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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on	Pronounced on
24.09.2019	16.10.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 575 OF 2019

AND

CRL. M.P. (MD) NO. 7246 OF 2019

Poomalai

.. Petitioner/Appellant/Accused

- Vs -

State, through

The Inspector of Police

Rajapalayam South Police Station

Rajapalayam, Virudhunagar District. .. Respondent/Respondent/
Complainant

Criminal Revision Case filed u/s 397 r/w 401 and 482 of the Code of Criminal Procedure praying to call for the records relating to the order passed in Crl. A. No.169 of 2012 dated 15.2.2019 on the file of the learned Prl. District & Sessions Judge, Virudhunagar District @ Srivilliputtur, confirming the judgment passed in C.C. No.353/2006 dated 27.9.2012, on the file of the learned Judicial Magistrate, Rajapalayam and set aside the same.

For Petitioner : Mr. T.Lajapathi Roy
(*)for Mr.M.Thirunavukkarasu

For Respondents : Ms. M.Anantha Devi, GA (Crl. Side)

ORDER

This revision petition is preferred to set aside the order dated 15.2.2019, passed by the learned Prl. District & Sessions Judge, Virudhunagar District @ Srivilliputtur, in Crl. A. No.169 of 2012 confirming the judgment dated 27.9.2012, passed by the learned Judicial Magistrate, Rajapalayam in C.C. No.353/2006.

2. The accused was charged and tried before the learned Judicial Magistrate, Rajapalayam, u/s 448 and 354 IPC on the allegation that he trespassed into the house of the complainant at about 0200 hours on the midnight of 27.12.2005 and outraged the



modesty of the complainant and when the complainant raised alarm, the petitioner/accused fled away from the scene of occurrence.

3. P.W.1 is the complainant, P.W.2 is the sister-in-law of P.W.1 and P.W.4 is the husband of P.W.1. P.W.3 is a relative of P.W.s 1, 2 and 4. Since P.W.4 was herding goats, it is his customary practice to keep the door open during night and sleep. On the day of occurrence, while P.W.4 was sleeping outside, P.W.2, 3 and other family members, including P.W.1 and her three children was sleeping inside. As P.W.1 felt some material disturbance on her person to the extent of outraging her modesty, she raised alarm and the mother-in-law of P.W.1 woke up and switched on the light and saw the accused and when the accused tried to escape by pushing P.W.3, who tried to overpower him, P.W.4 caught hold of the accused and tied him to a tree and after discussion with the elders in the village, P.W.1, accompanied by P.W.4, went to the Rajapalayam South Police Station and lodged the complaint, Ex.P-1, in and by which the criminal machinery was set in motion.

4. P.W.12 was the Inspector of Police attached to the abovesaid police station who was on duty on 25.12.05. At about 12.30 p.m., on the said day P.W.s 1 and 4 appeared before him and lodged the complaint, Ex.P-1 and a case was registered by preparing printed FIR, Ex.P4. P.W.12 took up investigation and arrested the accused and the accused was remanded to judicial custody. P.W.12, continuing with his investigation prepared observation mahazar, Ex.P-2 at the scene of occurrence and drew the rough sketch, Ex.P-5. P.W.12 gave requisition for conducting medical examination of the accused and, accordingly, the accused was produced before the doctor, P.W.9 for ascertaining his potency, who, on examination, issued accident register, Ex.P-3. On completion of investigation, P.W.12 filed the final report against the accused for the offences u/s 448 and 354 IPC.

5. On the appearance of the accused/petitioner, the provisions of Section 207 Cr.P.C. was complied with and the case was committed for trial in C.C. No.353/2006.

6. To prove the case, the prosecution examined P.W.s 1 to 12 and marked Exs.P-1 to P-5. When the accused was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked on the side of the appellant.

7. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months for the charge u/s 448 IPC and to pay a fine of Rs.9,000/-, in default to undergo simple imprisonment for a period of six months for the charge u/s 354 IPC. Challenging the legality of conviction and sentence, the accused preferred appeal



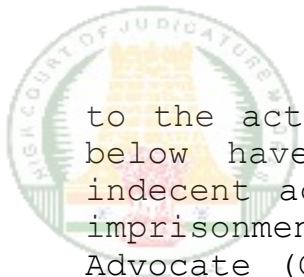
before the Principal District & Sessions Judge, Virudhunagar District @ Srivilliputtur, who confirmed the order passed by the trial court. Aggrieved by the said judgment of the appellate court, the present revision has been filed by the petitioner/accused.

