

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

110

**CRR-2001-2022 (O&M)
Decided on : 23.09.2022**

Rakesh Kumar

. . . Petitioner(s)

Versus

State of Punjab and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Onkar Rai, Advocate
for the petitioner(s).

Mr. Jaswinder Singh Arora, DAG, Punjab.

SANJAY VASHISTH, J. (Oral)

By way of present petition, complainant (petitioner herein) has challenged the judgment dated 29.07.2021, passed by learned Additional Sessions Judge, Gurdaspur, in complaint bearing No. 81 dated 09.12.2014, whereby while maintaining the conviction under Sections 323, 324 and 34 IPC, accused (private respondents herein) were released on probation on their furnishing probation bonds in the sum of Rs. 25,000/- each, with an undertaking of good behaviour, for a period of six months from 29.07.2022. Fine amount as imposed by learned trial Court was converted into cost of litigation expenses.

The petitioner was married in the family of the accused persons and the complaint in the present case has also arisen out of the matrimonial discord during which some injuries were caused by the accused family to the petitioner. Initially, complaint under Sections 307, 323, 324, 326, 148, 149 and 34 IPC was instituted by the petitioner Rakesh Kumar, against

Manohar Lal (accused No. 1), Bimla Devi w/o Manohar Lal (accused No. 2), Mandeep @ Komal son of Manohar Lal (accused No. 3), Sandeep Bains @ Sunny s/o Manohar Lal (accused No. 4) and Nishi Bains d/o Manohar Lal (accused no. 5). After summoning all the five accused persons, charges were framed only under Sections 323, 324 of Indian Penal Code, 1860.

In the statement recorded under Section 313 of Code of Criminal Procedure, stand of the accused was “that complainant-Rakesh Kumar has filed the present complaint as a counter blast to FIR No. 12/2013 under Sections 498-A, 323, 324, 452 and 406 IPC registered at Police Station Behrampur, District Gurdaspur. Further, on 27.10.2013, complainant Rakesh Kumar along with his father Mohan Lal and other relatives tried to enter their house forcibly and caused injuries to accused No. 1 and accused No. 5. Thereafter, this false story is concocted, and present complaint was filed by the petitioner”.

After completion of the trial, while, accused No. 2 and accused No. 5 were acquitted, accused No. 1 was convicted for the offences punishable under Sections 323, 324 and 34 IPC, Accused No. 3 was convicted for the offences punishable under Sections 323, 324 IPC and accused No. 4 was convicted for the offences punishable under Sections 323, 324 and 34 IPC. Awarded sentence to said three accused/convicts is as under:

Name of the convicts	Under Sections	Sentences	Fine	In default
Manohar lal (accused No. 1)	324 read with Section 34 IPC	-Nil-	Rs. 1000/-	Imprisonment of 15 days
	Section 323 IPC	-Nil-	Rs. 500/-	Imprisonment of 15 days
Mandeep @Komal (accused No. 3)	324 IPC	Imprisonment of 03 months	Rs. 1000/-	Imprisonment of 15 days
	323 IPC	-Nil-	Rs. 1000/-	Imprisonment of 15 days

Sandeep Bains @ Sunny (accused No. 4)	324 read with Section 34 IPC	Imprisonment of 03 months	Rs. 1000/-	Imprisonment of 15 days
	323 IPC	-Nil-	Rs. 1000/-	Imprisonment of 15 days

All the sentences awarded to said accused persons had been ordered to run concurrently.

While challenging the judgment of conviction and order of sentence dated 19.03.2021 passed by learned trial Court, criminal Appeal No. 17 dated 16.11.2021 was filed by the private respondents i.e. Manohar lal (respondents No. 2), Mandeep @ Komal (respondent No. 3) and Sandeep Bains @ Sunny (respondent No. 4). Another appeal No. 18 (CIS No. CRA-8-2021) dated 16.11.2021 was filed by the complainant for seeking enhancement of quantum of sentence of the convicts. Another appeal No. 16 (CIS CRA-61-2022) dated 29.07.2022 was also filed by the complainant (Rakesh Kumar) against the acquittal of the accused No.2 and accused No.5.

