

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1996 of 2005

JUDGMENT:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner/de-facto complainant–N.Srihari, questioning the release of the respondent No.1/accused by applying Section 3 of Probation of Offenders Act, 1958 (for short, 'PO Act'), after due admonition, having found him guilty under Section 323 IPC.

The case of the prosecution in brief is that the accused beat the petitioner herein (Pw.1) with an iron rod and caused grievous injury. Since the said fact was established during the course of trial, the trial Court found the accused guilty for the offence punishable under Section 323 IPC, instead of Section 324 IPC, as no material object was seized and produced before the Court, and released the accused by applying Section 3 of PO Act.

Aggrieved thereby, the *de facto* complainant filed this Criminal Revision Case.

During hearing, Sri C. Masthan Naidu, learned counsel for the petitioner/complainant mainly contended that the release of the accused by applying Section 3 of PO Act is illegal.

According to Section 360 Cr.P.C., when any person not under twenty one years of age is convicted an offence

punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, 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 behavior.

If for any reason, the Court did not exercise the power under Section 360(1) Cr.P.C., it has to record reasons for not exercising such power. Therefore, recording of reasons for not invoking Section 360(1) is mandatory.

However, in the present case, the accused, who is aged 44 years, was found guilty for the offence punishable under Section 323 IPC; and, Section 360 IPC has no application to the present case. But, by applying Section 3 of PO Act, the accused was released by the trial Court after duly admonished.

As per Section 3 of PO Act, the Court has to release certain offenders after admonition when a person is found guilty of

having committed an offence under Section 379 or Section 380 or Section 381 of Section 404 or Section 420 of the Indian Penal Code or any offence punishable with punishment for not more than two years, or with fine, or with both, under IPC, 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 to Section 3 of the PO Act further says that for the purpose of Section 3, previous conviction against a person shall include any previous order made against him under Section 3 or Section 4.

The Apex Court in *Keshav Sitaram Sali v. State of Maharashtra*¹, held that in a case of petty theft, the High Court should have extended the benefit of either Section 360 of the Code of Criminal Procedure or Section 3 and 4 of the Probation of Offenders Act, to the appellant, instead of imposing a sentence of fine to him. The offence committed by accused is only punishable under Section 323 of IPC, which is not serious or grave in nature, having impact on society.

¹ AIR 1983 SC 291

In view of the principle laid down in the judgment of the Apex Court mentioned supra, it is mandatory to pass appropriate order by applying Section 3 and 4 of PO Act.

In the instant case, it is not the case of the petitioner/complainant that the accused was convicted for any offence previously. In the absence of any such conviction and when the offence under Section 323 IPC is punishable with imprisonment for a term which may extend to one year or with fine, which may extend to one thousand rupees, or with both, invoking Section 3 of PO Act by the trial Court cannot be faulted. On the other hand, it is mandatory to follow the procedure provided under Section 3 of PO Act. Therefore, this Court cannot impose any sentence while exercising revisionary jurisdiction under Sections 397 and 401 of Cr.P.C., in view of the law declared by the Apex Court, wherein the Apex Court directed the High Court to invoke Section 3 and 4 of PO Act when the offence is punishable with imprisonment for less than two years. Therefore, I find no ground to interfere with the findings recorded by the trial Court in releasing of the petitioner by invoking Section 3 of PO Act after due admonition. The Revision is de void of merit and is liable to be dismissed.

In the result, this Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 10-08-2017
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