

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 170 of 2016 (O&M)
Date of Decision: 19.03.2019**

Om Parkash

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. S.P.Soi, Advocate
for the petitioner.

Mr. S.S.Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J.

The present revision arises out of the judgment and order dated 4.12.2015 passed by Additional Sessions Judge, Jalandhar, vide which the appeal filed by the petitioner, challenging the judgment of conviction and order of sentence dated 25.2.2014 passed by Sub Divisional Judicial Magistrate, Nakodar, in case FIR No. 117 dated 4.5.2007 under Sections 420, 466, 468, 471 of the Indian Penal Code ('IPC' for short), registered at Police Station Nakodar, was dismissed.

The brief facts of the case are that present case was registered on the basis of the complaint submitted to Senior Superintendent of Police, Jalandhar by Parjinder Kaur, Ex. Block Primary Education Officer, Shahkot-II alleging that one teacher, namely, Om Parkash, who was earlier working in Block Shahkot-II had taken loan from Hindu Urban Bank, Nakodar, District Jalandhar in the year 2002 after forging the signatures of

the Block Education Officer regarding which the complainant came to know from some reliable sources. Accordingly, the FIR in question was registered and accused was arrested on 6.5.2007.

After completion of investigation and necessary formalities, challan was presented against the accused-petitioner.

Charges were framed against the accused-petitioner under Sections 465, 468, 471, 420 IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, prosecution had examined 09 witnesses.

In the statement recorded under Section 313 Cr.P.C., the accused denied the prosecution case and pleaded false implication.

No witness was, however, examined by the accused in his defence.

The trial Court vide judgement and order dated 25.2.2014 convicted and sentenced the petitioner as under:-

<i>Under Sections</i>	<i>Sentence awarded</i>
<i>420 IPC</i>	<i>To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.</i>
<i>471 IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.</i>

Both the sentences were ordered to run concurrently.

The appeal preferred by the petitioner was dismissed by the

Appellate Court vide judgment dated 4.12.2015.

Learned counsel for the petitioner, at the outset, has argued that the petitioner was appointed as a Teacher on 1.1.2002. The petitioner applied for personal loan amounting to ₹ 50,000/- from Nakodar Hindu Urban Cooperative Bank, Nakodar. The amount of ₹ 2,000/- per month was deducted from his pay w.e.f. July 2003 onwards. It was also the condition in the loan sanction letter that if the repayment of loan was not made, then the bank would be legally entitled to recover the said amount from the petitioner under the provisions of Section 39 of the Punjab Co-operative Societies Act, 1961. Later on, the amount was repaid by the petitioner on 12.4.2006.

It is further argued that in the present case, complaint was made by Parjinder Kaur on 23.1.2006 and FIR was registered on 4.5.2007. It has been also submitted that complainant Parjinder Kaur had hatched a conspiracy against the petitioner, as earlier the petitioner had filed a complaint before Sub Divisional Judicial Magistrate, Nakodar against her which is on record. It has been further argued that there is no complaint by the bank that the loan amount has been misappropriated by the petitioner. Moreover, no damage has been caused to the general public. So far as the misuse of the documents is concerned, it has been argued that the petitioner had applied for the salary certificate from competent authority which was issued and after it was found to be genuine, the petitioner was extended loan by the bank. Thus, there is no reason to believe that the document was forged or there is any fraudulent or dishonest act on the part of the petitioner. It has been further argued that the opinion of the document expert should have been considered with care and caution particularly in the case of report of hand writing expert. The Court is duty bound to look for

further corroborative evidence besides the opinion of the expert.

Learned counsel for the petitioner has further contended that the petitioner has been terminated from service and his family is starving and the petitioner is to look after his family and old age parents. He is a first time offender and has been facing the agony of trial for the last 12 years.

Thus, he has prayed for setting aside the impugned judgments and order and has further prayed for the acquittal of the petitioner.

Per contra, learned State counsel has argued that petitioner Om Parkash has forged the signatures of Parjinder Kaur, Block Primary Education Officer, on the salary certificate and thereafter, he had cheated the bank by obtaining loan on the basis of forged document. He has also made reference and stressed on the report of the Forensic Science Laboratory (Ex. PW6/F) and has stated that the same is admissible in evidence.

