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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 280/2018, CrI.M. (Bail) 537/2018

RAVINDER

..... Petitioner

Through: Mr. Dhan Mohan, Ms. Tanu B. Mishra,
Mr. Ravi Mishra and Ms. Harkamaljeet Kaur,
Advs.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Radhika Kolluru, APP for the State.
Mr. Harsh Prabhakar, Adv. (DHCLSC) for the
complainant

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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11.07.2018

CRL.M.A. 9165/2018

1. On 06.07.2018, the following order was passed:-

“ This application seeks release of the petitioner under section 4 of the Probation of Offenders Act, 1958 read with section 360 and section 482 of Cr.P.C. on the sentence already undergone by him.

The petitioner has been convicted for assault on a medical professional under sections 332 and 354 IPC and was sentenced to undergo rigorous imprisonment for a period of 18 months of which he has already undergone imprisonment of five months.

It is the petitioner's case that he is 32 years of age and when the accident happened, he was merely 22 years of age and he had gone to the hospital with his sister-in-law who was expecting, and since he was in agony he tried to draw the attention of the Doctors in the room so that they could attend to his relative immediately. He did not mean to harm or outrage the modesty of the lady, least of all of a Doctor from whom he was seeking urgent help. He tenders unconditional

apology to the victim and states that whatever happened on the day was a result of his distress for the help of his relative who was in agony and it all happened at the spur of the moment. The learned counsel for the petitioner submits that the petitioner has a wife and two children to support as well as to look after his ailing father.

The petitioner's Nominal Roll is not on record. Let it be requisitioned by 09.07.2018.

The complainant/victim is present in the Court. She has been identified by the I.O. of the case. She does not have a counsel. Mr. Harsh Prabhakar, Advocate, who is present in the Court is appointed her counsel for the day. He states upon instructions that the victim has no objection if the application is allowed. He has also supplied a copy of Aadhar Card of the complainant in support of her identity.

List for further proceedings on 09.07.2018."

2. The Revision Petition impugns the judgment dated 31.01.2018 arising out from the conviction and sentence order dated 11.01.2018 and 21.01.2017 respectively wherein the appellate court had dismissed the appeal of the petitioner in FIR No. 53/19, under section 323/354 IPC. The impugned order reads as under:

"..... 12. The acts done by accused speak for themselves of the culpable intention of appellant/ accused to outrage modesty of complainant/ victim PW-1. By groping breast of Complainant PW-1, doctor on duty, such an act of appellant/ accused was that, which may be perceived as one which is capable of shocking the sense of decency of a woman. Assault on the person of doctor on duty suffices to demoralise the public servant in performance of her duty. Acts of appellant/ accused proved on record clearly prove that appellant/ accused had knowledge that modesty of complainant PW-1 doctor is likely to be outraged by his such acts of groping her breasts, which is sufficient to constitute the offence of outraging of modesty of woman.

13. *Grounds of appeal lack substance and are devoid of merits and cannot carve out a case for setting aside the judgment of conviction against the appellant/ since the impugned judgment suffers with no infirmity, no impropriety or no illegality.*

14. *In the case of **Amar Singh & Anr. Vs. The State of Haryana 1984 Cr. LJ 265 (P&H)**, it had been held that a public servant is a servant of the society and needs social protection so that he is not demoralised in the performance of his duty and allowed to serve free from fright. Even though when the offender is of young age and commits the offence u/s 332 IPC, the sentence of imprisonment alone would meet the ends of justice and not release on probation.*

15. *In the case of **Ram Mehar vs State of Haryana, 1998 Cr.L.J. 1999 (P&H)** it was held that when appellant/ accused had attempted to outrage the modesty of prosecutrix, then the commission of crime is a wrong done to society and awarding punishment is to do justice to society and such accused should not be released on probation of good conduct.*

16. *Having regard to the act and conduct of the appellant/ accused proved on record, probation of appellant/ accused is passé-part not made out. Lest it would send wrong signals to society reeling under upsurge of offences against women. Cry of society is that such offenders need to be brought to book, tried and when convicted, should be sufficiently punished; making clear to such offenders that they cannot expect flee bite sentence nor can they carve out a case for release on probation of good conduct. There is, accordingly, no need for interference in impugned sentence or modification of sentence whereby the appellant/ accused has been awarded reasonable punishment detailed above....*

17. *Resultantly, appeal being devoid of merits is dismissed. Appellant/ convict be taken into custody and sent to jail to serve the sentence.....”*

3. The learned counsel for the petitioner submits that the impugned order

is bad in law as it failed to take into consideration the fact that the prosecution has not been able to prove its case beyond reasonable doubt. Furthermore, he submits that the trial court has failed to appreciate the facts of the case and has overlooked the material contradiction and infirmities in the statement of prosecution witness, i.e. PW2, PW3, PW6, PW7 and PW8. At this stage, upon instructions, the learned counsel states that he does not wish to argue this case on merits and would limit the relief to release from incarceration for the period undergone. He submits that the petitioner was a rather young man when the incident happened. He has tendered an unconditional apology to the victim. Therefore, his plea to reduce the sentence might be taken in consideration.

