

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2467 of 2019

DECIDED ON: February 22, 2019

ABHAY SINGH GILL AND ANOTHER

..PETITIONERS

VERSUS

STATE OF U.T. CHANDIGARH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sartej Singh Narula, Advocate, for the petitioners.

Mr. J.S. Toor, Addl. P.P. for U.T., Chandigarh.

SUDHIR MITTAL, J. (ORAL)

The petitioners were caught consuming liquor in public on 22.09.2018 and were challaned under Sections 68(1)(b) of Punjab Police Act, 2007 (for short 'the Act') and Section 510 IPC. They were convicted vide order 25.09.2018 as they admitted their guilt and sentenced vide order of even date to pay fine of Rs.1,000/- each under Section 68 (1) (b) of the Act and to pay fine of Rs.10/- each under Section 510 of the Indian Penal Code, 1860 (for short 'the IPC'). The sentence alone is being challenged through this petition.

Learned counsel for the petitioners submits that in view of Section 360 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C'), a trial Court is duty bound to examine whether a convict is entitled to the benefit of the Probation of Offenders Act, 1958 before sentencing him. Reliance is

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placed upon judgment of the Supreme Court in '*Elamma and Anr. Vs. State of Karnataka, 2009 (2) R.C.R. (Criminal) 47*'. If the trial Court had done so, the petitioners would have been given benefit of Section 3 of the said Act because the maximum sentence provided under Section 68(1) (b) of the Act, is imprisonment not exceeding one month or fine not less than Rs.1,000/- or with both and under Section 510 IPC, simple imprisonment which may extend to 24 hours or with fine which may extend to Rs.10/- or with both. Such considerations would also be in the interest of the carrer of the petitioners, being young advocates, as they would not incur any disqualification in future on account of a conviction as Section 12 of the Probation of Offenders Act, 1958 would come to their rescue.

Learned State counsel does not dispute the legal proposition enunciated by learned counsel for the petitioners.

The relevant provisions of law which have been referred to in this case are reproduced below for ready reference:-

Section 360 Cr.P.C.

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 of the case in the manner provided by sub- section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub- section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal

when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub- section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

[\(6\)](#) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

[\(7\)](#) The Court, before directing the release of an offender under sub- section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

[\(8\)](#) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

[\(9\)](#) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

[\(10\)](#) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

Section 3 – The Probation of Offenders Act, 1958-

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

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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.

Section 12 of ‘The Probation of Offenders Act, 1958’–

Removal of disqualification attaching to conviction.—

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law: Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence.

Section 360 Cr.P.C., leaves no manner of doubt that a Court must consider the age, character or antecedents of the offender and the circumstances in which the offence was committed and then decide whether he is entitled to be released on probation of good conduct or not. Section 3 of Probation of Offenders Act, 1958, further entitles a convict to release after due admonition if the case falls within the parameters prescribed therein. Section 12 of the said Act provides that no disqualification shall attach to a conviction in case a convict has been dealt with under the provisions of Section 3 or Section 4 of the said Act.

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Keeping in view the age, character and antecedents of the petitioners and the nature of the offence committed by them, the petitioners were entitled to benefit of Section 3 of the Probation of Offenders Act, 1958. The trial Court has committed a patent illegality by not doing so.

The petition is accordingly allowed and the order of sentence dated 25.09.2018 passed by the learned Judicial Magistrate 1st Class, Chandigarh, is modified. It is directed that the petitioners are released after due admonition.

February 22, 2019

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No