

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

CRR No.1365-2015 (O&M)
Date of decision: 30.08.2019

Gurtaran Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aminder Singh, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. Naveen Bawa, Advocate for
respondents No.2 to 5.

ANIL KSHETARPAL, J. (ORAL)

The present revision petition has been filed against the order passed by the learned First Appellate Court releasing the accused-convicts on probation.

Learned Judicial Magistrate had convicted the respondent-accused under Sections 323, 325 read with Section 34 of the Indian Penal Code and sentenced to rigorous imprisonment for a period of one year. The incident took place in the year 2007. Learned First Appellate Court after considering all aspects of the matter directed that the accused have already faced protracted litigation for the last 12 years and there is no overt act thereafter on the part of the accused, therefore, the accused were granted benefit of probation and they were released on probation for a period of one

year. They were also required to give undertaking of good behaviour and directed not to commit breach of peace.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the petitioner has submitted that the petitioner first informant-injured had suffered injuries at the hands of the accused. He has further submitted that the petitioner is a very respected teacher and the accused beat the petitioner without any justifiable reason. Hence, he submitted that the First Appellate Court has erred in granting him benefit of probation. He further submitted that the procedure as required under Section 4 of the Probation of Offenders Act, 1958 has not been followed as the Court did not call for report of the Probation Officer.

In this regard, he relies upon a judgment passed by the Hon'ble Supreme Court in the case of M.C.D. Vs. State of Delhi and another, AIR 2005 (SC) 2658.

This Court has considered the submission. Both the Courts have correctly found that the accused is guilty and therefore, ordered to be convicted. The stigma of conviction continues, although, the convict has been released on probation. More than 12 years have elapsed. There are no assertions that the convicts have made any attempt thereafter or caused any harm to the injured. The learned First Appellate Court released the convicts on probation in the year 2014. Thereafter, 4½ years have elapsed and the accused have remained bound by the undertaking given. Hence, this Court does not find any reason to interfere in the discretion exercised by the learned First Appellate Court.

As regards the argument of learned counsel with reference to the judgment passed by the Hon'ble Supreme Court in the case of MCD (supra), it will be noted that Section 360 of the Code of Criminal Procedure enables the Court to order release of the convicts on probation for good conduct.

Learned counsel for the petitioner could not draw attention of the Court to any provision of the Probation of Offenders Act, 1958 which in any way supersedes the provision of probation provided under Section 360 of Cr.P.C. On careful reading of the judgment passed by the Hon'ble Supreme Court, it is apparent that attention of the Hon'ble Supreme Court was not drawn towards Section 360 of the Code of Criminal Procedure.

The Probation of Offenders Act, 1958 came into force on 16.05.1958 whereas Code of Criminal Procedure, 1973 came into force on 21.04.2018. Still further, Section 360 of Code of Criminal Procedure specifically notices the Probation of Offenders Act, 1958. Sub-section 10 of Section 360 provides that nothing in the section shall effect the provisions of Probation of Offenders Act, 1958 or the Children Act, 1960 or any other law for the time being enforced for the treatment, training or the petitions for the useful offenders. Thus, it is safe to conclude that the probation as provided under Section 360 operates independent of the Probation of Offenders Act, 1958. Still further, Section 4 of the Probation of Offenders Act does not contain any non-obstante clause which would place Section 4 at a higher pedestal.

Still further, purpose of providing provisions to grant a probation is to avoid imprisonment in jail and give opportunity to the convict to reform. Most of the time when a convict is sent to prison, at the

time of release from the prison after completing the term, he does not become a reformed citizen/resident.

In view thereof, there is no ground to interfere.

Hence, the petition is dismissed.

30.08.2019

D.Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No