

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.229 OF 1999

Bansidhar Binni Purshottam Bahrnani,
Age 33 years, Occ.Service, R/o.113,
Shantivan Adarsh Nagar, Near Oshiwara
Police Station, Jogeshwari, Mumbai.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Lokesh Zade I/by M/s.Khandeparkar & Associates for applicant.
Mrs.N.S.Jain, APP, for State.

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 26th July 2018
Date of Pronouncing the Judgment : 7th June 2019

JUDGMENT :-

1. The applicant challenges the legality, propriety and correctness of judgment and order passed by Additional Sessions Judge for Greater Bombay dated 14th September 1999 dismissing Criminal Appeal No.52 of 1997 as well as Miscellaneous Application No.54 of 1998, which was filed challenging conviction of applicant for the offences under Sections 465, 467, 468, 471 of Indian Penal Code vide judgment and order dated 4th March 1997 passed by Metropolitan Magistrate, 14th Court, Girgaum, Mumbai in CC No.431/P/94.

2. The case of prosecution can briefly be stated as under :

(a) The accused no.1 (applicant) preferred an application along with certain documents to Japanese Consulate for obtaining visa from their office. In order to get the visa, the applicant has to show that he is an employee in reputed institute or company and documents like salary slip, appointment letter, recommendation letter etc from such management is required for the purpose of getting the visa from the consulate;

(b) The applicant applied for visa to Japanese Consulate with fabricated documents allegedly issued by Larsen & Toubro Limited ('L & T'). The accused no.1 in furtherance of the common intention and assistance of accused no.2 prepared the false documents. The documents were prepared on the letter head of L & T Limited along with salary slip showing that accused no.1 is in employment of said company, which has recommended accused no.1 for visiting Japan;

(c) The officer on duty made inquiries with the company and it was revealed that accused no.1 was not at all in the employment. The matter was reported by L & T Company to Gamdevi Police Station. During the investigation it was found that real brain behind procreation of false documents was accused no.2. It was alleged that accused had committed theft of blank letter heads of the said company. The salary slip was forged and used as genuine document. The charge sheet was filed under Sections 380, 465, 467, 468, 471, 420, 511 r/w 34 of Indian Penal Code.

3. The applicant and accused no.2 were tried vide CC No.431/P/94 before the Court of Metropolitan Magistrate, 14th

Court, Girgaum, Mumbai. The charge was framed against both the accused under Sections 380, 465, 467, 468, 471 r/w 34 of Indian Penal Code. The accused pleaded not guilty.

4. The prosecution examined seven witnesses. PW-1 S.S.Mendon is the Councilor Officer with Japanese Consulate. PW-2 K.B.Makhija was first informant and senior manager of L & T Limited. PW-3 Gurubachansingh Sayani is the senior executive officer of L & T Limited, whereas PW-4 Vinayakrao Pawar was the security officer. PW-5 Sanjay Belal was Assistant Engineer and PW-6 Salim Mohamed Khan was handwriting expert. PW-7 A.H.Wadankar is the investigating officer. The prosecution has also brought on record several documents which were exhibited in evidence. The Trial Court after analysing the evidence, came to the conclusion that accused no.1 is found guilty for the offences under Sections 465, 467, 468 and 471 of Indian Penal Code and he was sentenced to suffer simple imprisonment for six months for each of the offences. He was acquitted for the offence punishable u/s 380 of IPC. Accused no.2 was not found guilty and was acquitted for all the offences for which he was charged. The Trial Court observed that although according to prosecution the real brain behind the procreation of documents is accused no.2, the burden has not been rightly discharged by prosecution. No evidence is received from the investigating officer. The accused was heard on the point of sentence. It was contended at the instance of accused no.1-applicant that he has never committed any offence in the past. He repents for the said offence and prayed that lenient view may be taken. The prosecution contended that normal tendency in the society, particularly of such criminals, is that there is no fear of any nature

while making such applications for visa. It should be viewed seriously. The Court observed that several such cases are filed in the Court by consulate and there is no fear in the mind of criminals who are using such modus operandi. Thus the applicant was convicted and sentenced as stated above.

