IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 180 of 2014

Shekhar Chandra Joshi ...Revisionist

Vs.

State of Uttarakhand ...Respondent

Mr. Bhagwat Mehra, learned counsel for the revisionist.
Mr. Subhash Tyagi Bhardwaj, learned Deputy Advocate General along with Mr. V.S. Rathore, learned A.G.A. for the State.

Dated: 08th December, 2020

Hon'ble N.S. Dhanik, J.

This criminal revision is preferred against the judgment and order dated 20.06.2012 passed by learned Chief Judicial Magistrate, Almora in Criminal Case No. 453 of 2010, "State of Uttarakhand vs. Shekhar Chandra Joshi" and also against the judgment and order dated 11.03.2014 passed by learned Sessions Judge, Almora in Criminal Appeal no. 29 of 2012.

2. Learned counsel for the revisionist does not press this revision on merits. The only point raised by him was that the revisionist should be given the benefit of Section 4 of the Probation of Offenders Act, 1958, (for short, ""The Act").

3. Section 4 of the Act is applicable where a person is found guilty of committing an offence where punishment is neither life sentence nor death. The Court may release such an accused on probation of good conduct on his furnishing a bond as mentioned in the Section. The court is applying the provisions of this Section is also required to consider that the accused was not previously convicted, the circumstances of the

case, character of the offender and nature of the offence before exercising its discretion.

4. Learned counsel for the revisionist submitted that the offences for which the revisionist has been found guilty are not punishable with death or imprisonment of life and the revisionist has no previous criminal history; offender-revisionist has fixed place of abode and he is ready to furnish the bond of good behavior. Learned counsel for the revisionist further submitted that the revisionist has huge respect in the society and family.

5. Learned State Counsel opposed the prayer. However, he does not dispute that there is no past criminal antecedents of the revisionist.

6. Section 4 of the Probation of Offenders Act, 1958 read as under:

> *"4. Power of court to release certain offenders on probation of good conduct*
>
> *1. When any person is found guilty of having committed an offence not punishable with death or imprisonment for life 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 to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, 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 the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if 5 any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.*

> *2. Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.*
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> *3. When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.*
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> *4. The Court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender. 5. The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."*

7. Considering the facts and circumstances of the case, nature of the offences and character of the offender, the request to invoke the discretion and inherent powers under Section 4 of the Act in favour of the revisionist is acceded to and instead of directing the revisionist to undergo imprisonment, it is being directed that the revisionist be released on his executing a bond of good behavior for a period of six months and on furnishing two sureties in a sum of Rs. 25,000/- to the satisfaction of the court concerned and a personal bond of Rs. 25,000/-. Revisionist shall keep peace in the society and shall not commit any such offence in future. Revisionist shall also present himself once in every month before the Probation Officer concerned during the probation period of six months. In the event of any breach during such period of six months, the revisionist shall appear and receive such sentence during such period when called upon to so do it.

8. Revisionist shall be entitled to the benefit as envisaged under Section 12 of the Probation of Offenders Act.

9. Consequently, this revision is partly allowed. Impugned judgments and orders stand modified to the extent indicated above.

10. Let certified copy of this judgment and order, along with LCR, be sent to the Court concerned to ensure compliance of this order.

(N.S. Dhanik, J.)
08.12.2020

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