

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

256

CRR-44-2020

Reserved on:26.07.2022

Date of Decision:18.08.2022

Inder

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

**Present: Mr. Raj Kapoor Malik, Advocate,
for the petitioner.**

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

VINOD S. BHARDWAJ , J.

The instant criminal revision petition has been preferred against the judgment dated 29.04.2019 passed by Judicial Magistrate Ist Class, Kaithal, in Criminal Case No.RBT-282/2017 in case bearing FIR No.211 dated 05.12.2016 under Sections 323, 506, 509, 325 read with Section 34 of the Indian Penal Code, 1860(hereinafter referred to as "IPC") registered at Police Station Rajaund, District Kaithal, wherein the petitioner has been convicted for the commission of offences under Sections 323 and 325 IPC as well as the order of sentence dated 30.04.2019, whereby the petitioner has been sentenced as under:-

S.No.	Sections	Punishment
1.	323 of Indian Penal Code read with Section 34 of of Indian Penal Code	Six months simple imprisonment and to pay fine of Rs.500/- each. In default of payment of fine, convicts are directed to undergo one month simple imprisonment.

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| 2. | 325 of Indian Penal Code read with Section 34 of of Indian Penal Code | one year simple imprisonment and to pay fine of Rs.1000/- each. In default of payment of fine, convict is directed to undergo fifteen days simple imprisonment. |
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Succinctly, it is the case of prosecution that on 03.12.2016, a telephonic information was received from Exemptee Head-Constable Manjeet Kaur regarding the admission of one Kamlesh wife of Rajender, resident of Songal, Police-Station, Rajaund in Government Hospital, Kaithal, who suffered injuries in a quarrel. On receiving this information, they reached the Government Hospital, Kaithal where Assistant Sub-Inspector Chain Singh and Head-Constable Rakesh were already present. Assistant Sub-Inspector Chain Singh handed over rukka and MLRs of Kamlesh and Pinki. Thereafter, statement of complainant Kamlesh was recorded, wherein, she alleged that she is the resident of above said address and is a labourer. She further stated that her husband is paralyzed, due to which she is responsible for her family. She has four daughters and one son. On 03.12.2016, around 8.30 AM, her husband told her brother-in-law (dewar) Inder (petitioner herein) that water is seeping in the foundation of their bathroom, due to which the wall may fall. Therefore, he asked him to separate the water in the drain(nali) by fixing a bend in it. Upon this, Inder refused to do it and started misbehaving with the complainant's husband by uttering obscene words. When the complainant tried to shut him up, he started using filthy language with her and also started to beat her by picking up a lathi. He gave a lathi blow on her right hand due to which her hand fracatured. When her daughter Pinki tried to rescue her, Inder also gave lathi blows to her. The complainant raised hue and cry. In the meanwhile,

Bala wife of Inder came and started giving slaps and stick blows to her and her daughter. Her neighbour got rescued the complainant and her daughter from the clutches of the accused and they got admitted in Civil Hospital, Kaithal by her husband. Complainant's brother-in-law extended threat of life to her if she gave any statement to the police. On the basis of these allegations, present FIR was registered against the accused. During investigation, site plan was prepared and statements of witnesses were recorded. Accused persons were formally arrested on 15.12.2016, who are now on bail. On 27.12.2016, after receipt of X-ray report of complainant and injured, Section 325 of Indian Penal Code was added. On completion of all formalities of investigation, challan was filed into the Court against accused persons namely Inder and Bala.

Thereafter, copies of challan along with accompanying documents were supplied to the accused free of costs as envisaged under Section 207 of the Code of Criminal Procedure.

Documents were perused and the arguments on charge heard. A prima facie case punishable under Sections 323, 325, 506, 509 read with Section 34 of Indian Penal Code was found to be made out against the accused persons. Accordingly, accused persons were charge-sheeted for the commission of offences under above said Sections vide order dated 15.03.2017, passed by the Judicial Magistrate First Class, Kaithal. The contents of charge sheet had been read over and explained to the accused in simple Hindi language to which they pleaded not guilty and claimed trial.

