

CRA-S-2121-SB of 2013

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-2121-SB of 2013 (O&M)

Date of decision: 19.05.2015

Lakhvir Singh

....Appellant

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

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

Present: - Mr. Ashok Goel, Advocate, for the appellant.
Mr. K.S. Sidhu, DAG, Punjab.

PARAMJEET SINGH, J.

Challenge in the present criminal appeal is to the judgment dated 07.07.2012 passed by learned Additional Sessions Judge, Patiala, whereby conviction of respondents No.2 and 3 has been upheld, however, order of sentence has been modified and respondents No.2 and 3 have been granted the benefit of provisions of the Probation of Offenders Act, 1958 (for short 'the Probation Act').

In brief, the facts relevant for disposal of instant appeal are to the effect that on 23.03.2004 at about 5.30 a.m. when the petitioner-complainant was watering his fields, respondents No.2, 3 and Shingar Singh suddenly attacked the petitioner with *kasi* and *dangs*, respectively, in their hands. Respondent No.2 gave *kasi* blow on the neck of the

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petitioner, which hit the jaw of the petitioner as a result of which jaw of the petitioner got dislodged/fractured. Shingar Singh and respondent No.3 gave *dang* blows on the other body parts of the petitioner and petitioner became unconscious. On seeing the mother of the petitioner, respondents No.2, 3 and Shingar Singh ran away from the spot. Petitioner was admitted to the Civil Hospital, Samana, wherein he was medico-legally examined. X-ray examination revealed fracture of jaw. Statement of the petitioner was recorded, however, no FIR was registered. Petitioner filed a criminal complaint. After examination of the witnesses, trial Court vide judgment of conviction dated 11.08.2009 and order of sentence dated 18.08.2009 convicted respondents No.2 and 3 as under: -

“Hardyal Singh

<i>U/s</i>	<i>Imprisonment & fine</i>	<i>In default</i>
<i>325 IPC</i>	<i>R.I. for one year & ₹ 500/-</i>	<i>--</i>
<i>323/34 IPC</i>	<i>R.I. for six months & ₹ 200/-</i>	<i>R.I. for 15 days”</i>

“Davinder Singh

<i>U/s</i>	<i>Imprisonment & fine</i>	<i>In default</i>
<i>325/34 IPC</i>	<i>R.I. for one year & ₹ 200/-</i>	<i>R.I. for 15 days</i>
<i>323/34 IPC</i>	<i>R.I. for one year & ₹ 200/-</i>	<i>R.I. for 15 days”</i>

Both the sentences were ordered to run concurrently.

Aggrieved against the judgment of conviction and order of

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sentence, respondents No.2 and 3 preferred an appeal before the learned Additional Sessions Judge, Patiala. Learned Additional Sessions Judge upheld the conviction of respondents No.2 and 3, however, modified the sentence part and respondents No.2 and 3 were released on probation. Hence, this appeal.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contended that conversion of sentence into probation is against the law and facts of this case. Appellate Court has not considered the gravity of offence and the order, invoking the provisions of Probation Act, is not sustainable. Appellate Court should have looked into the gravity of offence. It has wrongly applied the benevolent provisions contained in the Probation Act.

Nobody put in appearance on behalf of respondents No.2 and 3. Learned counsel for the State submitted that if the wrongdoers are not given deterrent sentence, it will give encouragement to other criminals. Learned counsel for the State admitted that Probation Act is applicable in the State of Punjab and Punjab Probation of Offenders Rules, 1962 have been framed thereunder.

I have considered the contentions raised by learned counsel for the petitioner as well as learned counsel for the State.

Under Section 360 of the Code of Criminal Procedure there is provision to release the convict on probation of good conduct or on admonition. However, the provisions of Section 360 Cr.P.C. are not

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applicable in the States where the provisions of Probation Act are applicable.

Before proceeding further with the present appeal, it would be apposite to reproduce Sections 3 and 4 of the Probation Act, which read as under: -

“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 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

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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.”

