

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Revision No.1227 of 2016**

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1. Shashi Shekhar son of Bindeshwari Prasad Singh, Resident of Village+P.O. Mazhulia(Estate), P.s.-Bathnaha, District- Sitamarhi. Bihar,

.... .... Petitioner/s

Versus

1. State of Bihar

2. Bimlendu singh, son of Awadhesh singh, Resident of village+P.O.- Mazhullia(Estate) P.S.- Bathnaha, district- sitamarhi, Bihar

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Rajeev Shekhar

For the Respondent/s : Mr. Sri Ashok Kumar

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI**  
**SHARAN SINGH**

**ORAL JUDGMENT ORDER**

8      18-07-2017                      The petitioner is informant of Bathnaha P.S. Case No. 35 of 2012, which had given rise to trial No.2662 of 2015, in the Court of learned Judicial Magistrate Ist Class, Sitamarhi. The Opposite party No.2 herein was put on trial before the learned Magistrate on the charge of the offence punishable under Sections 452, 504, 506 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act. The appellate Court held Opposite party No.2, the guilty of the offence punishable under Section 506(2) of the Indian Penal Code and acquitted him of the offence punishable under Sections 504 and 452 of the Indian Penal Code and Section 27 of the Arms Act. After having held Opposite party No.2 guilty of the said offence,, the trial Court sentenced him to imprisonment for a term of one year.

2. The Opposite party No.2 had preferred appeal against the said judgment and order of the trial Court, dated



30.09.2015. The appellate Court, i.e. the Court of learned Sessions Judge, Sitamarhi, by judgment and order, dated 09.08.2016, passed in Criminal Appeal No. 100 of 2015 upheld conviction of Opposite party No.2. However, he extended to Opposite party No.2, benefit of probation under Section 360 of the Code of Criminal Procedure, 1973 and, accordingly, directed the Opposite party No.2 to be released on executing bail to the satisfaction of the learned Magistrate.

3. I must indicate here that Section 360 of the Cr.P.C has no application in the present case since the Probation of Offender's Act is in force in the State of Bihar.

4. The petitioner has assailed the order of the appellate Court only on the ground that in view of the fact that the Opposite party No.2 is accused in number of criminal cases, in any event, no benefit in the nature of benefit available under Section 360 of the Code or Sections 3 and 4 of the Probation of Offender's Act could have been allowed.

5. My attention has been drawn to a chart containing list of cases in which Opposite party No.2 had been made accused.

6. The State of Bihar has also filed counter affidavit from which it appears that the Opposite party No.2 has been convicted in Bathnaha P.S. case No. 35 of 2012. It also appears that there are several cases against him, which are at the stages of prosecution evidence/appearance of accused



persons etc.

7. I have heard learned counsel for the petitioner, learned Additional Public Prosecutor, representing the State and learned counsel appearing on behalf of Opposite party No.2.

8. What has emerged on the basis of records and the submissions advanced on behalf of the parties that the materials, which have been brought to the notice of this Court as regards the criminal cases pending against Opposite party No.2 and at least one case in which he has been convicted was not brought to the notice of the Court below. For exercise of power under Sections 3 and 4 of the Probation of Offender's Act, the Court has to take into account such aspects as is evident from the language itself.

9. Sections 3 and 4 of the Probation of Offender's Act read thus:-

3. Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

4. Power 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 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 behaviour:

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”.

10. A bare reading of Section 3 of the Probation of Offender's Act, it can be easily noticed that the Court who finds a person guilty of the categorized offences mentioned therein can release him on probation of a good conduct under Section 4 or release him after due admonition having regard to the circumstances of the case including (i) no previous conviction is proved against such person and (ii) Character of the offender.

11. The Court has released the Opposite party No.2 on the ground that there was nothing on record to show his previous conviction. Apparently, there was nothing before the Court below to show that the petitioner was convicted earlier also. Further, character of the offender is also a relevant factor, which is to be taken into account for exercise of power under Sections 3 and 4 of the Probation of Offender's Act.

12. The Appellate Court below has missed to look into these aspects of the matter. The impugned judgment and order, dated 09.08.2016, therefore, requires interference and is, accordingly, set aside. The matter is remanded back to the Court of Sessions for



passing an order afresh on the question of release of the petitioner by giving him benefit of Sections 3 and 4 of the Probation of Offender's Act, in the light of observations made hereinabove.

13. The Court expects that the Court below shall expedite disposing of the bail after remand within a period of two months from the date of the present order.

14. This application is, accordingly, allowed.

16. Before I part with, I must indicate that a submission has been made on behalf of Opposite party NO.2 that he had already remained in custody for three months in connection with the said case and the sentence which has been awarded by the trial Court is only one year. This aspect can be looked into by the learned appellate Court also.

**(Chakradhari Sharan Singh, J)**

ArunKumar/-

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