5. The applicant preferred an appeal before the Sessions Court challenging the judgment and order passed by the Trial Court. The applicant also preferred Miscellaneous Application No.54 of 1998 u/s 391 of Code of Criminal Procedure, 1973 ('Cr.P.C') on the ground that accused was not defended properly though he was represented by an advocate. It was contended that additional evidence by allowing the applicant-appellant to further cross-examine the prosecution witnesses be allowed. Learned Sessions Judge by assigning reasons rejected the said miscellaneous application by order dated 14th September 1999. Learned Sessions Judge also dismissed the appeal by judgment and order dated 14th September 1999. Apart from merits of the case it was also submitted before the Appellate Court that benefit u/s 360 of Cr.P.C be given to the applicant. It was submitted that the applicant is aged about 33 years. There are no criminal antecedents. The accused no.2 who had allegedly prepared false documents, has been acquitted. The applicant was in custody for three days and hence benefit u/s 360 of Cr.P.C be given to the applicant.

6. The Sessions Court confirmed the conviction of applicant for the offences under Sections 465, 468, 471 of IPC and set aside the conviction u/s 467 of IPC. Thus the applicant was acquitted for the charge u/s 467 of IPC.

7. Learned advocate for applicant submitted that prosecution has not been able to prove the charges framed against applicant. Learned advocate for applicant pointed out evidence adduced before Trial Court and submitted that the prosecution has not proved its case beyond all reasonable doubts. It is also submitted that the Appellate Court has erroneously dismissed the appeal as well as application preferred by applicant u/s 391 of Cr.P.C.. It is further submitted that the Courts below have failed to grant benefit of Section 360 of Cr.P.C to the applicant. The Trial Court did not apply its mind to the said provision at all. There was no proper reasons given by the Courts below why probation should not be granted to the applicant. It is submitted that the applicant was acquitted of the offence u/s 467 of IPC. He had paid the fine imposed by Trial Court. There were several mitigating circumstances in favour of applicant which entitled him to be released on probation. He is a young man aged 33 years. He has a clean prior record. He is a family man living with his parents. He was gainfully employed. There was no loss caused to the complainant. The preparation of documents was done by accused no.2 who was acquitted. The Courts have failed to take into consideration the provisions of Section 248(2) of Cr.P.C.

8. Learned APP submitted that there is concurrent findings of two Courts. There is sufficient evidence against applicant which has been considered by the Courts below. No case was made out to exercise powers u/s 391 of Cr.P.C. The Appellate Court has rightly rejected his application u/s 391 of Cr.P.C. The Trial Court as well as the Appellate Court has analyzed the evidence in proper perspective and has convicted the applicant. The Trial Court had heard the applicant on the point of sentence. The Appellate Court has also considered

the prayer for releasing the applicant on probation u/s 360 of Cr.P.C and has rejected the said prayer by assigning reasons. The applicant was involved in serious crime. The forged documents were prepared which were utilized for making application for visa with Japanese Consulate. In view of findings of both the Courts, the applicant has been rightly convicted. The Appellate Court has set aside the conviction u/s 467 of IPC. No case for interference with the impugned judgments is made out and hence the application be dismissed.

9. Learned counsel for applicant has relied upon the decision of Hon'ble Supreme Court in case of **Dilbag SinghVs. State of Punjab AIR-1979-SC-680**. The said decision relates to exercise of powers u/s 360 of Cr.P.C.

10. I have perused the impugned judgments delivered by learned Trial Court and Appellate Court. I have also scrutinized the evidence of witnesses and documents exhibited in the evidence before the Trial Court. The Trial Court had acquitted the accused no.2 of all the charges. The applicant was convicted for the aforesaid offences and acquitted for offence u/s 380 of IPC. The Sessions Court has confirmed the conviction awarded by the Trial Court except for the offence u/s 467 of IPC. The applicant is the person who had applied for visa and tendered fabricated documents. The prosecution has examined the witnesses in support of its case. Considering the depositions of witnesses, the reasons assigned by the Trial Court as well as Appellate Court, I do not find that case is made out by the applicant to interfere in the judgments rendered by the Courts below. Thus no case is made out to set aside the conviction u/s 465, 468,

471 of IPC. The application for invoking Section 391 Cr.P.C has been rejected by reasons which do not call for interference. The applicant has been sentenced to suffer simple imprisonment of six months on each count. However, surprisingly the operative part of the judgment of Trial Court did not indicate whether the sentences to run concurrently or consecutively. The Appellate Court vide judgment and order dated 14th September 1999 has confirmed the conviction for the offences referred to hereinabove. However, even the order passed by Appellate Court did not indicate whether the sentence is to run concurrently or consecutively. In the absence of any reasons, the sentences shall run concurrently.