I have heard the learned counsel for the petitioner as well as the learned State counsel and have gone through the record of the Courts below with their able assistance.

It is a case in which a Teacher was sanctioned personal loan of ₹ 50,000/- by the bank after he had tendered his salary certificate, issued by the school authorities, indicating his salary as ₹ 7911/- per month. The loan was sanctioned on 9.7.2003. The loan amount had been deducted from the salary of the petitioner on regular basis and ultimately the entire loan stood repaid on 12.4.2006 and 'No Objection' certificate was issued by the bank. Parjinder Kaur, Block Primary Education Officer had made a complaint dated 23.1.2006 to the Senior Superintendent of Police, Jalandhar on which the FIR in question was registered on 4.5.2007 and the petitioner stands

convicted under Sections 420, 471 IPC.

On perusal of the judgment of the Courts below, this Court is of the considered view that there is no illegality or perversity in the findings given by both the Courts below regarding conviction of the petitioner which may warrant interference by this Court by invoking revisional jurisdiction. The petitioner is not a previous convict. Thus, no useful purpose will be served by sending the petitioner behind the bars. It is a fit case, where the petitioner, who is otherwise not reflected to be a previous offender, can be released on probation. Thus, the conviction of the petitioner is, therefore, affirmed.

So far as the prayer of learned counsel for the petitioner for releasing the petitioner on probation on good conduct is concerned, this Court feels that the purpose of criminal law justice is not only to bring peace, harmony and discipline in the society, but also to give an opportunity to an erring individual to reform himself, so that there is everlasting peace in the society. This view finds support from the judgment of Hon'ble Supreme Court in the case of ***Karamjit Singh Versus State (Delhi Admn.)***, **2001(9) SCC 161**, wherein the following observations were made:

“Punishment in criminal cases is both punitive and reformative. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformative aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case the Court has to weight the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of

punishment in the case. An act of balancing is what is needed in such a case, a balance between the interest of the individual and the concern of the society weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.”

So while determining the question of proper punishment in a criminal case the Court has to weigh the degree of culpability of the accused person and to afford an opportunity to the individual to reform himself.

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

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 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.

The Hon'ble Supreme Court in ***Chandreshwar Sharma Vs. State of Bihar, (2000) 9 SCC 245***, while considering such mandate, has held to the following effect:-

“3. The appellant herein was convicted under Sections 379 and 411 Indian Penal Code and was sentenced to rigorous imprisonment for one year as 3.5 kg of nonferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the Tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negatived and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code should not be made applicable. Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance. From the perusal of the judgment of the

learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forum below had considered the question of applicability of Section 360 of the Criminal Procedure Code. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then shall record in its judgment the specific reasons for not having done so. (Emphasis Supplied). This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the Criminal Procedure Code. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reasons not to apply the provisions of Section 360 of the CrPC. We accordingly, while maintain the conviction of the appellant, direct that he will be dealt with under section 360, and as such, we direct that the appellant be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly.”

Thus, as per the above judgment rendered by the Hon'ble Supreme Court of India, the Magistrate as well as the Court of Appeal and the High Court have to consider the question of applicability of Section 360 Cr.P.C. as Sections 360 and 361 Cr.P.C. on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 Cr.P.C. but does not want to grant the benefit of the said provision, then it shall record in its judgment the specific reasons for not

having done so. Thus, it is the mandatory duty cast upon the Magistrate as well as the Appellate Court which in the case in hand has not been performed.

Resultantly, while upholding the conviction of the petitioner under Sections 420, 471 IPC, his substantive sentence of imprisonment is set aside. Instead, he is ordered to be released on probation for a period of one year subject to his executing bonds to the satisfaction of the Chief Judicial Magistrate concerned, undertaking to keep peace and be of good behaviour for the said period and to appear and receive the sentence as and when called upon to do so in case of violation of any of the conditions of the bonds. Petitioner is also directed to pay a sum of ₹ 25,000/- as costs of litigation to be paid to the State.

Revision petition stands disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

March 19, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes