has submitted that the learned Additional Sessions Judge has acted without jurisdiction while passing the impugned judgment. The only argument raised by the learned counsel for the petitioner is that since the offence under Section 325 IPC was punishable for imprisonment for seven years and fine as well, thus, punishment being more than seven years, the benefit under Section 360 Cr.P.C. could not have been extended in favour of the accused-respondent No.2. Learned counsel for the

petitioner, thus, submitted that the impugned judgment, being without jurisdiction, was not sustainable in law and the present revision petition deserves to be accepted.

Having heard the learned counsel for the petitioner and after going through the record of the case with his able assistance, this Court is of the considered opinion that the present one is not a fit case for exercising the revisional jurisdiction. The present revision petition is misconceived and without any merits, which is liable to be dismissed for more than one reasons, being recorded hereinafter.

Firstly, it is an admitted position on record that conviction of the accused-respondent No.2 has been upheld.

Secondly, the contention raised by the learned counsel for the petitioner does not hold good, for the reason that the petitioner himself gave a concession, by appearing and deposing before the learned Additional Sessions Judge on 17.8.2010, that he would have no objection in case benefit of probation is extended to the accused, provided he is granted compensation to the tune of rupees one lac. The accused brought the payment of Rs.40,000/- by way of bank draft, very next date, i.e. on 18.8.2010 but the petitioner, owing to his greed, did not accept that amount of Rs.40,000/-. He insisted on the payment of Rs.1,00,000/- as if he was to dictate the terms to the Court. This act on the part of the petitioner throws direct light on his conduct.

Thirdly, the learned Additional Sessions Judge was well in his jurisdiction while striking the balance between both the parties. Further, the learned court has rightly exercised its discretion for

advancing the cause of justice.

A careful perusal of the impugned judgment would show that no illegality or perversity has been committed by the learned Additional Sessions Judge much less patent illegality thereof. On the pointed question put to the learned counsel for the petitioner by this Court, he submitted that in case rupees one lac was paid to the petitioner by way of compensation, he would have no objection in extending the benefit of probation to the accused-respondent No.2.

In this view of the matter, this Court has no hesitation to conclude that the learned Additional Sessions Judge has arrived at a just conclusion doing complete and substantial justice between the parties. It is equally important to note that the revisional jurisdiction of this Court is limited one, which can be exercised only when a patent illegality or perversity has been found to have been committed, while passing the impugned order. No such patent illegality or perversity has been pointed out in the impugned judgment.

Keeping in view the totality of the facts and circumstances of the case noted above, coupled with the reasons aforementioned, it is unhesitatingly held that the present revision petition is bereft of any merit. No error of law has been committed while passing the impugned judgment. No case for interference is made out.

Resultantly, the instant criminal revision petition stands dismissed.

24.7.2012
mks

(RAMESHWAR SINGH MALIK)
JUDGE