11. Having considered that no interference is warranted on the decisions of the Courts below awarding conviction, it would be necessary to adjudicate on the other submission advanced by learned counsel for applicant that benefit u/s 360 of Cr.P.C ought to be given to the applicant. The Trial Court had called upon the applicant to say regarding quantum of punishment. After hearing both the sides, the Court imposed the conviction and sentence vide judgment and order dated 4th March 1997. The Appellate Court considered the submission advanced by the applicant for invoking Section 360 of Cr.P.C. However, the Appellate Court has observed that the letter dated 30th April 1995 issued by the Consulate General of Japan to Senior Police Inspector, Gamdevi Police Station, Mumbai, which is Exhibit P-17 is of relevance. Vide said letter the Consulate of Japan had requested the police and raised the doubt as to big racket involved in such type of illegal activities and also some smuggling of drugs, which had been detected by Customs Officials of Japan in the recent past. The Court observed that in view of the above, in the

opinion of Court, the benefit u/s 360 of Cr.P.C and under Probation of Offenders Act, cannot be granted to the applicant. It is relevant to note that the prosecution had not brought on record any evidence that accused in the present case were involved in any such racket nor any connection was established with the contents of Exhibit-P-17 with regards to drugs smuggling detected in Japan. The order of the Appellate Court thus reflects total non-application of mind. The Appellate Court has indeed observed that at this juncture the Court can consider whether benefit can be given to the applicant u/s 360 of Cr.P.C, but the same was denied by relying upon letter dated 30th April 1995 (Exhibit-P-17).

12. It is pertinent to note that the incident had occurred in 1993. The trial had commenced in 1996. The applicant was convicted in 1997. The appeal was partly allowed in 1999. The applicant had canvassed before the Trial Court as well as Appellate Court that his antecedents are good. He is aged about 33 years. It is also relevant to note that the applicant was acquitted for the offences u/s 380 of IPC by Trial Court. The case of prosecution was that the accused have committed theft of letter heads/documents of L & T Limited. The applicant was also acquitted by Appellate Court for offence u/s 467 of IPC, which relates to forgery of valuable security etc.. The prosecution case was that accused no.2 was master mind in procreation of documents. He was acquitted for want of evidence. The assertion of the applicant that there was no antecedents and he had maintained good behaviour was not controverted before the Trial Court as well as before Appellate Court and at this stage it is not warranted to call upon report from the Probation Officer.

13. In the case of Dilbag Singh Vs. State of Punjab (supra), it was

observed that time has come for Courts to abandon the monroe doctrine towards penology and concern itself with innovative sentences. We stressed the legal position so that the Subordinate Courts may not treat conviction as the terminal point but the end of one chapter. We are mindful of the complexity and remove the impression that easy report to Section 360 is right. Imprisonment is the appropriate sentence when the offender must be isolated from the community in order to protect society or if he can learn to readjust his attitudes and patterns of behaviour only in a closely controlled environment. The consequences of a sentence are of the highest order. If too short or of the wrong type, it can deprive the law of its effectiveness and result in the premature release of a dangerous criminal. If too severe or improperly conceived, it can reinforce the criminal tendencies of the defendant and lead to a new offence by one who otherwise might not have offended so seriously again. The sentence which is not in some fashion limited in accordance with the particular offence can lead to a system of incomparable brutality. Per contra, a sentence or pattern of sentence which fails to take due account of the gravity of the offence, can seriously undermine respect for law.

14. The Supreme Court in the decision rendered in the case of **Lakhanlal @ Lakhan Singh Vs. State of Madhya Pradesh** delivered in **Criminal Appeal No.1306 of 2013**, has observed that the provisions of Section 360 of the Cr.P.C are in addition to the provisions of Probation of Offenders Act, 1958 or the Children Act, 1960, or in any other case for the time being in force for the treatment, training or rehabilitation of youthful offenders. The appellant therein was punished u/s 325 of IPC. The conviction was

