

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No. 1586 of 2017

Date of Decision: May 30, 2017

Baldev Singh and anotherPetitioners

Versus

State of PunjabRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Vivek Salathia, Advocate for the petitioners.

Mr.Varun Sharma, Assistant Advocate General, Punjab.

<><><>

TEJINDER SINGH DHINDSA, J.

The instant criminal revision is directed against the judgment dated 18.3.2017 passed by the learned Additional Sessions Judge, Gurdaspur thereby dismissing the appeal preferred by the petitioners against the judgment and order dated 8.1.2013 passed by the learned Judicial Magistrate Ist Class, Batala vide which the petitioners were convicted for offence punishable under Section 61(1)(c) of the Punjab Excise Act, 1958 and sentenced to undergo rigorous imprisonment for one year and to pay fine of ₹5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for 30 days.

2. Brief facts of the case are that on 24.8.2007, a police party headed by Head Constable Charanjit Singh were on patrol duty and a secret information was received that Baldev Singh and his servant Raju Masih (petitioners herein) were distilling illicit

liquor having installed a working still. Raid was conducted on the disclosed spot i.e. tubewell of Baldev Singh, petitioner No.1 and both the petitioners herein were apprehended. One aluminum vessel containing 50 kgs. lahan and other equipments of working-still were taken into possession. After completion of investigation, challan was presented against the accused in the Court. Finding a prima facie case against the accused, they were charge-sheeted to which they pleaded not guilty and claimed trial.

3. Prosecution in order to prove its case examined PW1 Head Constable Charanjit Singh, PW2 Hardeep Singh, Excise Inspector, PW3 Jagjit Singh, PW4 Baljinder Singh Head Constable, PW5 SI Tarsem Lal and PW6 ASI Balwinder Jeet Singh.

4. Trial has culminated in the conviction and sentence of the accused/petitioners herein as aforenoticed. Petitioners preferred appeal before the Additional Sessions Judge and which has been dismissed on 18.3.2017. Hence the present revision petition.

5. Without challenging the conviction against the petitioners, learned counsel has sought extension of the benefit of probation towards petitioners. Learned counsel contended that occurrence took place way back in the year 2007 and 10 years have since elapsed. Learned counsel has placed reliance on the judgment delivered by this Court rendered in **Pakhar Singh v. State of Punjab 2007 (1) R.C.R. (Criminal) 396** wherein it was observed as under :

"5. For an offence under Section 61(1)(c) of the Act, the law prescribes minimum sentence of one year and

fine, which shall not be less than ₹5,000/- in the case of a working still. However, even if minimum sentence has been prescribed for the offence, that is no ground to deny the relief of probation.

6. In Isher Dass v. State of Punjab, AIR 1972 SC 1295, 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 provisions 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 Court may direct and, in the meantime, to keep the peace and be of 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.”

7. In Joginder Singh Vs. State of Punjab 1980 PLR 585, a Full Bench of this Court also 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 Cr.P.C. Further that the same was not a special reason 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.”

6. This Court has examined the impugned judgment. Conviction of the petitioners has been recorded upon due appreciation of evidence adduced on record. No illegality much less irregularity has been detected or pointed out warranting interference by this Court in exercise of its revisional jurisdiction.

7. As such, conviction of the petitioners is maintained.

8. As regards quantum of sentence, it is noticed that the petitioners otherwise have clean antecedents and are not involved in any other case except this case.

9. This Court deems it to be a fit case where benefit of probation of Section 4(1) of the Probation of Offenders Act, 1958 can be extended to the petitioners.

10. Resultantly, while dismissing the petition, sentence passed against the petitioners is modified to the extent that they be released on probation under Section 4(1) of the Probation of Offenders Act, 1958 on their executing a bond in the sum of ₹10,000/- with one surety in the like amount each to the satisfaction of trial Court for a period of one year within which they shall continue to maintain good behaviour and keep peace. In case of breach of conditions of the bond, petitioners would be liable to serve the sentence as and when called for. Fine is converted into costs of litigation.

11. Revision petition is disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

May 30, 2017

SRM

Note: *Whether speaking/reasoned?* *Yes/No*
 Whether Reportable? *Yes/No*