

GAHC020001082022



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**(KOHIMA BENCH)**

**Case No. : CRL.REVN/1/2022**

SHRI. JOSEPH ZHIMOMI AND ANR  
S/O TOKUGHA, R/O KIVIKHU VILLAGE, P.S - SATAKHA, DISTRICT -  
ZUNHEBOTO, NAGALAND

2: SHRI.TOKHUVI SHEQI  
S/O ISHIKHU  
R/O PUGHOBOTO VILLAGE  
P.S - PUGHOBOTO  
DIST - ZUNHEBOTO  
NAGALAN

VERSUS

THE STATE OF NAGALAND AND ANR  
NAGALAND, KOHIMA

2:LANUWATI  
UDA  
COMMISSIONER OFFICE  
KOHIMA  
S/O LATE NANGSHITIBA  
ADD. - UPPER AGRI COLONY  
KOHIMA

**:: BEFORE ::**

**HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

For the Petitioners : Mr. Joshua Sheqi, Advocate

For the Respondents : Mr. K. Angami, Public Prosecutor,  
Nagaland.

Date of Hearing : **16.05.2023**

Date of Judgment : **23.05.2023**

**JUDGMENT & ORDER(CAV)**

*(Mridul Kumar Kalita, J)*

**1.** Heard Mr. Joshua Sheqi, learned counsel for the petitioners. Also heard Mr. K. Angami, learned Public Prosecutor for the State of Nagaland. None appears for the respondent No. 2 (*the informant*).

**2.** This Criminal Revision Petition has been registered on filing of an application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 by the petitioners, namely, Shri Joseph Zhimomi and Shri Tokhuvi Sheqi impugning the judgment dated 28.02.2022 passed by the learned Sessions Judge, Kohima in Criminal Appeal No. 1/2022 and order dated 25.01.2022 passed by the learned Judicial Magistrate, 1<sup>st</sup> class, Kohima Nagaland in G.R. Case No. 120/2018.

**3.** The facts relevant for adjudication for this Criminal Revision Petition, in brief, are as follows:-

**(i)** That on 11.08.2018, one Mr. Lanuwati, UDA, Commissioners Office, Kohima, Nagaland lodged an FIR before the Officer-in-Charge of South Police Station, Kohima, Nagaland, *inter alia*, alleging that on that day at around 8.30 p.m., one red colour Gypsy bearing registration No. NL-10-4941 lost from Agri Colony, Kohima. On receipt of the said FIR, Kohima South Police Station Case No. 29/2018 was registered under Sections 379/34 of the Indian Penal Code.

**(ii)** On the same day at 22.30 hours, the said vehicle was intercepted at Peducha Check Gate and the suspected persons, namely, Shayang Konyak and Tokishe Jakhalu were arrested. During the course of investigation, the present petitioners, namely, Shri Joseph Zhimomi and Shri Tokhuvi Sheqi were also arrested. Ultimately, after completion of the investigation, the Investigating Officer, laid charge-sheet dated 27.12.2018 under sections 379/34 of the Indian Penal Code read with section 7 of the NSR, 1962 against the accused persons, namely, Tokishe Jakhalu (A-1), Shayang Konyak (A-2), Tokhuvi Sheqi (A-3 and present petitioner No. 2) & Joseph Zhimomi (A-4 and present petitioner No. 1). Both the present petitioners appeared before the learned Judicial Magistrate, 1<sup>st</sup> class, Kohima on 25.01.2022 and on that day, learned Judicial Magistrate, 1<sup>st</sup> class, Kohima framed charges under sections 379/34 of the Indian Penal Code against both the present petitioners. When the said charge were read over and explained to the present petitioners, they pleaded guilty to the said charge and on the basis of their plea of guilt, both of them were convicted under sections 379/34 of the Indian Penal Code read with section 7 of the NSR, 1962. Thereafter, the counsel for the present petitioners filed an application under section 4 of the Probation of Offenders Act, 1958 praying for releasing the present petitioners on probation of good conduct as they were first time offender, however, learned Judicial Magistrate, 1<sup>st</sup> class, Kohima did not find it

justified to extend the benefits of the Probation of Offenders Act, 1958 to the present petitioners and accordingly after hearing them on the point of sentence both the present petitioners were sentenced to pay fine of Rs.3,000/- each and in default of payment of fine to undergo simple imprisonment for 1(one) month.

