

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.692 of 2015

Date of Decision: *January 31, 2019*

Jai

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

. . .

PRESENT: - Mr. Tarun Sharma, Advocate, for Mr. S.P.S. Sidhu,
Advocate, for the petitioner..

Mr. H.S. Sullar, Deputy Advocate General, Punjab, for
the respondent – State.

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Harnaresh Singh Gill, J

The present petition has been preferred by the petitioner –
accused challenging judgment dated 21.11.2014 passed by the Sessions
Judge, Ferozepur, whereby his appeal against judgment of his conviction
and order of sentence dated 30.07.2014 passed by the Judicial Magistrate Ist
Class, Ferozepur, in case FIR No.105 dated 18.04.2012, under Section
61(1)(a) of the Punjab Excise Act, 1914 (for short, ‘Act’), has been
dismissed. Vide aforesaid judgment/order passed by the trial court, petitioner
– accused has been convicted under the Act *ibid* and sentenced to undergo
RI for a period of one year alongwith fine of ₹ 500/- and in default of

payment of fine, to further undergo RI for one month, for having in possession of heavy quantity of 50-1/4 bottles of illicit liquor without any licence.

The facts giving rise to the present petition are that on 18.04.2012, police party headed by HC Gurnam Singh, while on patrolling, received a secret information to the effect that accused is selling illicit liquor near the bushes on the way leading from Basti Bhattian to Basti Sunwan and if a raid is conducted, illicit liquor in heavy quantity can be recovered from him. No independent witness was joined despite efforts. A raid was conducted at the disclosed place and accused alongwith rubber tube containing illicit liquor was apprehended. A sample nip of 180 ml was separated by the Investigating Officer and remaining liquor on measurement came to be 50 bottles of 750 ml each. Accused was arrested.

On completion of necessary formalities, challan was presented in the court of competent jurisdiction. Copies of documents were supplied to the accused, free of cost, as required under Section 207 Cr.P.C.

Finding a prima facie case against the accused, he was chargesheeted under Section 61(1)(a) of the Act, to which, he pleaded not guilty and claimed trial.

In order to substantiate its case, prosecution examined four witnesses.

Statement of accused under Section 313 Cr.P.C. was recorded to elicit answers to incriminating circumstances appearing in prosecution evidence. Accused pleaded innocence and false implication. No defence evidence was produced.

After hearing counsel for the parties and on appreciation of documentary as well as oral evidence, trial court vide impugned judgment/order dated 30.07.2014 convicted the accused under Section 61(1)(a) and sentenced him to undergo RI for the period of one year alongwith fine of ₹ 500/-, and in default of payment of fine, to further undergo RI of one month.

Aggrieved by the aforesaid judgment of conviction and order of sentence, accused filed an appeal which was also dismissed vide another impugned judgment dated 21.11.2014 passed by the appellate court.

Now, dis-satisfied by the judgments rendered by the courts below, petitioner – accused has approached this Court by way of present criminal revision petition.

Having heard counsel for the parties and scanning the record available, this Court does not find any ground to interfere with the impugned judgments of conviction rendered by the courts below and as such, the same are affirmed.

As regards to quantum of sentence, learned counsel for the petitioner has contended that petitioner is first offender. He is facing the agony of trial since the date of registration of FIR i.e. 18.04.2012. He is the owner bread winner of his family. He is not a previous convict and had already undergone about 4 months and 15 days upto 31.03.2015 when sentence imposed on him was suspended during pendency of this revision petition. Learned counsel further prayed that petitioner deserves to be given benefit of probation under the Probation of Offenders Act, 1958 (for short, '1958 Act')

The aforesaid facts have not been disputed by learned counsel for the respondent – State.

