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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 291/2019 & CRL.M.A. 5403/2019**

STATE OF NCT OF DELHI

..... Petitioner

Through Mr Amit Gupta, APP for State.
SI N.K. Singh, P.S. Shalimar Bagh present.

versus

CHAND RAM

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.02.2020

1. The State has filed the present petition impugning the order dated 30.10.2018, passed by the Special Judge, CBI-01, North West, Rohini Courts, New Delhi, whereby the respondent was released on probation for good conduct. The State contends that the Learned Judge had failed to appreciate that while dealing with offences relating to motor accidents, the provisions of the Probation of Offenders Act, 1958 (hereafter 'the Probation Act') are not applicable.

2. The facts leading to the present petition are that on 22.01.2005, at about 11:30 pm, at Ring Road, T point, AL Block, Shalimar Bagh, the respondent was found driving a vehicle, that is, a bus bearing Registration No. DL 1-PB-3428, in a rash and negligent manner. The respondent hit against a motorcycle which resulted in the death of the motor cyclist. On the basis of the same, FIR No. 58/2005 was registered, under Sections

279/304-A of the Indian Penal Code, 1860 (IPC), with Police Station Shalimar Bagh.

3. Investigation was conducted and a charge sheet was filed. To prove its case, the prosecution examined six witnesses. The Trial Court examined the evidence brought on record and held that the respondent was guilty of driving the offending bus in a rash and negligent manner and hitting a motorcycle and thereby, causing the death of the motorcyclist. Accordingly, the Trial Court convicted the respondent for the offences under Sections 279/304A of the IPC by the judgment dated 22.05.2018.

4. On 17.07.2018, the MM, Rohini Courts sentenced the respondent to a period of six months of imprisonment for the offence under Section 304A of the IPC and he was further sentenced to a period of fifteen days for the offence committed under Section 279 of the IPC. Both the sentences were directed to run concurrently.

5. Thereafter, the respondent filed an appeal against the judgment dated 30.10.2018 and the order on sentence dated 17.07.2018. The Learned Sessions Judge upheld the conviction of the respondent under Sections 279/304A of the IPC, but released the respondent on probation for good conduct on furnishing surety bond in the sum of ₹25,000/- with one surety of the like amount for a period of two years to the satisfaction of the Learned MM.

6. The State contends that the Learned Sessions Court erred in passing the said order dated 30.10.2018, since Sections 3 and 4 of the Probation of Offenders Act could not be invoked with reference to offences committed

under Section 304-A of the IPC.

7. It is contended on behalf of the State that the learned Sessions Judge had erred in passing the order dated 30.10.2018 without following the procedure under the Probation Act.

8. At the outset it is relevant to refer to Section 360 of the Cr.P.C. The same is set out below:

9. Section 360 of Cr.PC reads as under:-

“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.”

10. The offence under Section 279 of the IPC is punishable with a term of

imprisonment which may extend to six months, or a fine which may extend to rupees one thousand, or with both. The offence under Section 304A of the IPC is punishable with imprisonment for a term which may extend to two years or with fine or both. Thus, clearly, it was well within the jurisdiction of the court to grant probation in terms of Section 360 of the Cr.P.C.

11. In ***Lakhanlal @ Lakhan Singh v. state of Madhya Pradesh: Criminal Appeal No. 1306/2013 decided on 04.04.2019***, the Supreme Court had set aside the decision of the Madhya Pradesh High Court wherein it was held that Section 360 of the Cr.P.C. would not be applicable as the matter fell within Section 3 and 4 of the Probation Act. The Supreme Court held that the appellant was entitled to the benefit under Section 360 of the Cr.P.C and further observed as under:-

“15. We find that the attention of the Court was not drawn to sub Section (10) of Section 360 which provides that Section 360 will not affect the provisions of 1958 Act or other similar laws for the time being in force for the treatment, training or rehabilitation of youthful offenders. Still further, Section 4 of the 1958 Act has a non obstante clause, giving overriding effect over any other provisions of law.”

12. In the present case, the Court noted that the trial had spanned over thirteen years. The respondent was a driver by profession and there was no allegation of the respondent being involved in any other incident after the accident in question. The antecedents of the respondent were also clean. Given the above, the decision of the Learned Special Judge, CBI, in

releasing the respondent on probation cannot be faulted.

13. The petition is, accordingly, dismissed. The pending application is also disposed of.

FEBRUARY 10, 2020

pkv

VIBHU BAKHRU, J