

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

CRR No.61 of 2015 (O&M).

Date of Decision: 05.08.2015.

Ram Lubhaya

....Petitioner.

VERSUS

Sanjeev Kumar @ Sanju and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Paramjit Batta, Advocate for the petitioner.

Mr. Ashish Sanghi, Deputy Advocate General, Punjab.

SNEH PRASHAR, J.

CRM-784-2015

There was a delay of 8 days in filing the present revision. Alongwith the revision, an application under Section 5 of the Limitation Act for condonation of delay was filed by the petitioner.

In view of the submissions made in the application, the delay is condoned and accordingly the application is allowed.

CRR-61-2015

This is a petition under Section 401 of the Code of Criminal

Procedure (for short, "Cr.P.C.") for setting aside the order dated 22.08.2014 passed by learned Additional Sessions Judge, Hoshiarpur and for restoration of order dated 16.10.2013 passed by learned Judicial Magistrate Ist Class, Mukerian.

On 14.11.2010 the petitioner was admitted in the hospital on account of injuries sustained by him during an occurrence that had taken place on 13.11.2010. On the basis of his statement recorded by Head Constable Major Singh, First Information Report No.79 dated 13.12.2010 under Sections 323/354/506 read with Section 34 of the Indian Penal Code (for short, "I.P.C.") was registered. The respondents-accused were arrested and on completion of investigation were sent to the court for trial.

Vide judgment and order dated 16.10.2013 passed by Judicial Magistrate Ist Class, Mukerian, the respondents were convicted for commission of offence under Section 323 read with Section 34 I.P.C. and were sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days.

The respondents preferred an appeal. Since the respondents did not challenge the judgment of conviction recorded by the trial court, vide judgment dated 22.08.2014 learned Additional Sessions Judge, Hoshiarpur affirmed the said judgment. As regards the order of sentence, the prayer made by the respondents-appellants to release them on probation was allowed and they were ordered to be released on probation of good conduct for a period of one year on their furnishing probation bond in the sum of

Rs.30,000/- with one surty in the like amount each.

Aggrieved by the modification in the order of sentence passed by learned Additional Sessions Judge, the petitioner filed the instant petition.

The submissions made by Mr. Paramjit Batta, learned counsel representing the petitioner and Mr. Ashish Sanghi, Deputy Advocate General, representing the State of Punjab have been considered.

Learned counsel for the petitioner referring to Section 4 of the Probation of Offenders Act, 1958 (for short, “the Act of 1958”) argued that for invoking provisions of the said section it was mandatory for learned Additional Sessions Judge to call for the report of the probation officer to satisfy himself about the fixed place of abode and regular occupation etc. of the offender. It was also necessary to enquire that offender lived at a place within the jurisdiction of the court concerned and was also likely to live there during the period of probation. Learned counsel contended that without complying with the said provision of law, learned Additional Sessions Judge passed the impugned order extending the benefit of probation to the respondents which was illegal.

There is absolutely no merit in the argument of learned counsel for the petitioner. Section 4(1) of the Act of 1958 gives a discretion to the court to, instead of sentencing an offender at once to any punishment, release the offender, guilty of an offence not punishable with death or imprisonment for life, on probation of good conduct considering the circumstances of the case including the nature of the offence and the

character of the offender. The offender is released on probation on his entering into a probation bond with or without sureties with an undertaking to appear before the court and receive sentence as and when called upon by the court during the period of probation not exceeding three years and to keep peace and be of good behaviour during the period of probation.

The proviso to section 4(1) is of mandatory nature and it postulates that the court shall not direct release of an offender on probation unless it is satisfied that the offender or his surety, if any, have a fixed place of abode or regular occupation at a place or where he is likely to live during the period of probation over which the court exercises jurisdiction.

The proviso to section 4(1) of the Act of 1958 nowhere provides for the court to call for report of the probation officer regarding the place of abode or place of regular occupation of the offender. It is the subjective satisfaction exclusively of the court extending the benefit of probation to the offender and no specific procedure for the same is either provided or can be laid down.

In the case in hand, the petitioner as well as the respondents-accused were all residents of same place i.e. Gurnanak Mohalla, Police Station Hazipur, Tehsil Mukerian, District Hoshiarpur. Learned Additional Sessions Judge released the respondents on probation of good conduct for one year on their furnishing probation bonds in the sum of Rs.30,000/- with one surety in the like amount. The respondents were also directed to keep peace and be of good behaviour and to surrender before the court to receive sentence as and when called upon by the court, in case they violated the

condition of the probation bonds. Needless to say that the order is very much legal.

In the above premises, there is no ground for interference in the impugned order passed by learned Additional Sessions Judge extending the benefit of probation to the respondents and the petition is dismissed.

(SNEH PRASHAR)
JUDGE

05.08.2015.

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