

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No.1235 of 2009 (O&M)

Date of Decision: September 10, 2019.

Jagir Singh

.....Petitioner

versus

State of Punjab

.

....Respondent

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL.

Present: Mr.Amardeep Singh, Advocate, for the petitioner.

Mr.S.P.S.Tinna, Additional AG, Punjab.

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Anil Kshetarpal, J. (Oral)

The petitioner was convicted under Section 420 IPC and sentenced to undergo RI for a period of 2½ years. Initially, the prosecution was launched on the complaint lodged by Rajwinder Kaur daughter-in-law of the petitioner but later on she became widow as the petitioner lost his son Santokh Singh (husband of the complainant). Judicial Magistrate, 1st Class, Phagwara convicted the petitioner under Section 420 IPC on the ground that superanuary benefits of the son have been withdrawn by the petitioner by asserting that his son is unmarried and issueless although at that time he was married. Remaining accused, i.e, wife of the petitioner and daughter of the petitioner were acquitted.

First Appellate Court has also affirmed the judgment passed by the JMJC.

Learned counsel for the petitioner although made sincere attempt, however could not point-out any perversity in the judgment of the

courts below, hence, this Court did not find any ground to interfere with the

judgment on merits.

Learned counsel for the petitioner has come up with an alternative prayer. He submits that the petitioner is more than 65 years of age and first time offender. Petitioner lost his son who was in his prime youth age, hence he submits that lenient view may be taken.

Learned State counsel has produced the custody certificate, according to which the petitioner has already undergone three months and not involved in any other case.

The maximum punishment which can be awarded under Section 420 IPC is imprisonment for a period of 7 years and to take fine.

Section 360 of Cr.P.C. gives discretion power to the Court to release the convicts who have been ordered to be imprisoned for a period of 7 years or less.

Section 360 Cr.P.C. reads as under:-

“Section 360 in The Code Of Criminal Procedure, 1973

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.”

Keeping in view the facts of the present case, age of the petitioner and the fact that he has lost his son, this Court is of the view that this is a fit case for the release of the petitioner on probation. It can be noted here that daughter in law of the petitioner, i.e., first informant, has re-married in the year 2006.

Accordingly, the petitioner is directed to enter into a bond before the concerned Magistrate, for a sum of Rs.50,000/- with surety, to appear and receive sentence when called upon during a period of two years and in the meantime, to keep the peace and be of good behaviour, within a period of one month from the date of receiving a certified copy of this order.

The revision petition stands allowed accordingly.

September 10, 2019

mohinder

(ANIL KSHETARPAL)

JUDGE

