

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.539 of 2015

Arising Out of PS. Case No. -86 Year- 2005 Thana -Karahgar District- Sasaram (Rohtas)

- =====
1. Rama Shankar Choudhary, son of Ramdhani Choudhary
 2. Ajay Choudhary, son of Ramashankar Choudhary
 3. Chhathu Chudhary, son of Sita Ram Choudhary

All resident of village – Lakhanpura, P.S. kargahar, District – Rohtas.

4. Surendra Choudhary, son of Bishun Choudhary, resident of village – Shanti Nagar, P.S. – kargahar, District – Rohtas.
5. Radhey Shyam Choudhary, son of Budhan Choudhary, resident of village – Tenua, P.S. – Kargahar, District – Rohtas.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Vikram Deo Singh, Advocate
: Mr. Sada Nand Roy, Advocate
For the State : Mr. Bipin Kumar, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-09-2018

Heard learned counsel for the appellants and learned counsel for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 14.07.2015 passed by learned Additional Sessions Judge-5th, Rohtas at Sasaram in Session Trial No. 425 of 2007 arising out of Kargahar P.S. Case No.86 of 2005 by



which appellant nos.1 to 4 have been convicted and sentenced to undergo simple imprisonment for one month under Section 447 of the Indian Penal Code (for short 'I.P.C.') and simple imprisonment for six month under Section 323 of the I.P.C and their sentences have been ordered to run concurrently whereas the appellant no.5 has been convicted and sentenced to undergo rigorous imprisonment for three years and fine of Rs.10,000/- under Section 324 of the I.P.C. and in default of payment of fine to further undergo simple imprisonment for six months. He has also been convicted under Section 447 of the I.P.C. and sentenced to undergo one month's simple imprisonment and both the sentences have been ordered to run concurrently.

3. The first information report (for short 'F.I.R.') was instituted on the basis of fardbeyan of P.W. 6 Bechan Chaudhary, which was recorded by Sub Inspector of Police, Kargahar Police Station on 07.09.2005 at 11:30 a.m. in Kargahar Hospital. In his fardbeyan, he has stated that about 11 a.m., on 07.09.2005, while he was in his house, the accused Rup Chando Devi, Surendra Choudhary, Mina Devi and Radheyshyam Choudhary armed with *lathi*, *danda* tried to enter into his house. When he protested, they caught hold of him and started assaulting him with *lathi*, *dnada*. On hulla, his father Ram Sharan Choudhary, who came from outside was also apprehended and assaulted by the accused person as a result of which



he sustained injury over his head. In the meantime the accused Chhathu Choudhary, Ramashankar Choudhary and Ajay Choudhary came there. They exhorted other accused persons to enter inside the house and assault him. Thereafter, his wife Dharmsheela Devi and nephew Ajit Kumar came to rescue. He has further alleged that the accused Rup Chando Devi, Mina Devi and Radheyshyam Choudhary brought acid from their house and threw upon them as a result of which they sustained burn injuries.

4. On the basis of the said fardbeyan, after institution of the F.I.R., the police investigated the case. On completion of investigation, charge sheet was submitted for the offences punishable under Sections 447, 341, 323, 324 and 307 read with 34 of the I.P.C. against the accused persons, namely, Ramashankar Choudhary, Ajay Choudhary, Radheyshyam Choudhary, Chhathu Choudhary and Surendra Choudhary. However, the two lady accused, namely, Rup Chando Devi and Mina Devi, who were named in the F.I.R., were found innocent and were not sent up for trial.

5. After taking cognizance of the offences, the learned Magistrate committed the case to the court of session for trial where charges were explained to the accused persons. Since they did not plead guilty, the trial commenced. After conclusion of the trial, the trial court passed the impugned judgment whereby the accused



persons were convicted and sentenced in the manner indicated above.

6. Learned counsel for the appellants abandoned the appeal on merits. He confined his argument seeking benefit under Section 4 of the Probation of Offenders Act, 1958 (for short 'the Act').

7. He contended that from perusal of the order on the point of sentence, it would appear that the trial court after considering the entire facts and circumstances of the case, had come to the conclusion that there is no criminal antecedent of the convict but still it failed to exercise the mandatory provisions of the Act. He contended that from the evidence on record it would be manifest that the appellants are next door neighbours of the informant. They belong to one family. They have got roots in the society. There is no adverse report against their character. In case they are sentenced to imprisonment, they may get associated with hardened criminals, which would frustrate the very object of the Act.

8. On the other hand learned counsel for the State submitted that looking at the nature of the offence, it would not have been proper for the trial court to have granted the benefit of the Act to the appellants. Hence, the trial court rightly sentenced them to imprisonment with fine.

9. I have heard learned counsel for the parties on the



point of sentence and perused the record.

10. Save and except appellant no.5, namely, Radheyshyam Choudhary, all others have been convicted under Sections 323 and 447 of the I.P.C. The appellant, Radheyshyam Choudhary has been convicted under Sections 447 and 324 of the I.P.C. Admittedly, there is no adverse report against their character. No previous conviction has been proved against them. There is no report of the probation officer that if extended the benefit of probation, they may get associated with hardened criminals.

11. Since the appellants have confined their argument seeking benefit under Section 4 of the Act, it would be pertinent to refer to the origin and object of the Act and its relevant provisions.

12. Section 562 of the Code of Criminal Procedure, 1889 (for short 'the Cr.P.C.') was the earliest provision to have dealt with probation.

13. After amendment of the Cr.P.C. in 1974, Section 562 of the old Code corresponds as Section 360.

14. The Act contains elaborate provisions relating to probation of offenders in lieu of sentence subject to certain conditions. They include (i) Release after admonition; and

(ii) Release on entering a bond on probation of good conduct with or without supervision, and on payment by the offender the compensation and costs to the victim if



so ordered, the courts being empowered to vary the conditions of the bond and to sentence and impose a fine, if he fails to observe the conditions of the bond.

