

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Revision. No.163/2008**

Date of Decision : September 29, 2008

Ranbir Singh Petitioner

Through : Mr. R.K. Saxena,
& Mr. Sunil K. Choudhary,
Advocates

Versus

The State (N.C.T. of Delhi) Respondent

Through : Mr. Pawan Bahl,
Advocate for the State

CORAM :

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be
allowed to see the judgment? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported
in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J

1. The petitioner has moved this Court under Section 397 read with Section 401 of the Code of Criminal Procedure. He is aggrieved of an order passed by the Learned Additional Sessions Judge, on 15.2.2008, in C.A. No.89/2007. By that order the Ld. ASJ confirmed the order of the Metropolitan Magistrate, sentencing the petitioner to undergo rigorous imprisonment for two months under Section 279 IPC, with a fine of Rs.500/-; and rigorous imprisonment for one year with

fine of Rs.2,000/- under Section 304-A IPC. The facts in a nutshell are as follows:

2. On 25.5.1995, while driving a bus bearing registration No. DL-1P-3997 at the Narela Singhu Border, Delhi, the petitioner hit a scooter bearing No. HR-10-6591. He injured both the persons riding the scooter, but the pillion rider succumbed to the injuries. PW-8, Bijender Kumar, son of the deceased, who was driving the scooter, was an eye witness to the accident. Before the Metropolitan Magistrate, Bijender Kumar deposed that the accident was a result of rash and negligent driving of the petitioner. Considering the entire evidence produced by the prosecution the petitioner was convicted by the Metropolitan Magistrate. The appeal preferred by the petitioner was also dismissed by the Sessions Court, holding that there is no infirmity in the order passed by the Trial Court.

3. On 20th March, 2008, counsel for the petitioner confined his plea in this matter to the reduction of sentence and/or the benefit of Sections 3 and 4 of the Probation of Offenders Act, 1958.

4. The counsel for the petitioner contends that the petitioner has faced the rigors of trial for nearly twelve years and has already served nearly five months of his sentence. Furthermore, it is contended that the petitioner has no history of ever being involved in any criminal proceedings. Counsel of the petitioner submits that keeping in mind these factors, either the sentence of the petitioner may be reduced or the petitioner may be released on probation of good conduct as

contemplated by Sections 3 and 4 of the Probation of Offenders Act, 1958.

5. Counsel for the State on the other hand opposes the contention of the petitioner and relies on the decision of the Supreme Court in ***Dalbir Singh Vs. State of Haryana 2000 Cri.L.J. 2283***. In that case, whilst dealing with the question of benefit of probation being granted to offenders under Section 304-A of the IPC, the Supreme Court categorically stated that the benefit of any such probation should not be extended to persons convicted under Section 304-A for rash and negligent driving.

6. The Probation of Offenders Act, 1958 is a benevolent legislation. The Supreme Court in ***Abdul Qayum Vs. State of Bihar, (1972) 1 SCC 103*** held that;

“2....The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. The provisions of the Act must therefore be viewed in the light of this laudable reformatory object which the Legislature was seeking to achieve by enacting the legislation...”

7. Discussing the scope and the object of the above Act the Supreme Court in ***Commandant, 20th Battalion, ITB Police Vs. Sanjay Binjola, (2001) 5 SCC 317*** held that;

“7.The Probation of Offenders Act has been enacted in view of the increasing emphasis on the reformation and rehabilitation of the offenders as useful and self-reliant members of society without subjecting them to deleterious effects of jail life. The Act empowers the court to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life or for the description mentioned in Sections 3 and 4 of the said Act.”

8. The relevant portions of Sections 3 and 4 of the Probation of Offenders Act, 1958 reads;

“3. Power of court to release certain offenders after admonition.— When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code (45 of 1860), or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or Section 4.”

“4. Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behavior.

Provided that the court shall not direct such release of an offender unless it is satisfied

that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under subsection (1) is made, the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case. ”

9. By using the expression “the court may”, both these sections make it clear that the courts have to exercise their discretion while extending the benefit under the sections. Of course, discretion under any Statute has to be exercised judicially. The sections also provide that such discretion should be exercised only if the courts think that “it is expedient” to release the accused on probation. The Supreme Court in ***Sitaram Paswan Vs. State of Bihar,(2005) 13 SCC 110***, held that;

“8...For exercising the power which is discretionary, the court has to consider the circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word “may” clearly indicates that the discretion vests with the court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the courts while finding the person guilty and if the court thinks that having regard to the circumstances of the case, including the nature of the offence and

the character of the offender, benefit should be extended to the accused, the power can be exercised by the court even at the appellate or revisional stage and also by this Court while hearing the appeal under Article 136 of the Constitution.”

