

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.179 of 2018**

Arising Out of PS. Case No.-13 Year-2009 Thana- WARISLIGANJ District- Nawada

1. Randhir Mahto
2. Praveen Kumar
Both sons of Nawal Mahto, Resident of Village-Baghi Chakwai, P.S.
Warisaliganj, District Nawada.

... .. Petitioners

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioners : Mr.Devendra Prasad Singh, Advocate
For the State : Mr.Sri Matloob Rab, APP
For the O.P.No.2: Mr. Santosh Kumar Pandey, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

7 04-07-2022 Heard Mr. Devendra Prasad Singh, learned counsel
for the petitioner, Mr. Santosh Kumar Pandey, learned counsel
for the O.P. No.2 and Mr. Matloob Rab, learned A.P.P. for the
State.

From the appellate order under revision, it appears
that the learned Appellate Court had given the benefit of the
provisions of Probation of Offenders Act to the petitioners but
while rejecting the appeal the learned Appellate Court modified
the sentence from that of one year imprisonment and fine of Rs.
1000/- under Section 323/34 and 448/34 I.P.C. to one of fine
imposed by learned court below and the appellants were
directed to pay the same to the informant as compensation.

Learned counsel for the petitioners submits that the



object of the Probation of Offenders Act, 1958 (hereinafter referred to as the “Act of 1958”) is to prevent the conversion of youthful offenders into obdurate criminals. Sections 3 & 4 confers power upon the court to release certain offenders after admonition or on probation of good conduct. Section 5 of the Act of 1958 the court may require the released offender to pay compensation and costs. It is, however, his submission that the grant of benefit of the provisions of the Act of 1958 would not take away the disqualification attached to the conviction of an offender of which he has been found guilty.

Learned counsel for the opposite party no. 2 as well as State have opposed the application. It is submitted that the Appellate Court has passed reasoned judgment giving benefit of the Act of 1958 to the petitioners. It is submitted that Section 12 of the Act of 1958 clearly stipulates that 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, attached to a conviction of an offender under such law.

It is, thus, submitted that the petitioners who have after their release under Section 4 have not been called upon to appear and receive sentence within the six months period fixed by the appellate court would not suffer any disqualification. After their release under Section 4 subsequently they have not been sentenced for the original offence.



Having heard learned counsel for the petitioners, the O.P. No. 2 and the State as also on perusal of the records, this court would agree with the submissions made on behalf of the learned counsel for the O.P. No. 2 and the State. Section 3, 4, 5 and 12 which are relevant for purpose of this case are being quoted hereunder for a ready reference:-

3. 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.

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 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.

(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.

(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 supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

5. Power of court to require released offenders to pay

compensation and costs- (1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay -

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

12. 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.”



It is crystal clear from a bare reading of Section 12 of the Act of 1958 that it starts with a non-obstante clause and in the case of these petitioners it would apply, therefore, the submission of learned counsel for the petitioners that the appellate order is likely to act as a disqualification for the petitioners seems to be totally misconceived.

This Revision Application stands disposed of with the aforesaid observations and clarifications.

(Rajeev Ranjan Prasad, J.)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