Thus, Court of learned Additional Sessions Judge, sitting in Appellate jurisdiction decided said three appeals by way of a common judgment dated 29.07.2022, vide which criminal appeal No. 18 was dismissed, whereas criminal Appeal No. 16 was dismissed being not maintainable before that Court. However, while dealing with Criminal Appeal No. 17 (CIS No. CRA-7-2021), judgment of conviction for the offences under Sections 323, 324 and 34 IPC passed by learned trial Court and order of sentence was found to be not suffering from any illegality or perversity, as such, same were upheld. But, keeping in view the facts of the case and **relationship between the parties**, sentence was modified by giving benefit/concession of the probation to the private respondents. The operative part of the said judgment dealing with the issue of granting probation says as under:

“However, keeping in view of the facts of the case and relationship between the parties, the sentence is modified giving benefit of probation to the appellants. The parties are related to each other. This Court is of the considered opinion that learned trial court must have resorted to the provision under law of probation which enable the Court to deal lenient with the first offender and to carry out the object of reformation. The order under this Section can only follow a conviction and can be substituted for a sentence. The Sections under which accused have been convicted, are not such for which law of probation may not be applied. The accused Mandeep @ Komal is stated to be serving in a Bank, while accused Sandeep Bains is stated to be a student at the time of occurrence. Both these accused are young and have carrier ahead in their life, while accused Manohar Lal is in advanced age. Thus, keeping in view the nature of the offences involved in this case, relationship between the parties, sentences awarded by the learned trial court and in the larger interest of justice, the benefit of probation is required to be granted to the accused. Hence, the substantive sentence awarded to the accused-appellants is hereby set aside and modified to the extent that accused-appellants Manohar Lal, Mandeep @ Komal and Sandeep Bains @ Sunny are ordered to be released on probation on their furnishing probation bonds in the sum of Rs. 25,000/- each with the undertaking to be of good

behaviour for a period of six months from today and to come and receive sentence, if, so, called upon to do so by the Court during the said period. The fine already paid converted into cost of litigation. They have furnished their probation bonds accordingly.”

Hence, petitioner who was complainant in the case, has filed present revision petition against the grant of benefit of probation to the convicts/accused.

While opening the arguments, learned counsel for the petitioner submits that the order qua benefit/concession of probation passed by learned Appellate Court is illegal because same is in violation of Section 4 (2) of the Probation of Offenders Act, 1958 (in short ‘the Act,1958).

Section 4 (1) &(2) of the Act, 1958 says as under:

“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)	XX	XX	XX
(4)	XX	XX	XX
(5)	XX	XX	XX”

While relying upon the proviso of Sub-Section 2 of Section 4 of the Act, 1958, learned counsel for the petitioner refers to paragraph No. 20 of the judgment passed by the Hon’ble Apex Court in case Criminal Appeal No. 660 of 2005, decided on 29.04.2005, titled as **M.C.D v. State of Delhi and another**, 2005 (3) R.C.R. (Criminal) 13, Law finder Doc ID # 82960.

Relevant paragraph 20 says as under:

“20. We have already reproduced Section 4 of the POB Act. It applied to all kinds of offenders whether under or above 21 years of age. This section is intended to attempt possible reformation of an offender instead of inflicting on him the normal punishment of his crime. The only limitation imposed by Section 6 is that in the first instance an offender under twenty one years of age, will not be sentenced to imprisonment. While extending benefit of this case, the discretion of the Court has to be exercised having regard to the circumstances in which the crime was committed, the age, character and antecedents of the offender. Such exercise of discretion needs a sense of responsibility. The offender can only be released on probation of good conduct under this section when the Court forms an opinion, having considered the circumstances of the case, the nature of the offence and the character of the offender, that in a particular case, the offender should be released on probation of good