Thereafter, case was fixed for recording of prosecution evidence. In order to substantiate its case, the prosecution has examined the following witnesses:-

S.No.	Name & Designation of witness	Proved
PW1	Kamlesh, complainant	She in her duly sworn testimony reiterated the case of the prosecution in letters and spirit. She proved the contents of complaint Ex.PW1/A and also identified her signature on the same at point Mark A. Besides this, she identified the accused present in the Court.
PW2	Pinki, injured/eye-witness	She reiterated the case of the prosecution in letters and spirit. Besides this, she identified the accused present in the Court.
PW3	Dr. Aman Bansal, MO CHC Kaul	MLR of Pinki Ex.PW3/B, X-ray report of Kamlesh Ex.PW3/D, X-ray films Ex.PW3/E & Ex.PW3/F, X-ray report of Pinki Ex.PW3/G, X-ray films of Pinki Ex.PW3/H to Ex.PW3/J and rukka Ex.PW3/K.
PW4	Rajinder, eye-witness	He deposed that on 03.12.2016 at about 8:30 AM, when he told the complainant that the water of the drain is seeping in the foundation of the bathroom wall due to which the wall may fall. He further deposed that he told accused Inder to discharge the water of drain by putting bend on the pipe, to which Inder refused and started to speak obscene words. When Kamlesh stopped him from using filthy language then he started to abuse her as well. In the meanwhile, Inder hit on the arm of his wife with lathi and also gave another lathi blow on her right arm due to which arm of his wife got fractured. Her daughter Pinki arrived there and Inder also hit Pinki with lathi due to which finger of hand of Pinki got fractured. The wife of Inder

namely Bala also hit with lathi on right arm of his wife and his daughter. When he was going to admit his wife and daughter to hospital, Inder threatened him not to lodge any case against him, otherwise, he will be killed. His wife got recorded her statement Ex.PW1/A. He did not give any statement to police. He identified the thumb-impressions placed on the statement i.e. Ex.PW4/A and also identified the accused present in the court.

PW5 Assistant Sub-Inspector Chain Singh, investigating officer

He deposed that on 05.12.2016, he was posted as investigating officer at Police-Station Rajaund. He further deposed that he prepared site plan Ex.PW5/A and recorded the statements of witnesses. He further deposed that he formally arrested both the accused and produced them before the court. After obtaining X-ray report, Section 325 of Indian Penal Code was added and report under Section 173 of Code of Criminal Procedure was prepared, on which he identified the signature of Sub-Inspector/ Station House Officer Ram Kumar. He further deposed that during investigation, arrest form and arrest detail forms were prepared by him.

PW6 Sub-Inspector Ram Kumar

Report under Section 173 of Code of Criminal Procedure

PW7 Assistant Sub-Inspector Balwan Singh

FIR Ex.PW7/A and endorsement Ex.PW7/B.

PW8 Sub-Inspector Rekha

Tehrir Ex.PW8/A

The prosecution evidence was closed on the statement of the

Public Prosecutor. The entire incriminating evidence was put to the petitioner, who pleaded his innocence. However, no evidence in defence has, however, been led by the petitioner despite grant of opportunity.

Upon consideration of the rival contentions, the judgment of conviction for the aforesaid offences i.e. under Sections 323, 325 IPC was passed and the petitioner as well as his wife were sentenced.

Aggrieved thereof, an appeal was filed before the Court of Sessions.

Vide judgment dated 18.12.2019 passed in Criminal Appeal No.24 of 2019, the appeal preferred by the petitioner and his wife was partly allowed inasmuch as the conviction of wife of the petitioner was modified and she was held guilty under Section 323 IPC and was ordered to be released on probation within a period of six months on furnishing probation bonds in the sum of ₹25,000/- with one surety.

The appeal qua the petitioner was, however, dismissed.

Hence, the present criminal revision petition.

During the course of arguments, learned counsel appearing on behalf of the petitioner submits that he has instructions to give up the challenge to the judgment of conviction concurrently recorded against him by both the Courts below and he restricts his argument to the quantum of sentence only.

It is submitted by him that the sentence awarded to the petitioner is simple imprisonment for a period of one year for the commission of offence under Section 325 IPC and six months for the commission of offence under Section 323 IPC along with fine of ₹1000/- and ₹500, respectively. It has also been contended that the offence, in

question, had taken place in the month of December 2016 and that the petitioner has already faced the protracted agony of criminal trial for the last more than six years. He further submits that the petitioner is a labourer and having three children who are fully dependent upon him. It is also contended that the petitioner is not a previous convict and that in view of Section 360 of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”), the petitioner is entitled to be considered to be released on probation for good conduct considering the age, character as well as the antecedents, including the circumstances in which the offence was committed.

Learned counsel for the State of Haryana has, however, contended that the offence in question was duly proven by the prosecution against the petitioner and that there is no valid justification as to why the benefit of probation ought to be extended in favour of the petitioner.