10. Similarly the Supreme Court in ***MCD Vs. State of Delhi, (2005) 4 SCC 605***, whilst analyzing Section 4 held that:

“22. We have already reproduced Section 4 of the POB Act. It applied to all kinds of offenders whether under or above 21 years of age. This section is intended to attempt possible reformation of an offender instead of inflicting on him the normal punishment of his crime. The only limitation imposed by Section 6 is that in the first instance an offender under twenty-one years of age, will not be sentenced to imprisonment. While extending benefit of this case, the discretion of the court has to be exercised having regard to the circumstances in which the crime was committed, the age, character and antecedents of the offender. Such exercise of discretion needs a sense of responsibility. The offender can only be released on probation of good conduct under this section when the court forms an opinion, having considered the circumstances of the case, the nature of the offence and the character of the offender, that in a particular case, the offender should be released on probation of good conduct. The section itself is clear that before applying the section, the Magistrate should carefully take into consideration the attendant circumstances...”

11. However, in ***Commandant, 20th Battalion, ITB Police Vs. Sanjay Binjola, (2001) 5 SCC 317*** apart from discussing the circumstances under which such discretion should be exercised, the Supreme Court also pointed out cases where such benefit should not be extended. The Apex Court held that;

“9....It is true that nobody can claim the benefit of Sections 3 and 4 of the Probation of Offenders Act as a matter of right and the court has to pass appropriate orders in the facts and circumstances of each case having regard to the nature of the offence, its general effect on the society and the character of the offender, etc. There are

laws which specifically direct that the provisions of the Probation of Offenders Act shall not apply to the persons convicted for those offences and there may be cases under other laws as well which may not justify the exercise of the powers of the Probation of Offenders Act. Even apart from such exclusions the courts should be wary of extending the benefit of the Probation of Offenders Act to offences relating to corruption, narcotic drugs, etc. This Court has indicated in *Dalbir Singh v. State of Haryana* that benefit of the Probation of Offenders Act should not normally be afforded in respect of the offences under Section 304-A IPC when it involves rash or negligent driving. Those are instances for showing how the nature of the offence could dissuade the court from giving the benefit...”

12. In *Dalbir Singh Vs. State of Haryana* (supra) the Supreme Court held that;

"13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence and lastly that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted

of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

13. This Court in ***Vijay Kumar Vs. State, 2005 (6) AD(Delhi) 37*** was dealing with a similar situation as in the instant case. In that case it was contended by the petitioner sought release on probation under Probation of Offenders Act on the ground that the petitioner had a family which was completely dependent on him. This Court held that;

“2....In this case one person has lost his life on account of rash and negligent driving of the petitioner. The petitioner was a driver of a commercial vehicle. He was required to be on the wheels almost whole of the day. If such drivers are excused for being rash, the consequences can be anybody's guess. Such drivers are required to exercise extra caution on their speed and manner of driving particularly when they are driving in a crowded city like Delhi. Further they should be particularly careful about those on two wheelers driving on the same roads for they are vulnerable to serious injuries in case of an accident. The punishment to such offenders should, therefore, have a deterrent effect...”

Relying on the decision of the Supreme Court in ***Dalbir Singh*** (supra), this court dismissed the revision petition.

14. In the case at hand, although the probation report favours the petitioner, however, as held by the Supreme Court in ***MCD Vs. State of Delhi and Anr. (2005) 4 SCC 605*** whilst the Court must take into consideration the probation report before coming to any conclusion, the Court is not bound by this report. Furthermore, the counsel for the petitioner has also pointed to a lengthy trial and no past criminal record as mitigating factors, but the fact remains that an innocent person has lost his life and both the Trial Court as well as the

court of Sessions has decided against the petitioner. The Sessions Court whilst giving its judgment also held that;

“The deceased was only 42 years old man whose life was truncated has the hands of the appellant. The benefit of long trial has already been afforded to the appellant by the Trial Court and a lenient view has been taken. Sentence of R.I. for one year cannot be said to be harsh.”

I am in complete agreement with this view. Furthermore, the Supreme Court in ***Dalbir Singh*** (supra) held;

“1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.”

15. Keeping in view the facts of the case and the judgments in the cases of ***Dalbir Singh*** (supra) and ***Sanjay Binjola*** (supra) by the Supreme Court, I think that the punishment awarded by the Court of the Metropolitan Magistrate and confirmed by the Court of Sessions is quite reasonable. No interference is called for from this Court.

16. The revision petition is accordingly dismissed.

Sudershan Kumar Misra, J.

September 29, 2008
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