Court No. - 15

Case :- CRIMINAL REVISION No. - 302 of 2012

Revisionist :- Parmeshwar and Ram Avtar
Opposite Party :- State of U.P.
Counsel for Revisionist :- Anoop Singh,Ram Achal Gupta
Counsel for Opposite Party :- Govt. Advocate

Hon'ble Karunesh Singh Pawar,J.

1. Heard learned counsel for the revisionists, learned Mr. Jayant Singh Tomar, A.G.A., assisted by Mr. Ayush Sharma, State Law Officer, and perused the record.

The revision has already been dismissed as abated for revisionist No.2 vide order dated 2.4.2024 passed by this Court. Hence, this revision is taken for hearing qua revisionist No.1 Parmeshwar.

2. Present criminal revision has been filed against the judgment and order dated 31.8.2010, passed by Additional District & Sessions Judge, Court No.2, Sitapur in Criminal Appeal No.37 of 2010 as well as the judgment and order dated 22.4.2010 passed by Judicial Magistrate-I, Sitapur in Criminal Case No.488 of 2009 under sections 332, 353, 504, 506, 427 I.P.C., P.S. Sidhauli, district Sitapur whereby the revisionist has been convicted and sentenced under section 353 I.P.C. for one year simple imprisonment with fine of Rs.1000/- with default provision and under section 506(2) I.P.C. for two years S.I. with fine of Rs.500/- with default provision.

3. At the outset, learned counsel for the revisionist submits that he is not challenging the impugned judgment and order of conviction and he is confining his submission only with respect to the order of sentence.

4. A written report was given by the complainant Rajju Lal, Collection Amin that on 21.3.1995 at about 10.00a.m., he along with the Peon Santosh Kumar had gone to Seerganj Majra Bhitaura for collection. He was drawing the receipt on sitting at the door of Chandrapal son of Hulasi, the defaulter Parmeshwar (revisionist) was called. Money was asked from him. He was adamant not to deposit the amount. He started using foul language and has stated that whenever he will have the money,

he will deposit the same. In the meantime, brother of the defaulter Ram Autar (since dead) and 3-4 persons came. They started hurling abuses and beating the complainant. The revisionist No.2 Ram Autar has also slapped him and has also torn Jamabandi of 1402 fasli. After hearing the alarm, neighbouts gathered. In the meantime, Collection Peon also returned. The accused persons went away by hurling abuses and have threatened to kill.

On the basis of the written report, first information report was registered as crime No.51/95 under sections 332, 353, 504, 506, 427 I.P.C.. Rajju was medically examined in C.H.C., Sidhauli. After investigation, charge sheet was filed under sections 332, 353, 504, 506, 427 I.P.C.. After taking cognizance, charges were framed. The accused persons denied the charges.

5.The prosecution in support of its case has produced P.W.1 Rajjulal, P.W.2 Santosh Kumar, P.W.3 Chandrapal, P.W.4 Kadhile, P.W.5 Ujagar, P.W.6 I.O. Tale Singh and P.W.7 Dr. S.C. Kaulwho was produced on the application under section 311 CrPC. Statement of the accused was recorded under section 313 CrPC, who had denied the incident and has stated that he has been implicated in a false case due to enmity. The accused persons did not produce any defence witness. The trial court after considering the evidence adduced by the prosecution has convicted the revisionists as aforesaid. The criminal appeal preferred against the said judgment has been partly allowed and while affirming the judgement of trial court in regard to the offence under section 353 I.P.C. has directed that the revisionists shall undergo R.I. for one year for the offence under section 506 I.P.C. with fine of Rs.500/-.

6.After going through the entire evidence adduced by the prosecution as well as the argument advanced, this Court comes to the conclusion that the prosecution has proved its case beyond reasonable doubt. There is no illegality in the impugned judgment.

7.Revisionist's counsel submits that the revisionist is not a previous convict. It is submitted that the revisionist is the first offender and he may be given the benefit of provisions of the Probation of Offenders Act, 1958 (in short, 1958 Act).

He further submits that in view of the facts and circumstances including the fact that the accused revisionist has not been convicted previously for any offence, the trial court ought to have invoked the provisions of the Probation of Offenders Act, 1958.

The Trial Court did neither invoke the provisions of the aforesaid Act nor the provisions of Section 360 Cr.P.C. while sentencing the accused-revisionist. The Trial Court has not given any special reason in the impugned judgment and order of conviction and sentence for not giving the benefit of provisions of Section 360 Cr.P.C. or the provisions of 1958 Act.

Learned counsel for the accused-revisionists submits that to that extent, the impugned judgment and order suffers from serious illegality and therefore, it cannot be sustained.