4. Mr. Harsh Prabhakar, the learned counsel for the victim refers to two dicta of the Supreme Court in *Ishwar Singh v. State of Madhya Pradesh* (2008) 15 SCC 667 and *Manohar Singh v. State of Madhya Pradesh and Another* (2014) 13 SCC 75. These judgments held that it is for the Court to ascertain whether convicting a person would serve the interest of justice or would it be wiser to release the person into the stream of society without constraints to resume normal life. He refers to paragraph nos. 12, 13, 14 & 15 of *Ishwar Singh* (supra) and paragraph nos. 8 and 9 of *Manohar Singh* (supra), which read as under:

Ishwar Singh (supra)

“12. Now, it cannot be gainsaid that an offence punishable under Section 307, IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration

about compromise between the parties for the purpose of reduction of sentence.

13. In Jetha Ram v. State of Rajasthan (2006) 9 SCC 255, Murugesan and Ors.v. Ganapathy Velar 2002 CriLJ260 and Ishwarlal v. State of M.P. JT 1988 (3) SC 366 (1), this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of Rajasthan 1988 CriLJ 121 , such offence was ordered to be compounded.

14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned Counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which, the Court may keep in mind.

15. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he is not released on bail. Considering the totality of facts and circumstances, in our opinion, ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused No. 1) is reduced to the period already undergone.”

Manohar Singh (supra)

“8. In the instant case, the Appellant is convicted Under Section 498-A of the Indian Penal Code and sentenced

to undergo six months imprisonment. He is convicted Under Section 4 of the Dowry Act and sentenced to undergo six months' imprisonment. Substantive sentences are to run concurrently. Even though the Appellant and Respondent No. 2 wife have arrived at a compromise, the order of conviction cannot be quashed on that ground because the offences involved are non-compoundable. However, in such a situation if the court feels that the parties have a real desire to bury the hatchet in the interest of peace, it can reduce the sentence of the accused to the sentence already undergone. Section 498-A of the Indian Penal Code does not prescribe any minimum punishment. Section 4 of the Dowry Act prescribes minimum punishment of six months but proviso thereto states that the Court may, for adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may be less than six months. Therefore, sentence of the Appellant can be reduced to sentence already undergone by him.

9. Now the question is whether a case for reduction of sentence is made out particularly when the Appellant has undergone only seven days sentence out of six months sentence imposed on him. We see no reason why in this case we should not reduce the Appellant's sentence to sentence already undergone by him. There can be no doubt about the genuine nature of compromise between the Appellant and Respondent No. 2-wife. The Appellant has offered to pay a sum of Rs. 2,50,000/- to Respondent No. 2 wife as compensation. A demand draft drawn in the name of Respondent No. 2 is brought to the Court. As directed by us even litigation costs of Rs. 25,000/- has been deposited by the Appellant in the Court. Respondent No. 2 wife has appeared in this Court on more than one occasion and requested this Court to take compromise into consideration and pass appropriate orders. Learned Counsel for the parties have requested us to take a

kindly view of the matter. The affidavit filed by the State of Madhya Pradesh opposing the prayer of the parties does not impress us.”

5. The Nominal Roll has been presented by the learned counsel for the State. It shows that the petitioner has undergone a period of 5 months and 11 days as of 10.07.2018.
6. The Court is of the view that looking at the satisfactory conduct of the petitioner in the incarceration where he is working as Jail Factory Sahayak, it would be in the interest of justice to release the petitioner on the period of sentence already undergone by him since he has other social responsibilities as a young man. The petitioner has tendered his unconditional apology to the victim. Considering that the incident happened in the spur of the moment, when the petitioner had sought immediate attention to his pregnant sister-in-law who was stated to be in agony, the punishment could be and is hereby reduced to the period undergone incarceration.
7. At this stage, the learned counsel for the petitioner submits that as a token of his contribution, he is ready and willing to contribute an amount of Rs.15,000/- to the Delhi High Court Mediation and Conciliation Centre and Rs.10,000/- to the Delhi High Court Staff Welfare Fund to be deposited forthwith.
8. The learned counsel for the petitioner submits that the petitioner shall visit the lady concerned at her place of work along with his parents and spouse and apologise to her and unconditionally, in a fortnight after his release, and file a compliance report in this Court, in a week thereafter.
9. In view of the above, nothing remains in the Revision Petition. It too is disposed off accordingly.
10. A copy of this order be sent to the Jail Superintendent concerned for

the release of the petitioner.

11. A copy of this order be given *dasti* to the learned counsel for the parties under signature of the Court Master.

NAJMI WAZIRI, J

JULY 11, 2018/acm