Section 3 of the Probation Act is applicable to the offences punishable under various Sections of Indian Penal Code mentioned therein 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 the convict. The court by which the person is found guilty, taking into consideration the circumstances of the case, nature of the offence and character of the offender, may deem fit to release him on probation of good conduct. Whereas Section 4 of the Probation Act is not applicable if the person is found guilty of having committed an offence punishable with death or imprisonment for life and is applicable to other offences under the IPC and other Acts unless specifically excluded by the particular Act.

Perusal of above provisions makes it clear that benefit of probation is to be extended to the person convicted for an offence not punishable with death or imprisonment for life. In ***Joginder Singh v. State of Punjab***, 1980 Criminal Law Journal 1218, a Full Bench of this Court has held that prescription of minimum sentence is no bar for attracting the provisions of the Probation Act or Sections 360 and 361

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Cr.P.C. Probation Act is one of the big departures from the ordinary rule of penology. It was promulgated with a view to provide benefit of probation to the first offenders who are convicted for an offence not punishable with imprisonment of life or death. It is the result of the recognition of the doctrine that object of criminal law is more to reform the individual offender than to punish him.

Admittedly, respondents No.2 and 3 are not previous convicts and there is nothing on the file that they have indulged in anti-social activities. Nor the State has been able to show that they have a bad character and are habitual offenders. In all counts, a very wide discretion in the matter of sentence vests in the trial Court and the appellate Court. The exercise of discretion is a matter of prudence and not of law. Nature of the offence and circumstances in which it is committed are also relevant factors. If a convict, with no previous conviction, comes into contact with hardened criminals in jail such contact may have a harmful effect on the first offender convicts. In every crime three factors i.e. (i) the motive of the offence; (ii) the magnitude of the offence; and (iii) the character of the offender, are required to be taken into consideration for determining the appropriate sentence. In the present case, a sudden fight took place between the petitioner and respondents No.2 and 3 while petitioner was irrigating the fields. The alleged offence occurred in March, 2004. Respondents No.2 and 3 have suffered the protracted criminal proceedings and have completed the probation period without any complaint. Keeping in view

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the old-age, protracted trial and the fact that no bad antecedents of respondents No.2 and 3 have been brought on record by the petitioner in order to dub them as habitual offenders, learned Additional Sessions Judge has rightly released them on probation on furnishing their personal bonds in the sum of ₹ 10,000/- with one surety each of the like amount for the period of six months. Moreover, the probation period has expired and nothing adverse against them during the said period has been brought to the notice of the Court. No useful purpose would be achieved by sending respondents No.2 and 3 behind bars, at this stage. The remittance of matter will cause unnecessary harassment to respondents No.2 and 3, who have been released on probation and probation period has been expired.

It needs to be added here that the Probation Act shifts the emphasis from deterrence to reformation and from the crime to the criminal in accordance with the modern outlook on punishment. Reformation and rehabilitation of the offenders are the key-notes of the above referred provisions.

Petitioner has not been able to bring on record any material in respect of the character and antecedents of respondents No.2 and 3 from which inference may be drawn that they do not deserve modification of sentence into probation. Provisions of the Probation Act must be viewed in the light of laudable reformatory effect. Probation Act introduces a very basic change in the criminal law of the land.

I have otherwise independently assessed the arguments raised

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by learned counsel for the petitioner and after going through the complaint, I am of the opinion that having regard to the circumstances, including the nature of the offence, past conduct and age of the offenders, it is expedient to give them benefit of provisions of the Probation Act, which has rightly been done by the learned Additional Sessions Judge.

In view of above discussion, I do not find any illegality or perversity in the impugned judgment passed by learned Additional Sessions Judge and no ground for interference is made out.

Moreover, learned counsel for the petitioner has also failed to point out as to how this appeal against the orders of the Courts below is maintainable by the complainant. However, I need not delve on this subject as otherwise I have come to the conclusion that there is no ground for interference in the impugned judgment.

Moreover, there is delay of 224 days in filing the appeal. Learned counsel for the applicant-appellant has failed to give cogent reasons to explain the inordinate delay.

In view of above, present appeal is dismissed on the ground of delay as well as on merits.

(Paramjeet Singh)
Judge

May 19, 2015
R.S.