

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

CRR-2242-2015 (O&M)

Date of Decision: 10.05.2016

SATISH KUMAR

.....Petitioner

Vs.

STATE OF HARYANA OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Akshay Kumar Jindal, Advocate,
for the petitioner.

Ms. Supriya Arora, AAG, Haryana.

Mr. Sushil Bhardwaj, Advocate,
for respondent No. 7.

KULDIP SINGH, J (ORAL)

The present revision has been filed by the petitioner against the order dated 26.02.2015 passed by the learned Additional Sessions Judge, Karnal.

In this case, Shish Pal @ Shishu Pal, Ram Saran, Satpal, Satbir Singh, Jasbir Singh and Babu Ram were convicted and sentenced by the learned Judicial Magistrate Ist Class, Karnal vide judgment of conviction dated 10.10.2011 and order of sentence dated 14.10.2011. The appeal against the aforesaid orders came up for hearing before the learned Additional Sessions Judge, Karnal, wherein while keeping in view that Babu Ram was sentenced to undergo simple imprisonment for a period of three years for commission of offence punishable under Section 326 of IPC and to pay fine of ₹ 1,000/- and in default of

payment of fine, to undergo simple imprisonment for a period of three months, the learned Additional Sessions Judge, Karnal, ordered the release of all the accused on executing bonds under Section 4 (1) of Probation of Offenders Act, 1958, in the sum of ₹ 50,000/- with one surety each in the like amount for the period of six months. In addition to this, Babu Ram was further ordered to pay additional fine of ₹ 20,000/- whereas the other accused were ordered to pay additional fine of ₹ 2,000/- each, which is to be paid to the Satish Kumar, injured-complainant as a compensation. Against the said judgment of the learned Additional Sessions Judge, the complainant has come up in revision before this Court.

In this Court, the notice was issued only qua the grant of probation to accused Babu Ram, who was accused of offence punishable under Section 326 IPC.

Section 4 (1) of the Probation of Offenders Act, 1958 provides as under:-

“Section 4 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 bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three, as the Court may direct, and in the meantime to keep the peace and be of good behavior:

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.”

Aforesaid Section 4 (1) made it clear that it is not applicable to the cases for the offences punishable under Section 326 where there is a punishment of imprisonment for life.

In the similar circumstances, Hon'ble the Supreme Court in **Ramesh Dass Vs. Raghu Nath ; 2008 (1) Crimes (SC) 412**, has held that probation could not be granted for the offence punishable under Section 326 IPC as it carries punishment of imprisonment for life.

Therefore, the order of learned Additional Sessions Judge, Karnal in granting probation to the accused-Babu Ram is patently illegal and against the mandate of law. Consequently, the impugned judgment dated 26.02.2015 qua the accused Babu Ram is set aside. The appeal qua the accused Babu Ram is

remanded back to the successor Court of Dinesh Kumar Mittal, Additional Sessions Judge, Karnal with a direction to re-hear the appeal of the accused-Babu Ram and dispose of the same in accordance with law.

Sh. Dinesh Kumar Mittal, Additional Sessions Judge, wherever he has been posted, be also conveyed about the findings of this Court and advised to be careful in future.

In view of the above the present revision stands allowed.

May 10, 2016

Suresh Kumar

**[KULDIP SINGH]
JUDGE**