8. Mr.Lajapathi Roy, learned counsel appearing for the accused/petitioner, even at the outset submitted that the occurrence had taken way back in the year 2006 and almost a decade and a half had passed since the occurrence and as on date, the family of the accused and the complainant are living peacefully. It is therefore submitted that at this point of time, putting the petitioner to pass the rigour of sentence for the conviction would not be in the interest of both the parties. It was earnestly submitted by the learned counsel for the petitioner/accused that since the solitary act as above, committed by the petitioner/accused, the petitioner had neither indulged in any such acts during the last 14 years or so, nor indulged in any other criminal acts over the past decade and a half and has been leading his life peacefully. Further, it is submitted by the learned counsel for the petitioner/accused that the accused is aged about 53 years and working as a Secretary in a Co-operative Bank and the conviction, which is only a fine, is hanging as a Damocles sword above the head of the petitioner and if the same is confirmed at this distant point of time, the probability are that the petitioner/accused will be proceeded with departmentally leading to his termination from service as well and, therefore, this Court, keeping the welfare of the accused may release the accused on probation under the Probation of Offenders Act by imposing any reasonable condition, which the petitioner/accused will strictly adhere to. It is submitted by the learned counsel for the petitioner that the family of the accused and the family of the complainant are leading normal lives peacefully after the untoward incident that happened over 14 years ago and, therefore, this Court, in exercise of its powers, may consider imposing any compensation, thereby detaching the stigma attached to the petitioner on account of the conviction.

9. Learned counsel for the petitioner placed reliance on Section 12 of the Probation of Offenders Act, 1958, which deals with removal of disqualification attaching to conviction, which are dealt with u/s 3 and 4 of the Probation of Offenders Act and submits that compensation, as this Court deems fit, may be awarded to the victim to compensate the trauma that the victim would have gone through due to the act of the petitioner so that the stigma of conviction would stand erased.

10. This Court heard the learned Government Advocate (Crl. Side) appearing for the respondent on the above contention and also perused the materials available on record.

11. Even at the outset it is to be stated that this Court is in
<https://hccservices.mca.gov.in/Services/> the finding recorded by the courts below with regard



to the act of the petitioner. It is further seen that the courts below have only sentenced the petitioner to pay fine for the indecent act committed by him and has not imposed any sentence of imprisonment. It is equally submitted by the learned Government Advocate (Crl. Side) that barring the one incident above, in which the petitioner has suffered the sentence on his conviction, the petitioner has not come to adverse notice of the respondent over the past decade and a half. In the above circumstance, the only question that falls for consideration is

"Whether the petitioner herein is entitled to get the relief as envisaged u/s 3 and 4 of the Probation of Offenders Act?"

12. The Supreme Court in **Jugal Kishore Prasad - Vs - State of Bihar ((1972) 2 SCC 633 : 1973 SCC (Cri) 48)** traced the necessity for enactment of the Probation of Offenders Act and found that the said Act was enacted with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. 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 recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective.

13. To address the issue above, it is but relevant to look at Sections 3 and 4 of the Probation of Offenders Act and for better clarity, the same are extracted hereunder :-

"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 offence, 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.

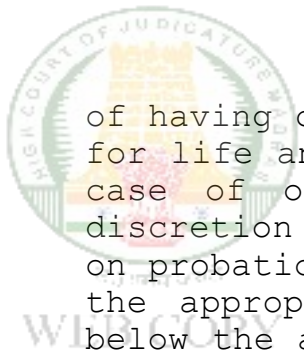
4. Power of court to release certain offenders on probation of good conduct.- (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances 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:

* * * * *

14. Section 3 of the Probation of Offenders Act clearly prescribes the power of the Court to release certain offenders after admonition. The said Section lays down that where an offence is punishable with imprisonment for not more than two years or with fine or with both and no previous conviction is proved against the person claiming the benefit, and the Court being satisfied with the circumstances of the case, including the nature of the offence and character of the offender, may, notwithstanding anything may release him on probation of good conduct under Section 4 after due admonition.

15. Section 4, likewise, empowers the Court to release certain offenders on probation of good conduct, where the Court is of the opinion that the circumstances attendant thereto and the character of the offender and the nature of the offence committed it is expedient to release the person on probation of good conduct.