**4.** Being aggrieved by the order dated 25.01.2022 passed by the learned Judicial Magistrate, 1<sup>st</sup> class, Kohima in G.R. Case No. 120/2018, the present petitioners preferred an appeal before the learned Sessions Judge, Kohima which was registered as Criminal Appeal No. 1/2022. However, the said appeal was also dismissed by judgment and order dated 28.02.2022 passed by the learned Sessions Judge, Kohima.

**5.** Being aggrieved and dissatisfied with the order of learned Sessions Judge dated 28.02.2022 passed in Criminal Appeal No. 1/2022, the present petitioners have preferred this instant revision petition on the following grounds:-

**(i)** For that, the learned Courts below have erred in law by not granting relief of section 3/4 of the Probation of Offenders Act, 1958 to the revisionists/petitioners.

**(ii)** For that, the Act itself has clearly states that 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 with regard to the circumstances of the case including the nature of offence and the character of the

offender, it is expedient to release the offender on probation of good conduct. However, instead of releasing the revisionists/petitioners on probation, the learned court of the Judicial Magistrate, 1<sup>st</sup> class, Kohima sentenced the present revisionists/petitioners to pay fine of Rs. 3,000/- each, vide Order dated 25.01.2022 which is cardinally erroneous. However, the learned Sessions Judge failed to examine the legality of the Order of the learned Judicial Magistrate, 1<sup>st</sup> class, Kohima in refusing to grant probation under the relevant law.

**(iii)** For that, the learned Court of the Sessions Judge, Kohima has erred in law for failing to examine the observation made by the learned court of the Judicial Magistrate, 1<sup>st</sup> class, Kohima in holding the opinion that considering the facts and circumstances of the present case wherein it is Prima facie established how the offence was carried on and there was common intention and pre-planned minds to commit offence and convicted the revisionists without considering the requirements for releasing the offenders on probation such as the antecedents of the offenders, nature of the offence as well as the character of the offender. The learned court of the Judicial Magistrate, 1<sup>st</sup> class, Kohima failed to apply the reasonable mind and the same was upheld by the learned Sessions Court without application of mind.

**(iv)** For that the learned Court of the Sessions Judge failed to apply the reasonable mind and also failed to appreciate the paradigm shift in jurisprudence of criminology in the modern times, where the rehabilitation of criminals to become meaningful contributors to the society have become the main focus. Unless the crime is of heinous nature, the reformation of the criminal is the priority beyond punishment. Hence, in addition to the section 360 of Cr.P.C., the Probation of Offenders Act is enacted as a benevolent legislation. The learned Courts below taking the narrow interpretation of law is a serious matter of concern which requires the intervention of this Court.

**(v)** For that, the offence committed by the revisionists/petitioners is neither punishable with death nor imprisonment for life, however, the lower Courts below failed to appreciate the provisions of the Act and also failed to appreciate the necessary requirements for releasing the offenders on probation.

**(vi)** For that the learned Courts below failed to appreciate the glaring fact that the revisionists/petitioners have no past criminal antecedent and are still young in age, who deserve the chance to reform themselves and become meaningful contributory members of their own family and society at large. The purpose of the law enacted giving opportunity to class of criminals, where the revisionists/petitioners squarely qualifies, stands defeated

by the learned courts below for taking the harsh view that harms the present and future of the revisionists/petitioners.

**(vii)** For that, the learned Courts below failed to appreciate the most important aspect that the revisionists/petitioners are in Government Service, which is their only source of their livelihood and their conviction is likely to jeopardize his service, because if they are convicted, their criminal record will have impact on his service which will eventually lead to their termination/dismissal from service. The refusal to grant the benefit of under the Probation of Offenders Act would take away the only meaningful source of livelihood of the two revisionists/petitioners. It would cause more harm to the young offenders than any good, as they get reduced to a person who is a walking dead.

**(viii)** For that, it is the interest of law to reform a person and not to destroy the future by resorting to extraneous considerations. A reformed person is an asset to himself, his family and the society at large.

**(ix)** For that, the learned courts below failed to grasp the law that does not bar the revisionists/petitioners from applying for the benefit of the Probation of Offenders Act at any stage, regardless of whether the revisionists were convicted after the trial or for pleading guilty at the stage of consideration of charge.

**(x)** For that the learned Court of the Sessions Judge

misunderstood the provisions of law contained in section 375 Cr.P.C. to hold the view that appeal does not lie. The learned Court failed to appreciate the second part of the section 375 Cr.P.C., which permits the appellant to question the legality of the conviction. The view taken by the learned court below is without application of mind and mechanical in nature.