Answering the similar questions of law, the Hon’ble Supreme Court in **Isher Dass vs. The State of Punjab, AIR 1972 Supreme Court 1295(1)** held as under:-

“7. The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under 317 the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act. In this respect we find that subsection (1) of section 4 of the Probation of Offenders Act contains the words "notwithstanding anything contained in any other law for the time being in force". The above non-obstante clause points to the conclusion that the provisions of section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the other conditions prescribed are fulfilled. Those conditions are (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the 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, and (3) the accused in such an event enters 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 behavior. Sub-section (1) of section 6 of the above mentioned Act, as stated earlier, imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him under sections 3 or 4 of the Act but to award a sentence of imprisonment to him. The underlying object of the above provisions obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals. So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life, he shall not be sentenced to imprisonment unless there exist

reasons which justify such a course. Such reasons have to be recorded in writing.

8. According to section 18 of the Probation of Offenders Act, the aforesaid Act shall not affect the provision of subsection (2) of section 5 of the Prevention of Corruption Act, 1947 (Act 2 of 1947). The last mentioned provision, namely, sub-section (2) of section 5 of the Prevention of Corruption Act, prescribes, in the absence of special reasons, a minimum sentence of imprisonment for a term of not less than one year for those convicted 318 under section 5 of that Act. If the object of the legislature was that the provisions of the Probation of Offenders Act should not apply to all cases where a minimum sentence of imprisonment is prescribed by the statute, there was no reason to specify subsection (2) of section 5 of the Prevention of Corruption Act in section 18 of the Probation of Offenders Act. The fact that out of the various offenses for which the minimum sentence is prescribed, only the offence under sub-section (2) of section 5 of the Prevention of Corruption Act has been mentioned in section 18 of the Probation of Offenders Act and not the other offenses for which the minimum sentence is prescribed, shows that in case of such other offenses the provisions of Probation of Offenders Act can be invoked.

9. The provisions of Probation of Offenders Act, in our opinion, point to the conclusion that their operation is not excluded in the case of persons found guilty of offenses

under the Prevention of Food Adulteration Act. Assuming that there was reasonable doubt or ambiguity, the principle to be applied in Construing a penal act is that such doubt or ambiguity should be resolved in favour of the person who would be liable to the penalty (see Maxwell on Interpretation of Statutes, p. 239, 12th Edition). It had also to be borne in mind that the Probation of Offenders Act was enacted in 1958 subsequent to the enactment in 1954 of the Prevention of Food Adulteration Act. As the legislature enacted the Probation of Offenders Act despite the existence on the statute book of the Prevention of Food Adulteration Act, the operation of the provisions of Probation of Offenders Act cannot be whittled down or circumscribed because of the provisions of the earlier enactment, viz. Prevention of Food Adulteration Act. Indeed, as mentioned earlier, the non-obstante clause in section 4 of the Probation of Offenders Act is a clear manifestation of the intention of the legislature that the provisions of the Probation of Offenders Act would have effect notwithstanding any other law for the time being in force. We may also in this context refer to the decision of this Court in the case of ***Ramji Missir v. State of Bihar, 1962 Supp. 2 S.C.R. 745*** wherein this Court while dealing with the Probation of Offenders Act observed that its beneficial provision,, should receive wide interpretation and should not be read in a restricted sense. Adulteration of food is a menace to public health. The

Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by the fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above, 21 years of age found guilty of offenses under the Prevention of Food Adulteration Act. As regards persons under 21 years of age, however, the policy of the law appears to be that such a person in spite of his conviction under the Prevention of Food Adulteration Act, should not be deprived of the advantage of Probation of Offenders Act which is a beneficent measure and reflects and incorporates the modern approach and latest trend in penology.”

Similar view has been reiterated by Full Bench of this Court in **Joginder Singh vs. State of Punjab, 1980 Chandigarh Law Reporter (Punjab and Haryana) 196**, wherein this Court observed as under:-

“22. Though as a matter of law, the aforesaid answer has been rendered a note of caution must necessarily be sounded as regards the sentencing policy thereunder. Herein again, he observations of the final Court appear to me as a conclusive with regard to the Prevention of Food Adulteration Act, their Lordships have set their face firmly against any facile

application of the Probation of Offenders Act to offence thereunder prior to 1976 went the legislature itself intervened to create a legal bar. Indeed, whilst holding that as a matter of law, probation could be resorted to with regard to offences under the Prevention of Food Adulteration Act, a virtual ban on a resort thereto has been laid in actual practice. In ***Isher Das v. The State of Punjab, AIR 1974 Supreme Court 228***, it was observed as follows:-

“Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the air of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by a fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offenders under the Prevention of Food Adulteration Act, 1947.....”