15. Section 3 of the Act confers powers on the court to release certain offenders after admonition. The said provision reads as under:

“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.”*



16. Section 4 of the Act deals with power of the Court to release certain offenders on probation of good conduct. The said provision reads as under:-

“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.

(2) Before making any order under sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The Court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the Court may, having



regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.”

17. In Ratanlal vs. State of Punjab, [A.I.R. 1965 SC 444], the Supreme Court explained the philosophy behind the grant of probation. In the said case Hon’ble Subba Rao, J, as he then was observed:-

“ The act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser



offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders. It is not desirable to deal with them under Sections 3 and 4 of the Act.”

18. In Arvind Kumar Sinha v. Amulya Kumar

Biswas [(1974) 4 SCC 222], the Supreme Court has held:

“The broad principle that punishment must be proportioned to the offence is or ought to be of universal application save where the statute bars the exercise of judicial discretion either in awarding punishment or in releasing an offender on probation in lieu of sentencing him forthwith.”



19. In Ram Parkash vs The State of Himachal Pradesh [AIR 1973 SC 780], the Supreme Court observed:

“...While in the case of offenders who are above the age of 21 years, absolute discretion is given to the Court to release them after admonition or on probation of good conduct, in the case of offenders below the age of 21 years an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Section 3 and 4 of the Act.”

20. In Jugal Kishore Prasad vs State of Bihar [AIR 1972 SC 2522], the Hon’ble Supreme Court observed:

“ the above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognises that no one is a born criminal and that good many crimes are the product of socio-economic milieu.”



21. Thus, from reading of the aforesaid decisions it would be manifest that while exercising the inherent jurisdiction under the provisions of the Act the court has to keep in mind the nature of the offence, circumstances of the case, background of the accused etc. while weighing the sentence to an accused. It is only if the Court forms an opinion that it is 'expedient' to release the convict on probation of good conduct, regard being had to the facts and circumstances, then only the benefit of the Act would be extended. The Court has discretion to decide as to when and how it should form such an opinion.

22. The word 'expedient' has been explained by the Supreme Court in **Dalbir Singh vs. State of Haryana [AIR 2000 SC 1677]** as under:

"9.The word "expedient" had been thoughtfully employed by Parliament in the section so as to mean it as "apt and suitable to the end in view". In Black's Law Dictionary the word expedient is defined as "suitable and appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In State of Gujarat v. Jamnadas G. Pabri, AIR 1974 SC 2233 three-Judge Bench of this Court has considered the word "expedient". Learned



Judges have observed in para 21 thus:

"Again, the word 'expedient' used in this provision, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view', 'practical and efficient', 'politic', 'profitable', 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right' (see Webster's New International Dictionary)."

10. It was then held that the Court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in S. 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence...". This means S. 4 can be resorted to when the Court considers the circumstances of the case, particularly the nature of the offence, and the Court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct."



23. In Md. Monir Alam vs. State of Bihar [(2010) 12 SCC 26] in which the appellant was convicted under Section 304-II read with 149 of the I.P.C. and 323 of the I.P.C., the Hon'ble Supreme Court, taking into account the professional qualification of the appellant, which displayed his expertise in his specialty and also portrayed his association with prestigious organizations worldwide in the field of strategic studies, conduct and attainments after his involvement in the matter, held that his release on probation was justified.

24. It is well-settled position in law that nobody can claim the benefit of Sections 3 and 4 of the Act as a matter of right and the court has to pass appropriate orders in the facts and circumstances of each case having regard to the nature of offence, its general effect on the society and character of the offenders etc.

25. Thus, it would be pertinent that the word 'expedient' used in Section 4 of the Act casts a duty on the court to take into consideration the circumstances of the case including the nature of the offence and conclude whether it would be apt and suitable to extend the benefit of probation under the Act.

26. In the instant case, the conviction of the appellants is under Sections 323, 324 and 447 of the I.P.C. They are co-villagers of the informant. They have no criminal antecedent. Having got



permanent abode, they have got roots in the society. They all belong to one family. There is no report that if benefit under the Act would be given to them, they would mix up with the hardened criminals. A plea was taken on their behalf that it is their first offence and, thus, a lenient view may be taken. The trial court had recorded its satisfaction after going through the records of the case that there is no evidence of any criminal antecedent. The alleged offence took place in the year, 2005 whereas the impugned judgment was passed after ten years in 2015. All these factors should have weighed in favour of extending them the benefits under the Act, but the trial court sentenced them for the offences punishable under Sections 323, 324 and 447 of the I.P.C. for imprisonment with fine.

27. In my opinion, the trial court has erred in sentencing the appellants for imprisonment with fine. To sentence them with imprisonment would itself frustrate the object of the Act and bring them in association with hardened criminals. I am also of the opinion that if released on probation of good conduct, there is hope of them being reclaimed and afforded an opportunity to live a normal life of a law abiding citizen.

28. In view of the discussions made above, the appeal against the sentence is allowed. The sentences awarded against the appellants are set aside. They are directed to be released under Section



4 of the Act on their entering into a bond with a family member as a surety in the sum of Rs.5,000/- each and receive sentence by the trial court whenever called upon to do so within a period of one year and during that time to keep the peace and be of good behaviour. The trial court is directed to take a bond from each of the appellants and a surety bond from one of the family members as aforesaid. Their bail bond will enure till then and will be deemed to be cancelled after the directions are carried out.

(Ashwani Kumar Singh, J)

Md.S./-Sanjeev

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	20.09.2018
Transmission Date	20.09.2018