**(xi)** For that the learned Courts below failed to appreciate the fact that the petition for probation under section 360 Cr.P.C., read with section 3/4 of the Probation of Offenders Act, 1958 was filed before the order of conviction was passed.

**(xii)** For that the learned Courts below failed to appreciate the fact that the revisionists on realising their own guilt pleaded guilty instead of wasting the precious time of the court as a sign of realisation of the wrongs/offence committed. This in itself is a good ground to grant probation.

**(xiii)** For that the learned Courts below failed to understand the fact that granting the benefit of probation is not letting loose the revisionists/petitioners to commit crime, but the noose is bound on them while under probation. Within the period of probation if the revisionists commit any crime or similar crime, it is to their own peril. Probation is but a conditional freedom to assist the process of rehabilitation of the offenders. The simple logic and

intent of probation failed to register in the minds of the learned courts below.

**(xiv)** For that, this is a fit case to consider for probation, which is only fair and just to keep the offenders under observation of good behaviour bond.

**6.** Mr. Joshua Sheqi, learned counsel for the petitioners has submitted that both the present petitioners, who pleaded guilty before learned Judicial Magistrate, 1<sup>st</sup> class, Kohima in G.R. Case No. 120/2018 are young person of 21 years and 25 years of age respectively. No previous conviction is proved against any one of them. They have realized their wrong and have pleaded guilty before the court of learned Judicial Magistrate, 1<sup>st</sup> class, Kohima at the earliest possible opportunity without wasting precious judicial time. Mr. Joshua Sheqi, learned counsel for the petitioners has submitted that learned Judicial Magistrate, 1<sup>st</sup> class, Kohima ought to have taken these circumstances into consideration before imposing any sentence on the present petitioners by rejecting their application under section 4 of the Probation of Offenders Act, 1958. In support of his contention, Mr. Joshua Sheqi, learned counsel for the petitioners relied upon following rulings cited by him:-

**(i)** “*Keshav Sitaram Sali v. State of Maharashtra*” reported in “**(1983) 1 SCC 390**” wherein having regard to the special circumstances of the case and the character and antecedents of the appellant Hon’ble Supreme Court observed that the benefit of either section 360 of the Code of Criminal Procedure or sections 3 and 4 of the Probation of Offenders Act should

have been extended to the appellant instead of imposing a sentence of fine on him.

(ii) “***State of H.P. v. Dharam Pal***” reported in “**(2004) 9 SCC 681**” wherein Hon’ble Supreme Court of India granted benefit of Probation of Offenders Act, 1958 to the accused on the ground that the accused was less than 21 years of age on the date of alleged offence, though the offence involved was of an attempt to commit rape.

(iii) “***Lakhvir Singh v. State of Punjab***” reported in “**(2021) 2 SCC 763**” wherein Hon’ble Supreme Court of India released the accused on probation of good conduct under section 4 of the Probation of Offenders Act, 1958.

(iv) “***Keshav Sitaram Sali v. State of Maharashtra***” reported in “**(1983) 1 SCC 390**” where considering the special circumstances of the case and the character and antecedents of the accused the benefit of sections 3 and 4 was given to the appellants instead of imposing fine on them.

(v) “***Gandhi Baruah @ Jogesh Baruah vs. State of Assam***” (**CRP No. 159/2007**), decided on 15.12.2016 by this Court, wherein the accused was released after due admonition under section 3 of the Probation of Offenders Act, 1958 considering the fact that the offence was involved was the first offence committed by the accused and he was also a government servant.

**7.** Mr. Joshua Sheqi, learned counsel for the petitioners has also

submitted that apart from the fact that no previous conviction was proved against the accused persons and that the fact that they are young persons in their early twenties, another factor which ought to have been taken into consideration by learned Judicial Magistrate, 1<sup>st</sup> class, Kohima is that they were government servant when they were charged with the alleged offence and imposition of any sentence would jeopardize their career. On the other hand, if they were provided with the benefit of the provisions of sections 3 or 4 of the Probation of Offenders Act, 1958 then they would have been in a position to avail the statutory protection under section 12 of the Probation of Offenders Act, 1958 and would not have suffered any disqualification in spite of their conviction on their plea of guilt.