The Hon'ble Supreme Court in the matter of **Om Parkash and others Versus State of Haryana**, in Criminal Appeal No.1276 of 1999, arising out of SLP (Crl.) No.3206 of 1999, decided on 29.11.1999 had held as under:-

“4. When the case came up for admission before this Court, the learned counsel for the appellants raised the contention that the provisions of Section 360 Criminal Procedure Code, 1973 have not at all been looked into and we, therefore, issued limited notice as to why the said provisions will not be attracted to the facts and circumstances of the present case. The provisions of Section 360 Criminal Procedure Code, 1973 are beneficial to the accused only when the accused is a first offender in case the accused is more than 21 years of age. Section 361 of the Code of Criminal Procedure indicates that if the Court decided not to

exercise its jurisdiction under Section 360, then it must record its reasons as to why the benefit of Section 360 Criminal Procedure Code, 1973 is being denied. In view of the peremptory nature of the language of provisions of Section 361, the Magistrate as well as the Court in appeal and revision not having indicated as to why the provisions of Section 360 Criminal Procedure Code, 1973 have not been applied, there has been a gross miscarriage of justice and the legislative mandate engrafted in the aforesaid two sections of the Code have not been complied with.

5. In these circumstances, after hearing the learned counsel for the appellants and Mr Mahabir Singh, learned counsel appearing for the State of Haryana and bearing in mind the facts and circumstances of the present case, we are of the considered opinion that this is a fit case where the Court should have invoked the provisions of Section 360 Criminal Procedure Code, 1973. While, therefore, upholding the conviction of the appellants, instead of the sentence, we direct that they shall execute a bond with one surety to the extent of Rs. 10,000 for a period of one year within which period they shall continue to be on probation for good behaviour and keeping peace. The appellants shall prove to be of good conduct and maintain peace during the period of probation. The bond be executed before the trying Magistrate within a period of two weeks from today.”

Similarly, the Hon'ble Apex Court in the matter of **State through CBI, Anti Corruption Branch, Chandigarh Versus Sanjiv Bhalla, 2014(8) Scale 377**, has held as under:-

“These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift - from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative

mandate of Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act, what is imperative for the judge is to strike a fine balance between releasing a convict after admonition or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing mission must not be forgotten.”

This Court in the matter of Uday Singh and another Versus State of Haryana, 2015 SCC Online P&H 11158 has held as under”-

“12. The criminal justice system in India is slowly advancing with an object to prevent the conversion of first-time offenders into obdurate criminals as a result of their association with hardened criminals if they have to undergo imprisonment in jail. The object is in consonance with the present trend in the field of penology which suggests that effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice/deterrent punishment. Modern criminal jurisprudence recognizes that no one is a born criminal. The majority of the crimes are the product of socio-economic milieu. The provisions of Section 360 of the Code and Probation Act give statutory recognition to objectives of reformation and rehabilitation.

13. The Statement of Objects and Reasons for the Bill No. 79 of 1957, which was passed into the Probation of Offenders Act, 1958 states as under:-

“(1) The question of release of offenders on probation of good conduct instead of sentencing them to imprisonment has been under consideration for some time. In 1931, the Government of India prepared a draft of Probation of Offenders Bill and circulated it to the then Local Governments for their views. However, owing to preoccupation with other more important matters, the Bill could not be proceeded with. Later in 1934, the

Government of India informed Provincial Governments that there was no prospect of Central legislation being undertaken at the time and there would be no objection to the Provinces undertaking such legislation themselves. A few Provinces accordingly enacted their own probation laws.

(2) In several States, however, there are no separate probation laws at all. Even in States where there are probation laws, they are not uniform nor are they adequate to meet the present requirements. In the meantime, there has been an increasing emphasis on the reformation and rehabilitation of the offender as a useful and self-reliant member of society without subjecting him to the deleterious effects of jail life. In view of the widespread interest in the probation system in the country, this question has been reexamined and it is proposed to have a Central law on the subject which should be uniformly applicable to all the States.

(3) It is proposed to empower Courts to release an offender after admonition in respect of certain specified offences. It is also proposed to empower Courts to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life. In respect of offenders under 21 years of age, special provision has been made putting restrictions on their imprisonment. During the period of probation, offenders will remain under the supervision of Probation Officers in order that they may be reformed and become useful members of society. The Bill seeks to achieve these objects.”