16. **In Rattan Lal - Vs - State of Punjab (AIR 1965 SC 444 : (1964) 7 SCR 676 : (1965) 1 SCJ 779 : (1965) 1 Cri LJ 360)**, Subba Rao, J. (as he then was) speaking for the majority held that the Probation of Offenders 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 from 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.

17. In **Mohd. Hashim v. State of U.P. (2017) 2 SCC 198 : (2017) 1 SCC (Cri) 698**, the Supreme Court held as under :-

"22. We have referred to the aforesaid authority to stress the point that the court before exercising the power under Section 4 of the PO Act has to keep in view the nature of offence and the conditions incorporated under Section 4 of the PO Act. Be it stated in *Dalbir Singh v. State of Haryana* [*Dalbir Singh v. State of Haryana*, (2000) 5 SCC 82 : 2004 SCC (Cri) 1208 : AIR 2000 SC 1677] it has been held that Parliament has made it clear that only if the Court forms the opinion that it is expedient to release the convict on probation for the good conduct regard being had to the circumstances of the case and one of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence". The Court has further opined that though the discretion has been vested in the court to decide when and how the court should form such opinion, yet the provision itself provides sufficient indication that releasing the convicted person on probation of good conduct must appear to the Court to be expedient. Explaining the word "expedient", the Court held thus: (SCC p. 86, paras 9-10)

"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* [*State of Gujarat v. Jamnadas G. Pabri*, (1975) 1 SCC 138 : AIR 1974 SC 2233] a two-Judge Bench of this Court has considered the word "expedient". The learned Judges have observed in para 21 thus: (SCC p.

145)



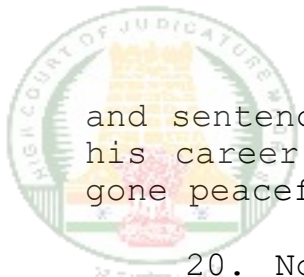
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'21. ... Again, the word "expedient" used in this provision, has several shades of meaning. In one dictionary sense, "expedient" (adj.) means "apt and suitable to the end in view", "practical and efficient"; "politic"; "profitable"; "advisable", "fit, 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 Section 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 Section 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."

18. From the above provisions of law as also the ratio laid down by the Hon'ble Supreme Court in the decisions supra, it is amply clear that though the discretion has been vested in the court to decide when and how the court should form such opinion, yet the provision itself provides sufficient indication that releasing the convicted person on probation of good conduct must appear to the Court to be expedient and after forming such opinion, the Court is empowered to exercise its discretion and release the person on probation subject to attendant circumstances, character of the person and the nature of the offence coupled with the age of the person.

19. In the case on hand, it is fairly conceded by the learned counsel appearing for the petitioner that the petitioner is not assailing the order passed by the courts below, but the revision has been filed only on the limited ground that this Court may exercise its discretion and release the petitioner on probation by invoking Sections 3 and 4 of the Probation of Offenders Act considering the conduct of the petitioner over the last one and half decade, so that the benefit of Section 12 may accrue upon him, as the petitioner, as on date is aged about 53 years and is employed and any conviction



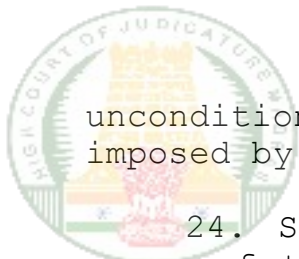
and sentence, at this distant point of time would be detrimental to his career and also affect his family as well, which has hitherto gone peacefully after that untoward incident.

20. No doubt, the courts below have imposed only fine on the petitioner and no sentence of imprisonment has been attached with the said conviction. It is true that detriment should not be caused to the petitioner at the fag end of his career on account of his indecent act, committed in an inebriated state at an age, when the blood was rather hot. But equally so, the trauma suffered by the victim/complainant, who was leading a peaceful life till that point of time, should also be taken into account, while granting any relief, as sought for by the petitioner. The trauma that the victim/complainant would have gone through due to the indecent act of the petitioner is inexplicable beyond words, that too, a mother of three children in a joint family. The trauma suffered by the victim/complainant should equally be respected by taking necessary action against the person, herein the petitioner, who was the root cause of the storm in her household. However, it is also to be kept in mind that the incident had taken place in the year 2006, almost a decade and a half ago and the wheels of the criminal machinery culminated in the order of the trial court in the year 2012 itself. Therefore, nothing would be gained by any party to the *lis* to have the sentence maintained, but, however, there being a conviction, a necessary sentence is a necessary corollary. The balance of scales of justice should be so balanced that the ultimate object of the Court should be to render complete justice to one and all.