**8.** On the other hand, Mr. K. Angami, learned Public Prosecutor, Nagaland vehemently opposed the prayer of learned counsel for the petitioners for affording the benefit of sections 4 of the Probation of Offenders Act, 1958 to the present petitioners. Learned Public Prosecutor, Nagaland has also submitted that from the materials available on the record, it appears that the manner in which the alleged offence was planned and executed, it does not justify affording the benefits of the provisions of the Probation of Offenders Act, 1958 to the present petitioners. He has further stated that under the facts and circumstances of this case, both the Courts below, namely, the Court of learned Judicial Magistrate, 1<sup>st</sup> class, Kohima as well as learned Sessions Judge, Kohima have correctly rejected the prayer of the present petitioners and same does not warrants any interference by this Court.

**9.** I have thoroughly gone through the materials available on record

and considered the rival submissions made by learned counsel for both the sides.

**10.** Before going into the main question as to whether, having regard to the circumstances of the present case including the nature of offence and character of offenders, the present petitioners ought to have been granted the benefit of Probation of Offenders Act, 1958 or not, let me first point out certain anomalies which are noticed in the order dated 25.01.2022 passed by the learned Judicial Magistrate, 1<sup>st</sup> class, Kohima in GR Case No. 120/2018, which, it appears, also skipped the notice of learned Sessions Judge, Kohima while dealing with the Criminal Appeal No. 1/2021 wherein the said order dated 25.01.2022 was impugned.

It appears on perusal of the order dated 25.01.2022 that though it has been mentioned in the said order that formal charge under section 379/34 of the Indian Penal Code is framed against the accused persons Shri Joseph Zhimomi and Shri Tokhuvi Sheqi, however, no formal form of charge (*memorandum of charge*), as prescribed in Form No. 32 of the Second Schedule to the Code of Criminal Procedure, 1973, was found in the case record of GR Case No. 120/2018 even after thorough check, which only leads to the inference that no formal charge under section 379/34 of the Indian Penal Code was framed in the said case. Secondly, though the order dated 25.01.2022, passed in GR Case No. 120/2018 shows that charge was framed under section 379/34 of the Indian Penal Code only, it is stated in the later part of the said order that the present petitioners were also held guilty of under Regulation 7 of the Nagaland Security Regulation, 1962 and they were convicted under section 379/34 of IPC read with Rule 7 of the Nagaland Security Regulation, 1962. There

is nothing on record to show that any charge under Rule 7 of the Nagaland Security Regulation, 1962 was framed against the present petitioners.

**11.** Now, let us examine as to whether in the instant case, the benefit of section 4 of the Probation of Offenders Act, 1958, as prayed for by the petitioners, ought to have been given to them or not. For the sake of convenience, section 4 of the Probation of Offenders Act, 1958 is quoted herein below:-

*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 behaviour:*

*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 sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.*

*(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being*

*less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.*

*(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.*

*(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."*

**12.** It appears from order dated 25.01.2022, passed by the learned Judicial Magistrate, 1<sup>st</sup> class, Kohima, in GR Case No. 120/2018, that following reasons were given by learned Judicial Magistrate, 1<sup>st</sup> class, Kohima for rejecting the application for extending the benefit of section 4 of the Probation of Offenders Act, 1958 to the present petitioners-

*"Considering the increase in theft case and most importantly the facts and circumstances of the present case wherein it is prima facie established how the offence was carried on and there was common intention and preplanned minds to commit the offence and the convict Joseph Zhimomi and Tokhuvi Sheqi was involved in carrying out the act and hence, I do not find it justified to extend the benefits of Probation of Offenders Act to the convict".*

From above, it appears that the factors which played in the mind of learned Judicial Magistrate, 1<sup>st</sup> class, Kohima for not extending the benefit of section 4 of the Probation of Offenders Act, 1958 to the present

petitioners were mainly (i) the fact of increase in theft cases, (ii) the manner in which the offence was carried out and (iii) the common intention and preplanned mind of the present petitioners to commit the said offence. Learned Magistrate did not consider the fact that the no previous conviction was proved against the present petitioners. Learned Magistrate also did not consider the plea of the present petitioners that they would not repeat the said offence in future and in case of imposition of any sentence on them, not only they but their family would also suffer. Learned Magistrate, though rejected the prayer for extending the benefits of section 4 of the Probation of Offenders Act, 1958 to the present petitioners on above ground, however, on the same grounds, she took a lenient view of the matter and imposed only fine of Rs.3,000/- each against the present petitioners. It also appears that, for the same reasons, while considering the order passed by learned Judicial Magistrate, 1<sup>st</sup> class, Kohima in Criminal Appeal No. 1/2022 learned Sessions Judge, Kohima also refused to interfere with the said order passed by learned Judicial Magistrate, 1<sup>st</sup> class, Kohima.