14. Similar are the provisions of the Code. Section 360(10) of the Code specifically states that nothing in this Section shall affect the provisions of Probation of Offenders Act, 1958 or any

other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

15. *In the light of the objects and reasons extracted above, it would be appropriate to examine the meaning of “probation” and “scheme” of Probation Act and Section 360 of the Code.*

Meaning of probation and how this concept becomes important:-

16. *The word “probation” is derived from the Latin word “probare”, which means to test or to prove. Etymologically, probation means “I prove my worth”. It is a treatment device and an alternative to custodial measure that is required to be used by the trial Court and appellate Court generally. When a person is held guilty instead of sending him to jail, he can be afforded a chance to reform. As a treatment measure an accused/convict should be given a chance of reformation, which he may lose in case, he is incarcerated in prison and associates with hardened criminals. Modern penological approach in new form of sentencing is with a purpose to balance the needs of the society in the best interest of the accused-convict such as release on admonition, probation of good conduct, compensation and costs by taking into consideration the age of offenders under 21 years or above 21 years and report of probation officer. Study shows that imprisonment decreases the convict's capacity to readjust in the normal society after the release and association with professional delinquents often leads to undesirable results.*

Scheme of the Code:-

17. *In India in 1931 Government of India prepared a draft of Offenders Bill but it lapsed thereafter in 1934, as mentioned in the statement of objects and reasons even some of the provinces enacted their own legislations. Ultimately, after independence in 1958 the Probation Act came into existence. Even under the old Code of Criminal Procedure of 1898, Section 562 was existing with respect to probation. Thereafter in the new Code,*

as amended in 1974, Section 360 also deals with the probation of good conduct. Section 361 makes it mandatory for the Courts to assign reasons for not awarding benefit of benevolent provisions of probation. If we compare the schemes of Probation Act and Section 360 of the Code, it would be clear that the Probation Act provides for appointment of Probation Officers who will give presentence report to the Court and also supervise the accused-convict during the period of probation. Section 18 of the Probation Act specifically provides that where the provisions of Probation Act apply, provisions of Section 360 of the Code (Section 562 in the old Code) are excluded.

18. In the case of Ishar Das v. State of Punjab, AIR 1972 SC 1295, Hon'ble Supreme Court has observed that the object of Criminal Law is more to reform the offender than to punish him. Instead of keeping an accused with hardened criminals in a prison, Court can order personal freedom on promise of good behavior and can also order a supervision during probation. The probation is a conditional release of an offender on the promise of good behavior.

20. Hon'ble Supreme Court in Rattan Lal v. State of Punjab, 1965 Cri.L.J. 360 noticed that Probation Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. The underlying object of the provisions of the Probation Act 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.

21. Hon'ble Supreme Court in Musadhan v. State of Maharastra, AIR 1976 SC 2566 has observed that the Probation Act is a social legislation which is meant to reform juvenile offenders so as to prevent them from becoming hardened criminals by providing an educative and reformatory treatment to them by the Government.

24. In all crimes a very wide discretion in the matter of

sentence vests in the trial and appellate Court. Exercise of discretion is a matter of prudence and not law. It is well-settled law that no one can claim benefit of the Probation Act and provisions of the Code as a matter of right. So has been held in Commandant 20 BN ITB Police v. Sanjay Binjoa, AIR 2001 SC 2058. Even in the Probation Act it is specifically mentioned as to in which offence it is applicable and which offences are excluded from its purview.

25. *Before awarding the appropriate sentence, Court should take at least into consideration the motive of the offence, the magnitude of the offence, the age, character and socio-economic background of the offender. As discussed above, Probation Act and the provisions of the Code, which deal with the probation, shift the emphasis from deterrence to reformation and from the offence to the offender in accordance with the modern approach towards punishment. Reformation and rehabilitation of the offenders are the key-notes of the above referred provisions. Although the problem of punishment is a baffling issue, still while awarding sentence the Court is required to look into as to how the ends of justice would be better served without sending a convicted person in jail. Many a times the legislations which relate to amelioration in punishment are not brought to the notice of over-burdened Courts and as such are not taken into consideration, therefore, benefit of the same is not extended to the offenders. It appears to be totally a wrong approach and even if the counsel does not render help, the Court must fulfil its duty of sentencing implicit in such enactments as the Probation Act or the relevant provisions of the Code. In this context, the Hon'ble Supreme Court in Ved Prakash v. State of Haryana, AIR 1981 (SC) 643 has observed as under:-*

“.....Even if Section 360, Criminal Procedure Code is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on

punishment with a rehabilitating slant. The absence of such materials in the present case has left us with little assistance even from the counsel. Indeed, members of the bar also do not pay sufficient attention to these legislative provisions which relate to dealing with an offender in such manner that he becomes a non-offender. We emphasise this because the legislations which relate to amelioration in punishment have been regarded as 'Minor Acts' and, therefore, of little consequence. This is a totally wrong approach and even if the Bar does not help, the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of Offenders Act.....”

26. In view of above, the Courts below are duty-bound to examine the applicability of the provisions of the Code or the Probation Act before sentencing.

