

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

**Criminal Revision 752 of 2008**

Date of Decision : November 21, 2016

Suresh @ Mahesha

.....Petitioner

Versus

State of Haryana

.... Respondent

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

Present : Mr. Vivek Khatri, Advocate  
for the petitioner.

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

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

The petitioner was tried for committing offence punishable under Section 61(1)(a) of the Punjab Excise Act 1914 (hereinafter to be referred as 'the Act') on the allegations that on 3.1.1997, he was found carrying 72 bottles of Indian made foreign liquor on his scooter and on seeing the police party, he had managed to escape. Vide judgment and order dated 28.1.2006, learned Additional Chief Judicial Magistrate, Jind, convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal. Vide judgment dated 24.3.2008, learned Additional Sessions Judge-I, Jind, after holding that there

was no merit in the same and, therefore, dismissed the appeal. Still not satisfied, he filed the present revision, which stood admitted and his sentence of imprisonment duly suspended.

Learned counsel for the petitioner has submitted that the petitioner is facing the agony of criminal prosecution for the last about twenty years. He is not a previous convict and has already undergone a sentence of more than two months. Prayer has, accordingly, been made for releasing him on probation.

Learned State counsel has vehemently opposed the prayer by submitting that as the petitioner was transporting the Indian made foreign liquor, he did not deserve the benefit of probation.

It is a fact that for the offence under Section 61(1)(a) of the Act, the law prescribes minimum sentence of six months. However, even if the minimum sentence of imprisonment has been prescribed for the offence under Section 6(1)(a) of the Act, that is, no ground to deny the relief of probation to him.

In **Isher Dass Vs. State of Punjab**, AIR 1972 Supreme Court 1295, the Hon'ble Supreme Court held that sub-section (1) of Section 4 of the Probation of Offenders Act containing the non-obstante clause, would have over-riding effect and shall prevail if the other conditions prescribed were fulfilled. It was held as follows:-

“ 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 provision 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 law for the time being in force.” The above *non obstante* clause points to the conclusions 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 good behaviour. 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 Section 3 or 4 of the Act but to award a

sentence of imprisonment.”

In **Joginder Singh V. State of Punjab** 1980 PLR 585, a Full Bench of this Court held that mere prescription of the minimum sentence under Section 61(1)(c) of the Act was no bar to the applicability of Sections 360 and 361 Criminal Procedure Code. Further that the same was not a special reasons for denying the benefit of probation to a person convicted thereunder. It was further held that on the same reasoning, there was no bar to the applicability of Sections 4 and 6 of the Probation of Offenders Act. The Full Bench held as follows:-

“ 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.”

As per the custody certificate dated 20.12.2015 already brought on record by the learned State counsel, the petitioner has undergone an actual sentence of two months and four days. He claims himself to be a poor person and sole bread winner of his family. He is also not shown to be either involved or convicted in any other

case. A period of about twenty years has elapsed since the petitioner was apprehended in the present case. Out of the sentence of six months imposed upon him, he has already undergone a period of more than two months. Even the fine imposed stood deposited by him. At the time of the decision of the appeal, learned lower appellate Court did not specify any reasons, much less special reasons, to deny the benefit of probation to him.

In view of the above, the conviction of the petitioner under Section 61(1)(a) of the Punjab Excise Act 1914 is upheld. His substantive sentence of imprisonment is set-aside. Instead, he is ordered to be released on probation for a period of six months subject to his executing bonds to the satisfaction of the Chief Judicial Magistrate, Jind undertaking to keep peace and be of good behaviour for the said period and to appear and receive the sentence as and when called upon to do so. The amount of fine already deposited by him shall be treated as costs of the proceedings.

The revision is, accordingly, disposed of.

**November 21, 2016**  
amit rana

**( T.P.S. MANN )**  
**JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No