Reiterating the aforesaid view, Krishna Iyer, J, speaking for Constitution Bench in ***Pyarali K. Tejani v. Mahedeo Ramchandra Bange, AIR 1974 Supreme Court 228***, seems to take even a stricter view in the following words :-

“The kindly application of the probation principle is negative by the imperatives of social defence and the

improbabilities of moral proselytization. No chances can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white collar Criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the incentive not easily humanized by the peptic probationary measure. It is not without significance that the recent report (47 report) of the Law Commission of India has recommended the exclusion of the Act to social and economic offences by suitable amendments.

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“..... In the current Indian conditions the probation movement has not yet attained sufficient strength to correct these intractable. May be, under more developed conditions a different approach may have to be made. For the present, we cannot acceded to the invitation to let of the accused on probation.”

The aforesaid view has been reiterated with force again in ***Prem Ballab v. The State of (Delhi Admn), AIR 1977 Supreme Court 256.***

23. It appears to be plain that what has been said above in the context of edible food and economic offences applies with

even greater emphasis to the commercial production of illicit liquor illegally by running working skills. The dangers herein are inherent and sometimes more immediately fatal than those under the Prevention of Food Adulteration Act. The piteous deaths resulting from the clandestine imbibing of poisonous illicit liquor, as often reported in the press provides a red-light signal. The legislative trend is again evident in enhancing the minimum sentence under Section 61(1)(c) of the Punjab Excise Act, 1914, to two years' rigorous imprisonment and a fine of Rs. 5000/- by the amendment Act No. 31 of 1976. The following observations of my learned brother S.C. Mittal, J., in ***Harnam Singh v. The State of Punjab, 1976(78) PLR 739***, are most apposite in this context :-

“..... On principle prescribing of the minimum punishment may not deprive the court of its power to release a person on probation, but the fact remains that by so doing the legislature has clearly expressed its intention of punishing the offender with deterrent effect. It is common knowledge that illicit liquor is manufactured not only unscientifically but also under unhygienic conditions. Drinking of such liquor is hazardous to public health. The persons indulging in illicit distillation are motivated by greed of money to such extent they have no regard for human life. The other sordid aspect of this trade is that it is carried out by preparing schemes involving active participation of several persons. For the

foregoing reasons the release of a person on probation indulging in illicit distillation of liquor has to be for very exceptional reason, which is lacking in this case. In the result is not at all expedient to release Harnam Singh on probation.”

24. It will be plain from the aforesaid catena of authorities that it is only in exceptional circumstances and for specific weighty reasons recorded that the broad policy of declining the benefit of probation to an accused person in these cases can be possibly deviated from.”

Keeping in view the totality of facts and circumstances of the case in hand as well as law laid down by the Hon’ble Supreme Court in the case of **Isher Dass (supra)**, followed by Full Bench of this Court in **Joginder Singh’s case (supra)**, this Court is of the considered view that fixing a minimum sentence for an offence is no reason for denying benefit under the provisions of 1958 Act. There is no legal impediment to release the petitioner on probation.

In the light of aforesaid discussion, the revision petition is partly accepted. While affirming the judgment of conviction passed by both the courts below, order of sentence is modified to the extent that petitioner – accused is ordered to be released on probation of good conduct on his furnishing probation bonds for a period of two years to the satisfaction of the trial court. During this period of probation, petitioner shall not commit any offence and be of good behavior. He shall given an undertaking to the trial court that he would undergo the remaining part of his sentence, if called for

to do so by a court of competent jurisdiction during the period of probation,
in case of violation of any condition of the bonds.

January 31, 2019
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(Harnaresh Singh Gill)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No