27. Even otherwise the probation would be of great benefit for States of Punjab and Haryana where the jails are often overcrowded. It is otherwise also necessary in the context of existing social conditions to reclaim offenders back to ordinary society. It is not the object of the Probation Act that all offenders should be released on probation but if Court finds that an offender does not deserve to be released on bail the Court would do so by recording special reasons in the judgment.”

Invariably, the mandate of Section 360 Cr.P.C. as well as Section 4 and 5 of the Probation of Offenders Act, 1958 contemplate that in case the offences are not heinous or grievous, the law should take recourse to extend certain indulgence to the first time offenders. The object of the said Act and the provisions contained in the Code of Criminal Procedure offer an opportunity to an accused for mending himself without compromising the deterrent effect of law and sentencing. Punishment is not

to be imposed always as a measure of imposing punitive punishment intended to confine a person in custody for each and every offence. The object of sentencing is also reformatory and to assess as to whether a convict displays traits of a hardened criminal beyond reform or has potential for reform. A person must not necessarily be labeled as a criminal for having committed a crime. Thus, an element of reformatory theory of sentencing comes into the picture. The same offers an opportunity to an offender to live in mainstream society.

The Hon'ble Supreme Court had held in the matter of ***Ved Prakash Vs. State of Haryana, reported as AIR 1981 S.C. 643***, to the effect that sentencing of an accused is a sensitive matter and not a routine mechanical prescription. It becomes the duty of a sentencing Court to become an activist enough to consider such facts as have a bearing on punishment with a rehabilitative object.

Benefit should ordinarily be extended unless the Court feels that the convict is incorrigible and cannot be reformed. The Court takes into consideration varied factors including social, educational, physical and psychological circumstances of an accused; the gravity, nature and manner of committing the offence; the consequences, the social reaction of the offence; the antecedents and tendencies of an accused and assesses the punishment that is ought to be deterrent, reformatory or proportionate. Such an exercise once undertaken wherein the Court has reposed faith in imposing reformatory punishment as probation etc., it should not be interfered with unless the punishment disregards the parameters blatantly. As a Court of law, a Judge sits not only with an eye on evil, but also with a vision to see the good in people.

The object of the Probation of Offenders Act, 1958 would stand defeated in case strict and stringent method is adopted by the Courts and such benefits are not to be extended at all. No such circumstances, as ought to have been taken into consideration and alleged to have been violated, are pointed out.

A perusal of the aforesaid judgments as well as the statutory provisions show that a person who is more than 21 years of age and is convicted for an offence which is punishable with imprisonment for a term of seven years or less, is entitled to claim the benefit of probation for good conduct under Section 360 Cr.P.C., provided that there is no previous conviction against the offender and after taking into consideration the age, character and antecedents of the offender, along with the circumstances in which the offence was committed.

It is not in dispute that the petitioner fulfils the prescribed circumstances under Section 360 Cr.P.C. He has been convicted for an offence under Section 325 IPC which is punishable for imprisonment for a maximum period of seven years and Section 323 IPC which is punishable for imprisonment for a maximum period of one year. Besides, it has not been proven that the petitioner is a previous convict or that he is a habitual offender. Additionally, it is also evident that the petitioner is nearly 50 years of age and that in the aforesaid circumstances, he would have sufficient responsibilities to be discharged towards his children. The financial hardship for the family shall be greatly enhanced in the event the petitioner is subjected to undergo the entire imprisonment especially when the petitioner is a labourer. Besides, the antecedents or the subsequent conduct of the petitioner does not show that he is a habitual offender and is incapable

to reform. One of the essential objective of sentencing being to permit the offenders to reform, the failure on the part of the Court to keep that in mind is likely to defeat one of the laudable objects of sentencing.

While punitive aspect of sentencing may be essential in cases of habitual offenders or criminals, the same yardstick should not be applied to persons who have committed an offence at a given moment in time and for no criminal tendencies and pursuits.

Taking into consideration the position of law in relation to probation, the object of sentencing and also the mitigating circumstances pertaining to the petitioner noticed above, the present criminal revision petition is partly allowed.

While upholding the conviction of the petitioner in case bearing FIR No.211 dated 05.12.2016 under Sections 323, 506, 509, 325 read with Section 34 of the Indian Penal Code, 1860, registered at Police Station Rajaund, District Kaithal, the judgment of conviction dated 29.04.2019 passed by Judicial Magistrate Ist Class, Kaithal as well as the judgment dated 18.12.2019 passed by Additional Sessions Judge, Kaithal, is upheld. The order of sentence dated 30.04.2019 passed by the Judicial Magistrate Ist Class, Kaithal, is modified and the petitioner is directed to be released on probation for good conduct for a period of one year on his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court.

August 18, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No