confirmed by the Appellate Court. He preferred an appeal before the Supreme Court. Primary question which was under consideration of the Supreme Court was that the High Court had held that Section 360 of Cr.P.C will not be applicable as the matter falls within Sections 3 and 4 of Probation of Offenders Act, 1958. The Supreme Court held that the High Court's order was passed on erroneous reading of the provisions of law and that the appellant was entitled to benefit of probation in terms of Section 360 of Cr.P.C as well as Probation of Offenders Act. It was further observed that the High Court have not taken into consideration sub-section (10) of Section 360, which provided that Section 360 will not affect the provisions of Probation of Offenders act or other similar laws for the time being in force for treatment, training or rehabilitation of youthful offenders. Still Section 4 of Probation of Offenders Act has a non-obstante clause giving overriding effect over any other provisions of law. It was further observed that a conjoint reading of the provisions of both the statutes, the provisions of Section 360 of Cr.P.C are in addition to the provisions of Probation of Offenders Act or Children Act, 1960 for any law for time being in force for the treatment, training and rehabilitation of youthful offenders. This question about applicability had not arisen in the present case as the Courts have denied the probation u/s 360 of Cr.P.C on the facts of the case. The Supreme Court in paragraph 17 of the said decision has observed that incident is very old and the appellant had suffered proceedings for more than thirty years and hence the High Court had erred in law in not granting benefit of probation to the said appellant convicting for offence u/s 325 r/w 34 of IPC. The appellant therein was ordered to be released on probation of good conduct for a period of one year in terms of Section 360 of IPC. It is pertinent to note that

the said appellant was sentenced to imprisonment for one year and was directed to pay fine of Rs.1,000/- by the Trial Court.

15. Section 360(1) of Cr.P.C Reads as under :

“360. Order to release on probation of good conduct or after admonition :

(1) When any person not under twenty-one years of age is convicted of 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 behaviour; Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before such Magistrate who shall dispose off the case in the manner provided by sub-section (2).”

16. Section 360(1) of the Cr.P.C contemplates as to which

offenders are entitled to the benefit of probation and on what conditions. It contemplates that firstly, if any person not under twenty one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less; and secondly, 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, is entitled to the benefit of probation. Both categories of offenders have to further satisfy that he is not a previous convict; satisfaction of the Court having regard to the age, character or antecedents of the offender and to the circumstances in which the offence was committed. The Court being satisfied can order, instead of sentencing him at once to any punishment, 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) and in the meantime to keep the peace and be of good behaviour.

17. Thus, if the offender is less than 21 years of age or a woman not convicted of an offence not punishable with death or imprisonment for life; such offender can be granted benefit of probation on satisfaction of the Court on the basis of parameters contained in Section 360 of the Code. However, in respect of an offender more than 21 years of age, the benefit of release is available only if the offence is punishable for less than seven years imprisonment or fine. The object of Section 360 of the Cr.P.C is to prevent young persons from being committed to jail, who have for the first time committed crimes through ignorance, or inadvertence or the bad influence of others and who, but for such lapses, might be expected to be good citizens.

18. As noted hereinabove, the proceedings are pending since 1994. The applicant was more than 21 years of age at the time of incident. There is nothing to indicate that there are criminal antecedents against applicant. He was sentenced to suffer imprisonment for six months on each count for which he was convicted. The person who was instrumental in fabricating the documents, according to the prosecution, has been acquitted for lack of evidence. The applicant could not take benefit of act of preferring an application for visa. Although submissions were made before the Trial Court as well as Appellate Court, the prosecution has not brought on record any adverse material vis-a-vis the behaviour of the applicant during pendency of said proceedings. The Trial Court has not taken into consideration the effect of Section 360 of Cr.P.C or the provisions of Probation of Offenders Act. The Appellate Court has rejected the prayer for probation u/s 360 of Cr.P.C on erroneous conclusion based on Exhibit-P-17. Hence, the applicant is entitled for the relief in accordance with Section 360 of Cr.P.C.

19. Accordingly, I pass following order :

ORDER

(i) The applicant is directed to be released on probation of good conduct in terms of Section 360 of Code of Criminal Procedure, 1973, for a period of one year on furnishing personal bond before the Trial Court within a period of three months on usual terms and conditions, in connection with judgment and order dated 4th March 1997 passed by Metropolitan Magistrate, 14th Court, Girgaum, Mumbai in CC No.431/P/94 and judgment and order dated 14th

September 1999 passed by Additional Sessions Judge for Greater Bombay in Criminal Appeal No.52 of 1997;

(ii) Criminal Revision Application No.229 of 1999 is disposed off.

(PRAKASH D. NAIK, J.)

MST