**13.** Considering the factors which played in the mind of learned Judicial Magistrate, 1<sup>st</sup> class, Kohima while rejecting the prayer for extending the benefits of section 4 of the Probation of Offenders Act, 1958 to the present petitioners, it becomes very difficult to appreciate as to why learned Magistrate imposed a lenient sentence of Rs.3,000/- each only to the present petitioners on the same grounds for which their prayer for extending the benefit of section 4 of the Probation of Offenders Act, 1958 was rejected. Under the facts and circumstances of the present case,

imposition of sentence of fine of only Rs.3,000/- each, for an offence like theft of a vehicle (*a gypsy vehicle in the instant case*) does not appear to be an appropriate sentence.

**14.** If we carefully go through section 4 of the Probation of Offenders Act, 1958, it will appear that it not only provides for a beneficial piece of legislation in favour of any person found guilty of having committed an offence not punishable with death or imprisonment for life, but it also gives the power to the convicting court to defer the imposition of sentence on the convicted person and also enables the said court to pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year as may be specified therein and may also impose such conditions as it deems necessary for due supervision of the offender.

Thus, looking at section 4 of the Probation of Offenders Act, 1958 only from the point of view the benefit which it affords to the offenders would be a wrong approach. In an appropriate case, apart from the power of deferring the imposition of sentence on the offender, it gives power to convicting court to make provisions for monitoring the conduct of the convicted person and to pass appropriate supervision order with or without conditions. This salutary statutory provision is there in the statute book so that same may be made applicable in appropriate cases by the concerned court. It is not meant only to remain in the statute book as dead letters of law.

**15.** In the instant case, where the offence involved is a pre-planned one involving theft of a vehicle, where the accused persons have pleaded

guilty and have repented for their deeds and are praying for an opportunity to get reformed, imposition of a fine of mere Rs.3,000/- each on them does not appear to be appropriate. Instead of that, having regards to the circumstances of the case, including the nature of the offence and the character of the offender, learned Judicial Magistrate, 1<sup>st</sup> class, Kohima ought to have exercised his powers under section 4 of the Probation of Offenders Act, 1958 and ought to have deferred the imposition of the sentence on the present petitioners by asking them to appear before the court and receive the sentence when called for within such period not exceeding three years and in the meanwhile the present petitioners should have been released on probation of good conduct by entering into a bond with sureties for appearing before the court to receive the sentence when called upon by the Court and in the meanwhile to keep peace and be of good behaviour.

**16.** In the considered opinion of this court, learned Judicial Magistrate, 1<sup>st</sup> class, Kohima, under the facts and circumstances of this case, have erred in imposing the sentence of only fine of Rs.3,000/- each on the present petitioners by not taking recourse to the provisions of section 4 of the Probation of Offenders Act, 1958. Learned Sessions Judge, Kohima, in the considered opinion of this Court also erred in not interfering with the impugned order dated 25.01.2022 passed by learned Judicial Magistrate, 1<sup>st</sup> class, Kohima in GR Case No. 120/2018.

**17.** In view of what has been discussed herein above, the impugned order dated 28.02.2022 passed by learned Sessions Judge, Kohima in Criminal Appeal No. 1/2022 is hereby set aside. The order dated

25.01.2022 passed by learned Judicial Magistrate, 1<sup>st</sup> class, Kohima in GR Case No. 120/2018 is also set aside, in part, to the extent of it not affording the benefits of Probation of Offenders Act, 1958 to the present petitioners and to the extent of imposition of sentence on the present petitioners, i.e., of fine of Rs.3,000/- each in default of payment of fine to undergo to simple imprisonment for one month.

**18.** The GR Case No. 120/2018 is remitted back to the trial court i.e. the court of learned Judicial Magistrate, 1<sup>st</sup> class, Kohima with a direction to pass an appropriate order under section 4 of the Probation of Offenders Act, 1958 against the present petitioners as indicated herein above. The fine imposed on the present petitioners, if already paid, shall be refunded back to them. Both the present petitioners are directed to appear before the court of learned Judicial Magistrate, 1<sup>st</sup> class, Kohima on any date in the 3<sup>rd</sup> week of June, 2023 so as to enable the learned trial court to pass appropriate order as indicated herein before.

**19.** Let the case record of GR Case No. 120/2018 be remitted back to the court of learned Judicial Magistrate, 1<sup>st</sup> class, Kohima along with the connected files as well as a copy of this judgment.

**20.** With the above observation, this Criminal Revision is disposed of.

**JUDGE**

**Comparing Assistant**