

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

(311)

CRR No.1556 of 2005

Decided on: September 16, 2015.

Sudarshan Kumar and another

.... Petitioners

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Rakesh Nagpal, Advocate, for the petitioners.

Mr. C.S. Bakshi, Addl. A.G., Haryana.

M.M.S. BEDI, J (ORAL)

The petitioners were found in possession of 236 bottles of Indian made foreign liquor in the area of village Bhagal in District Kaithal being carried in a Maruti car. They were apprehended after chase by police party after the vehicle struck against bridge. Sahab Singh petitioner No.2 allegedly escaped from the spot while petitioner No.1 was arrested on the spot. After formal sealing of samples and the case property and preparation of site plan and receipt of report of chemical examiner, on completion of investigation, challan was presented. Petitioners were charged under Section 61 (1) (a) of Punjab Excise Act on 21.01.1988.

Courts below have convicted the petitioners to undergo imprisonment for a period of one year and to pay fine of Rs.1,000/- each for commission of an offence under Section 61 (1) (a) of Punjab Excise Act, 1914 and in default of payment of fine, to further undergo imprisonment for one month.

After hearing counsel for the petitioners, on merits, I do not find any ground to interfere in the order of conviction.

Learned counsel for the petitioners has submitted that the petitioners are not previous convicts and that they may be granted concession of provisions of Section 4 and 6 of the Probation of Offenders Act. The petitioners have been facing trial since the year 1988. The trial was decided on 19.12.2003. Appeal filed by the petitioners was decided on 09.08.2005. After the gap of 10 years, the revision petition has been taken up for hearing on turn.

Though minimum sentence is provided for offence under Section 61 (1) (A) of Punjab Excise Act but in view of the fact that the incident is of 1987, the petitioners can be granted the concession of probation as per the judgment in **Buta Singh Vs. State of Punjab 2004 (3) R.C.R. (Criminal) 848**, **Joginder Singh Vs. State of Punjab, 2014 (3) Law Herald 2468** and **Kuldip Chand Vs. State of Punjab 2013 (3) Cri. CC 406**.

The Apex Court in **Isher Dass Vs. The State of Punjab, AIR 1972 SC 1295** has interpreted the provisions of Section 4 and 6 of the Probation of Offenders Act and observed as follows:-

“ 7. The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act. In this respect we find that sub-section (1) of Section 4 of the Probation of Offenders Act contains the words "notwithstanding anything contained in any other law for the time being in force". The above non-obstante clause points to the conclusion that the provisions of Section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the

other conditions prescribed are fulfilled. Those conditions are (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the 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, and (3) the accused in such an event enters 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. Sub-section (1) of Section 6 of the above mentioned Act, as stated earlier, imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Sections 3 or 4 of the Act but to award a sentence of imprisonment to him. The underlying object of the above provisions obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals. So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life, he shall not be sentenced to imprisonment unless there exist reasons which justify such a course. Such reasons have to be recorded in writing.”

Similar is the ratio of judgment of Full Bench of this Court in **Joginder Singh Vs. State of Punjab, 1980 PLR 585** wherein it was observed that fixing a minimum sentence for an offence could be no reason for saying that the provisions of Section 360 and 361 Cr.P.C or Sections 4

and 6 of Probation of Offenders Act, would not be applicable to a convict sentenced for an offence, where minimum sentence was prescribed.

Following the ratio of above said judgments and taking into consideration the circumstances mentioned herein above and report of DSP Headquarter, Kaithal called for by this Court, I am of the opinion that the ends of justice would be adequately met in case petitioners are released on probation maintaining their conviction.

The revision petition is disposed of upholding the conviction and directing that petitioners would be released on probation on their furnishing requisite bonds in the sum of Rs.20,000/- each with one surety in the like amount to the satisfaction of the Illaqa Magistrate within a period of two months after receipt of certified copy of this order, undertaking that they would keep peace and be of good behaviour for a period of one year from the date of this judgment. In case, the petitioners are found indulging in any illegal activity, the sentence awarded to them by the Courts below shall stand revived. The sentence of imprisonment already undergone, in that circumstance, would be set off against the sentence of imprisonment awarded by the Courts below.

(M.M.S. BEDI)
JUDGE

September 16, 2015
harsha