21. On the aspect of sentence, learned counsel appearing for the petitioner submitted that any compensation, as this Court may deem fit, be awarded to the victim/complainant, so that the peaceful life of both the families, who are living peacefully for the past ten years or so, be not disturbed at this point of time due to the sentence, as the maintenance of the sentence would work hardship for the petitioner, as he would entail disciplinary action in his official stream, which would not be in the interest of his family at this point of time. Reliance was placed on Section 5 of the Probation of Offenders Act to drive home the point that it is within the realm of this Court to award any just and reasonable compensation.

22. In this regard, the petitioner has also filed an affidavit expressing his unconditional regret for the incident and further undertaking that he will not commit any offence of this nature in future and has further submitted that he is ready and willing to abide by any condition for payment of compensation to the victim.

23. This Court has given its careful consideration to the above submission of the learned counsel for the petitioner and also takes on record the affidavit filed by the petitioner expressing his



unconditional regret and to abide by any condition that may be imposed by this Court.

24. Section 5 of the Probation of Offenders Act details the power of the Court to release offenders on payment of compensation and costs. For better clarity, the relevant provision is extracted hereunder :-

"5. Power of court to require released offenders to pay compensation and costs.- (1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay-

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

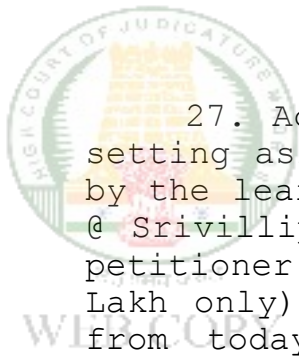
(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages."

25. From the above provision of law, it is evident that this Court is clothed with the power to release the offender on probation subject to payment of compensation and costs, which this Court thinks reasonable for the loss or injury caused to the person due to the commission of the offence.

26. In the case on hand, the petitioner has outraged the modesty of the complainant by acting indecently at her home, though in an inebriated state. However, the inebriated state of the petitioner cannot be a ground to leave him go unscathed but at the same time, a person, not in control of his senses, though due to his own act, cannot be put to irreparable loss at this distant point of time by retaining the sentence, thereby jeopardizing his career, which in turn affects his family, who are in no way connected with the offence.

26. In such view of the matter, this Court, in exercise of its discretion and taking aid from Section 5 of the Probation of Offenders Act, is inclined to release the petitioner on probation u/s 3 r/w 4 of the Probation of Offenders Act on condition that the petitioner pays just and reasonable compensation to the victim/complainant.



27. Accordingly, this criminal revision petition is allowed by setting aside the conviction and sentence imposed on the petitioner by the learned Prl. District & Sessions Judge, Virudhunagar District @ Srivilliputtur, in Crl. A. No.169 of 2012, on condition that the petitioner pays a compensation in a sum of Rs.1,00,000/- (Rupees One Lakh only) to the victim/complainant within a period of four weeks from today. In case the victim is unwilling to receive the compensation, the compensation amount shall be paid to the credit of the Chief Justice Relief Fund. Necessary affidavit shall be filed with regard to compliance of the above direction of this Court by the next date of hearing. Consequently, connected miscellaneous petition is closed.

28. Registry is directed to communicate a copy of this order to the victim/complainant in C.C. No.353/2006 on the file of the learned Judicial Magistrate, Rajapalayam. List the matter for reporting compliance on 18.11.2019.

Sd/-

Assistant Registrar (CO)
(Dated: 16/10/2019)

(*) Corrected as per Letter Dated 18/10/2019

Sd/-

Assistant Registrar (CO)
(Dated: 13/11/2019)

// True Copy //

Sub Assistant Registrar(CS)

GLN

To

1.The Principal District and Sessions Judge,
Virudhunagar at Srivilliputhur.

2.The Judicial Magistrate,
Rajapalayam.

3.The Chief Judicial Magistrate,
Srivilliputhur at Virudhunagar.

4.The Inspector of Police
Rajapalayam South Police Station
Rajapalayam
Virudhunagar District.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to:

1.The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

3.Chitra, Kalangapperi,
Rajapalayam Taluk, Virudhunagar District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-89145[F] dated
25/09/2019)

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-92049[F] dated
16/10/2019)

CRL. R.C. (MD) NO. 575 OF 2019
16.10.2019

KK/SAR/16.10.2019/11P-12C/
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