conduct. The section itself is clear that before applying the section, the Magistrate should carefully take into consideration the attendant circumstances. The second respondent is a previous convict as per the records placed before us. Such a previous convict cannot be released in view of Section 4 of the POB Act. The Court is bound to call for a report as per Section 4 of POB Act but the High Court has failed to do so although the Court is not bound by the report of the Probationer Officer but it must call for such a report before the case comes to its conclusion. The word "shall" in sub-section (2) of Section 4 is mandatory and the consideration of the report of the Probationer Officer is a condition precedent to the release of the accused as reported in the case of State v. Naguesh G. Shet Govenkar and another, AIR 1970 Goa 49 and a release without such a report would, therefore, be illegal."

Though not cited by the counsel for the petitioner, but on making research by the Court, said judgment passed in MCD's case (Supra) was subsequently followed in the judgment of State of Madhya Pradesh v. Man Singh, (2019) 10 Supreme Court Cases 161.

Relevant paragraph 9 says as under:

"9. Another error is that the order quoted hereinabove has been passed in violation of the provisions of Section 4 of the Act which mandates that before releasing any offender on probation of good conduct, the Court must

*obtain a report from the Probation Officer and can then order his release on his entering bonds with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, or as the Court may direct, and in the meantime to keep peace and good behavior. The proviso to sub-section (1) of Section 4 clearly provides that Court cannot order release of such an offender unless it is satisfied that the offender or his surety has a fixed place of abode or regular occupation in the place over which the court can exercise jurisdiction. Sub-Section (2) lays down that before making any order under Sub-section (1), the Court shall take into consideration the report of the Probation Officer. This Court in a number of judgments has held that before passing an order of probation. It is essential to obtain the report of the Probation Officer concerned. Reference in this behalf may be made to “**MCD v. State of (NCT of Delhi)**”.*

Heard.

Undoubtedly, both the aforementioned cases are dealing with the provisions of Section 4(2) of the Act, 1958 declaring it to be a mandatory provision of law. This court while hearing the petition, noticed the fact that in the impugned judgment there is nothing mentioned about the seeking of any probation report from the probation officer. However, looking at the date of incident dated 27.02.2013 i.e., about nine years back, this Court has put it to the petitioner to supply some material, document or evidence of any nature or quality in regard to the negative character/antecedents of the respondents

herein/convicts. Upon this, Counsel for the petitioner could not point out any such material or evidence to the Court. Another aspect, which is probably not noticed by the Counsel for the petitioner, is that while dealing with the issue of granting probation, in the impugned judgment, nowhere, Appellate Court has dealt with the provisions of the Act, 1958. Now in such circumstances it cannot be assumed by any possibility, that Court has granted concession/benefit of probation to the convicts under the Act, 1958, but it can be safely concluded that court has taken into consideration provisions of law under Section 360 of Code of Criminal Procedure, 1973.

Section 360 of Code of Criminal Procedure, 1973 is reproduced as follows:

“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) XX XX XX

(3) XX XX

(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) XX XX

(6) XX XX

(7) XX XX

(8) XX XX

(9) XX XX

(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.

From the perusal of Section 360 of Cr. P.C., it becomes clear that by dealing with the parameters prescribed therein, Court in its appellate jurisdiction or revisional jurisdiction is well competent to grant concession/benefit of probation under the Act, 1958. Further, Section 360 (10) of Cr.P.C. in no way declares Section 360 CrPC to be exclusive of the Act, 1958, rather it appears that Section 360 CrPC is in addition to the Act, 1958. It is also noticed by this Court that the Code of Criminal procedure was re-built in the year 1973, when already the Act, 1958, was in operation. Thus by all means, provisions of Section 360 Cr.P.C. would be considered in addition to the already existing law, i.e. the Act, 1958.

While making research work the assisting Law Researcher, namely, Mr. Akinchan, working with the Court, finds that observations here above made by this Court is fortified with the help of judgment passed by Hon'ble Apex Court in Criminal Appeal No. 1306 of 2016 decided on 04.04.2019 titled as Lakhanlal Alias Lakhan Singh v. State of Madhya Pradesh, 2019 SCC OnLine SC 1951.

