

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

**Criminal Revision 483 of 2008
Date of Decision: July 28, 2016**

Mange Ram		Petitioner
	Versus	
State of Haryana		 Respondent

Criminal Revision 738 of 2008

Pali		Petitioner
	Versus	
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

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

Mr. Ashok S. Chaudhary, Additional A.G., Haryana.

T.P.S.MANN, J. (Oral)

Both the petitioners were tried for committing offence punishable under Section 3 of the Railway Property (Unlawful Possession) Act 1966, (here-in-after referred to as '**the Act**'). Vide impugned judgment and order dated 16/19.10.2006, learned Chief Judicial Magistrate, Kaithal, convicted them for the said

offence and sentenced them to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo simple imprisonment for three months.

Aggrieved of their conviction and sentence, both the petitioners preferred separate appeals, which came to be decided by learned Additional Sessions Judge, Kaithal, who vide judgment dated 29.2.2008 upheld their conviction, as recorded by the trial Court, but reduced the sentence of imprisonment to half whereas the fine amount was kept intact.

Still not satisfied, both the petitioners preferred the aforementioned revision petitions, which were admitted in due course of time and they are currently on bail.

The case of the prosecution, in nutshell, is that on 22.8.1996, Mange Ram petitioner was found in possession of one bag of wheat, which he was carrying on a bicycle near KMNO 36/8-9 in between unmanned level crossing and he had disclosed the place from where he had stolen the said bag. Subsequently, Pali petitioner also got recovered two wheat bags, which were taken into police possession.

Learned counsel for the petitioners has submitted that he does not intend to challenge the conviction of the petitioners as recorded by the Courts below. He, however, states that they

are facing the agony of criminal prosecution for the last about twenty years. None of them is involved or convicted in any other criminal case other than the present case. Out of the sentence of six months imposed upon them, Mange Ram petitioner has undergone about one and half months whereas Pali petitioner has undergone more than five months. It is also submitted that though the law prescribes minimum sentence of imprisonment for the offence punishable under Section 3 of the Act, still the benefit of probation can be extended to them. In support of his submissions, he has placed reliance upon the judgment of Madras High Court in case **State by Public Prosecutor V. Rathinavelu**, 1973 Criminal Law Journal, 354, in which, the order passed by the trial court while granting benefit of probation to an offender under the Act was upheld by the High Court. Accordingly, prayer has been made for setting aside sentences of imprisonment of the petitioners and, instead, granting them the benefit of probation.

Per contra, learned State counsel has submitted that none of the petitioners deserves to be extended the benefit of probation as they were found in unlawful possession of the railway property.

Having heard learned counsel for the parties and on going through the order passed by the Courts below on the

question of sentence, this Court is of the considered view that despite the fact that the law prescribes minimum sentence of imprisonment, the offenders can still be granted the benefit of probation. Reliance in this regard can be placed upon the judgment in case of **Rathinavelu** (supra), where the Court while dealing with this aspect observed as under:-

“Clause (a) Section 3 of the Railway Property (Unlawful Possession) Act, 1966 states that unless for adequate reasons to be recorded in the judgment, the Court shall impose on the person convicted under Section 3 a sentence for a minimum of one year with a fine of Rs.1,000/-. The question which arises for determination is as to whether despite the fact that minimum sentence of imprisonment with fine having been prescribed by the Legislature for a person found guilty under Section 3 of the Railway Property (Unlawful Possession) Act, the Court can still resort to the provisions of the Probation of Offenders Act. This Act as pointed out by the Supreme Court in **Rattanlal v. State of Punjab,** (1964) 7 SCR 676 : 1965 Criminal Law Journal, 360 is a milestone in the progress of the modern liberal trend of reform in the field of criminology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. This Act received the assent of the President on the 16th of May, 1958. Section 18 of this Act specially

excludes from its purview (1) offences under Section 5 (2) of the Prevention of Corruption Act, (2) offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956 and (3) section 31 of the Reformatory Schools Act, 1897. The Railway Property (Unlawful Possession) Act is of the year 1966 and this long subsequent to the Probation of Offenders Act. Therefore, there could have been no specific exclusion of this Act under Section 18. In the Railway Property (Unlawful Possession) Act there is no specific exclusion of the applicability of the provisions of the Probation of Offenders Act

To the same effect is Full Bench judgment of this Court in **Joginder Singh Vs. State of Punjab**, 1980 PLR 585, wherein, it has been held as under:-

“To conclude on the legal aspect, therefore, it must be held that the mere prescription of the minimum sentence under Section 61(1)(c) of the Punjab Excise Act, 1914 is no bar to the applicability of sections 360 and 361 of the Criminal Procedure Code, 1973 and the same is not a special reason for denying the benefit of probation to a person convicted thereunder. In the alternative, it is equally no bar to the applicability of sections 4 and 6 of the Probation of Offenders Act. The answer to the question posed at the outset is rendered in the negative.”

Keeping in view the totality of the circumstances and

the fact that the petitioners are not previous convicts and are facing the agony of criminal prosecution for the last about twenty years, ends of justice would be suitably met, if their sentences of imprisonment are set-aside and, instead, they are released on probation.

Resultantly, the conviction of the petitioners under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 is upheld. Their sentences of imprisonment are set-aside. Instead, they are ordered to be released on probation on their furnishing bonds in the sum of Rs.10,000/- with two sureties in the like amount to the satisfaction of the Chief Judicial Magistrate, Kaithal, to keep peace and be of good behaviour for a period of six months and to receive sentence as and when called upon to do so. The fine amount, if already deposited by them, be treated as costs of proceedings.

Both the revisions are partly allowed to the extent indicated above.

July 28, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No