The accused-revisionist has statutory right for claiming the benefit of beneficial legislation i.e. the provisions of the Act and the learned Trial Court was under a duty to consider the applicability of Section 360 Cr.P.C. or Section 4 of the Act. If the provisions of Section 360 Cr.P.C. or provisions of the Act were not applied, then the learned Trial Court should have recorded reasons for the same.

8. Learned AGA appearing for the State does not dispute the application of the provisions of Section 4 of the 1958 Act, as in view of the provisions of the said Act, power can be exercised, while if a person is found guilty of committing an offence not punishable with death or imprisonment for life and with regard to the facts and circumstances of the case, like nature of the case and character of the offender, the revisionist/accused can be given benefit of the said provision. He also does not dispute the fact that accused-revisionist is the first time offender and was not previously convicted in any other case.

9. I have considered the submission advanced by learned counsel for the parties.

10. In order to appreciate the argument advanced by the learned counsel for the parties, the provision of Section 4 of the 1958 Act is required to be appreciated with,which is quoted hereinbelow:

"*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."

11. From perusal of the aforesaid provision, it is clear that the power is there with the Court to release a person on a bond of good conduct by extending the benefit of Section 4 of 1958 Act, if any person is found guilty of having committed an offence not punishable with death or imprisonment for life, but, at the same time, the Court will extend the benefit so provided under Section 4 of the Act, 1958 having due regard to the nature of the offence and the character of the offender.

12. In **Commandant, 20th Battalion, ITB Police** versus **Sanjay Binjola**

2001 SCC (Cri) 897, the Supreme court has held in para 7 as under :

"*7. Probation of Offencers Act has been enacted in view of the increasing emphasis on the reformation and rehabilitation of the offenders as a useful and self-reliant members of society without subjecting them to deleterious effect 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."*

The Supreme Court in **Paul George** versus **State of NCT of Delhi** 2008 SCC (Cri) 768 (para 12) has held as under :

"*12. This litigation has been going on for the last 20 years and has been fought tenaciously through various courts, we are also told that the appellant who has had a good career throughout but for this one aberration has since been dismissed from service on account of his conviction. We, therefore, while dismissing the appeal, feel that the ends of justice would be met if we direct that the appellant be released on probation under Section 4 of the Probation of Offenders Act, 1958 on conditions to be imposed by the Trial Court. The appeal is disposed of in the above terms."*

13.. From the perusal of the impugned judgment(s), it is clear that none of the Sections in which the revisionist/ accused was convicted, entail the punishment of death or imprisonment for life. So, the nature of the offences is such, where this Court can give the benefit of the 1958 Act to the revisionist/accused.

14. In addition to the above, there is other circumstance which would warrant the application of Section 4 of the Probation of Offenders Act, 1958 to the facts of the case, i.e. the pendency of the criminal trial, appeal and revision against the revisionist/accused since more than a decade and he has undergone the trauma of the criminal trial for the last so many years, coupled with the fact that the revisionist/ accused has no criminal antecedents and even prior and after the aforesaid crime, this is the only offence which has so far been registered against the revisionist/accused.

15. In this view of the fact, this Court is of the opinion that there is no useful purpose for sending the revisionist/accused to jail for serving the sentence awarded by the Court below.

16. In view of the above, the criminal revision is partly allowed. Judgment and orders passed by learned trial court to the extent it convicts the revisionist, and learned appellate court are hereby affirmed. The conviction as recorded by the learned trial

court and learned appellate court to the extent it convicts the revisionist shall remain intact.

However, so far as the sentence part is concerned, it is directed that the revisionist/accused Parmeshwar shall be released on probation for a period of one year on furnishing a personal bond with two sureties to the satisfaction of the concerned trial court. The fine imposed by the trial court shall be deposited by the revisionist/accused within a period of one month, if not already deposited, from the date of receipt of this order, with the Court concerned. The concerned Magistrate shall be at liberty to impose such condition(s) while executing the bond which he feels fit in accordance with the law.

It goes without saying that if accused/revisionist fails to observe good conduct and behaviour during probation, or is found violating any condition to be imposed, the Court concerned shall be at liberty to cancel the bond of good conduct calling the accused/revisionist to serve out the sentence awarded by the Courts below. The revisionist shall be released on probation immediately once he executes the bond of good conduct before the court concerned as directed above.

17. Let a copy of this judgment, along with the LCR, if received, be sent forthwith to the learned trial court for information/compliance.

Order Date :- 4.4.2024
kkb/

Digitally signed by :-
KRISHNA KUMAR BARANWAL
High Court of Judicature at Allahabad,
Lucknow Bench