Relevant Paragraphs 12 to 16 are reproduced here-in-below:

“12. The offence under Section 325 is punishable for a term which may extend to seven years. The sentence imposed upon the appellant is of one year. The finding of the High Court that Section 360 of the Code shall not have

*any application is misreading of the bare provisions of the Code. Sub-Section (10) of Section 360 of the Code specifically contemplates that the provisions of the 1958 Act or Children Act 1960 or any other law for the time being in force for the treatment, training or rehabilitation of the youth of the offenders are not affected by the Code. Therefore, the provisions of the Code are not excluded by the 1958 Act. **Both the provisions, Section 360 of the Code as well as 1958 Act, are applicable in respect of the offenders before the Court.** Therefore, we find that the High Court misread the provisions of the 1958 Act to hold that such Act is not applicable to the offender under the age of 21 years. The Court omitted that Section 6 of the 1958 Act provides that an offender of less than 21 years if found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment unless it 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 Section 3 or Section 4, and if the Court passes any sentence of imprisonment on the offender it shall record its reasons for doing so. Thus, the High Court erred in law in not granting benefit of probation to the appellant for an offence under Section 325 read with Section 34 of the IPC.*

13. The distinction is that under the 1958 Act, the Court is required to seek report from the Probationary Officer before allowing an offender the benefit of probation apart from satisfying other conditions, whereas there is no such limitation while exercising the powers under Section 360 of the Code.

14. At this stage, it may be noticed that a two Judge Bench of this Court in *Sanjay Dutt v. The State of Maharashtra* 2013 SCC online SC 252 considering the provisions of Section 360 of the Code and Sections 3 and 4 of 1958 Act held that the coexistence of such provisions would lead to enormous results. It was further held that the intention to retain the provisions of Section 360 of the Code and 1958 Act at the same time in a given area cannot be gathered from the provisions of Section 360 or any provision of the Code, when the Court held as under:-

"81) section 360 of the Code of Criminal Procedure, 1973 does not provide for any role for probation officers in assisting the courts in relation to supervision and other matters while the Probation of Offenders Act does make such a provision. While section 12 of the Probation of Offenders Act states that a person found guilty of an offence and dealt with under section 3 or 4 of the Probation of Offenders Act, shall not suffer disqualification, if any, attached to the conviction of an offence under any law. The Code of Criminal Procedure

does not contain parallel provision. Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 of the Code and the Probation of Offenders Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provisions of the Code."

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.

16. The conjoint reading of the provisions of both the statutes, we find that the provisions of Section 360 of the Code are in addition to the provisions of the 1958 Act or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders. "

Thus, as per the view of the Hon'ble Apex Court, Section 360 Cr.P.C. has already been held to be in addition to the provisions of the Act, 1958.

PROBATION AS A TOOL OF REFORMATION:-

From the time of second half of 20th century, punitive justice of our country started shifting from **retributory theory** to **the reformatory theory for the wrong doers**. Further, in the **Law Commission 262nd Report**, it was observed that *‘the theory of reformation strives to transform all offenders into peaceful, productive and capable citizens of society. Reformation assumes that offenders are capable of change, and once the reasons for the commission of the crime are removed, they can lead ordinary and fulfilling lives.’*

On the issue of reformatory theory in context to any wrong doer, in Judgment passed by the Hon’ble Apex Court in Criminal Appeal No. 195 of 1977, decided on 06.05.1977 titled as **Mod. Giasuddin v. State of A. P.**, Law Finder Doc Id #105743, His Lordship V.R. Krishna Iyer, J. observed as under: -

“If every saint has a past, every sinner has a future, and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the word treasury of criminology. The drawback of our criminal process is that often they are built on the bricks of impressionist opinions and dated values. Ignoring empirical studies and deeper researches.”

In Special leave Petition (Crl) No. 7369 of 2019, decided on 30.09.2020, titled as **Satish @ Sabbe v. State of Uttar Pradesh**, Law Finder Doc Id # 1746022, His Lordship Surya Kant, J. says as:

“Whilst it is undoubtedly true that society has a

right to lead a peaceful and fearless life, without free-roaming criminals creating havoc in the lives of ordinary peace-loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first-time offenders ought to be liberally accorded a chance to repent their past and look-forward to a bright future.”

This Court has further gone into the depth of the issue to find out the differences and its implications, when the Court invokes any two of the provisions (The Act 1958 or Section 360, CrPC) for the purpose of granting benefit of probation to the offenders. Undoubtedly, as per Section 4(2) of the Act, 1958, as already held by Hon’ble Apex Court in **MDC’s Case (Supra)**, seeking report is mandatory for the Court from the probation officer. In case any order is passed under Section 4(2) of the Act, 1958 without seeking any such report, same would be against the mandatory provisions of law and such irregularity will make the judgement illegal.

Once the Hon’ble Apex Court has discussed and held that provisions under Section 360 Cr.P.C. are in addition to the provisions of the Act, 1958 or the children Act, 1960 or any other law for the time being enforced for the production, training or reformation of youthful offenders, this court has to deal with the requirements mentioned under Section 360 Cr.P.C. Further, in the impugned judgment there is nothing to point out that if any such requirement has not been followed by the Appellate Court, which

is mentioned under Section 360 Cr.P.C. before granting the concession/benefit of probation to the convicts. Rather, the reasoning recorded by the Ld. Appellate court while passing the impugned order such as convicts being first offender, carrying out the project of reformation, one of the offender serving in the bank, one of them being a student at the time of occurrence of incident indicates that two of the said convicts/accused are young having a career ahead in their life, while convict Manohar Lal is in his advance age. Not only this, nature of offence and relationship between the parties are also discussed for expressing its mind in the larger interest of justice.

Thus, in no sense it can be assumed by this Court that the concession/benefit of probation granted to the private respondents (convicts) was considered under the provisions of the Act, 1958 and not under Section 360 Cr.P.C. In other words, passing of such order of granting of concession/benefit of the probation by giving sustainable and plausible reasons are possibly not under any other provisions of law except Section 360 Cr.P.C.

Undisputedly, case in hand is of causing hurt resulting into simple injuries by one relative to the other, that too arising out of matrimonial discord, therefore, intent of the complainant party seems to be vindictive in nature by seeing the other side behind the bars in all possible situation that too after a long period of more than nine years by seeking setting aside of the order granting probation.

This Court while dealing with the still existing grudge in the mind of the complainant also needs to look into the mental and physical torture that the private respondents will suffer, if they are sent in jail, at this

point of time by accepting the wish of the complainant. This Court is reminded with the quote noted in some of the judgments passed by the Hon'ble Apex Court and which was infact authored by Oscar Wilde, in his work The Ballad of Reading Gaol which says as under:

*'I know not whether laws be right,
Or whether laws be wrong,
All that we know who lie in gaol
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.'*

It is worth noticing here that all the requirements under Section 360 Cr.P.C. have been detailed and under such provisions, there is no requirement of seeking any prior report from any quarter. The same has been observed by the Apex court in Lakhanlal Alias Lakhan Singh (supra), Para 13 of which is reproduced below:

"13. The distinction is that under the 1958 Act, the Court is required to seek report from the Probationary Officer before allowing an offender the benefit of probation apart from satisfying other conditions, whereas there is no such limitation while exercising the powers under Section 360 of the Code."

For the sake of reiteration, it is again pointed out that petitioner could not point out any such material/document available with him even now, regarding the negative character/incidents of the private respondents herein. Therefore, finding no substance of merit in the submissions made by learned counsel for the petitioner, there is no need to interfere with the

impugned judgment.

Present revision petition stands dismissed.

(SANJAY VASHISTH)
JUDGE

September 23, 2022

Riya

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No