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

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Reserved on: 31.10.2022

Pronounced on: 24.11.2022

+ **CRL.REV.P. 72/2018**

SEEMA RANI

..... Petitioner

Through: Mr. Luv Manan, Mr. Ajit Singh, Ms. Komal Vashisht, Ms. Udit Bali, Mr. Jatin and Mr. Rahul, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State with SI Arvind Kumar, PS Fatehpur Beri.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been preferred against the impugned judgment dated 09.01.2018 and order on sentence dated 19.01.2018 passed in the case titled "*Seema Rani v. The State*" by learned District & Sessions Judge, Saket Courts, New Delhi ("Appellate Court") in Criminal Appeal No. 8127/2016 arising out of FIR No. 261/2010, registered at Police Station Fatehpur Beri for the

offences punishable under Section 420/120B of Indian Penal Code, 1860 (“IPC”).

2. The brief facts of the case are that the present FIR was registered pursuant to the directions of learned ACMM, South District, Patiala House Courts on the complaint of one Sh. Ajab Singh and Smt. Praveen. The complaint was to the effect that complainants had purchased the property no. B-32, Sultanpur admeasuring 100 square yards in Khasra No. 563 Min from accused persons namely Sh. Ramesh Kumar (now deceased), Smt. Seema Rani and Sh. Ravi Kukreja and an agreement to sell dated 11.07.2002 was entered into with the said accused persons for total sale consideration of Rs. 4 lacs out of which sum of Rs.1,70,000/- was paid to Sh. Ravi Kukreja and the balance was to be paid by the complainants within the next 03 months. Despite several requests made to the accused persons, neither the physical possession nor the NOC or any other certificate was provided to the complainants. A suit for specific performance of contract dated 11.07.2002 was then by the complainant, and during the course of the proceedings in the civil cases, it was ultimately revealed by accused Ravi Kukreja that he was a minor at the time when the agreement to sell was entered between him and the respondents. For the first time before the concerned Court, he disclosed that he is not Ravi Kukreja but Suneet Kalra and filed school certificate of 10th class for the year 2002 showing his date of birth as 15.01.1985. He further claimed that at the time of the purchase of the property from his parents, the name was wrongly mentioned as Ravi Kukreja while his correct name was Suneet Kalra and that both names Ravi Kumar and Suneet Kalra were of the

same person. As per the case of the prosecution, the accused persons namely Ramesh Kumar, his wife Seema Rani i.e. petitioner, and their son Ravi Kukreja, pursuant to a pre-planned conspiracy, misrepresented the co-accused Ravi Kukreja as major and hence had no capacity to contract and fraudulently and dishonestly induced the complainant to deliver Rs.1,70,000/- towards the purchase of the said property and committed an offence punishable under sections 420/120B IPC. After completion of the investigation, charge sheet was filed and charges under Sections 420/120B IPC were framed against the petitioner and her deceased husband.

3. The learned Trial Court *vide* judgment dated 28.04.2015 convicted the petitioner and her husband under Sections 420/120B IPC and sentenced them to undergo rigorous imprisonment for two years with a fine of Rs 1000/- each, in default of which, to undergo simple imprisonment for two weeks *vide* order on sentence dated 18.05.2015. No benefit of probation was given to the convicts.

4. Aggrieved by the order of conviction and sentence passed by learned Trial Court, an appeal was preferred by the petitioner and her husband, however the husband of the petitioner passed away during the pendency of the said appeal. The Appellate Court *vide* judgment dated 09.01.2018 and order on sentence dated 19.01.2018, while holding the conviction under Section 420/120B IPC, reduced the sentence of the petitioner from two years rigorous imprisonment to six months simple imprisonment, though the fine imposed on them was increased to Rs.1,75,000/-, and a further simple imprisonment for six months in case of default of payment of fine. No separate punishment was imposed

under Section 120B IPC and the petitioner was granted benefit of section 428 Cr.P.C.

5. During the course of arguments, learned counsel for petitioner stated that he is not pressing his petition as far as conviction under Section 420/120B IPC is concerned, however, the order of sentence be modified and petitioner be granted benefit of probation. It is stated that the petitioner is a home maker and is currently aged around 53 years. It is further stated that during the pendency of the appeal before the Appellate Court, she had even lost her husband.

6. Learned counsel for petitioner submits that the fine imposed by the learned Appellate Court i.e., Rs.1,75,000/- has already been paid to and received by the complainant and the same has also been recorded before this Court in order dated 01.05.2018. Further, reliance has also been placed upon Section 3 and 4 of the Probation of Offenders Act, 1958.

7. On the other hand, learned APP for the State opposes the prayer of the petitioner and contends that no benefit of probation be given to the petitioner considering her conduct during the course of trial. It is stated that the petitioner was fully aware of the transactions in dispute as well as execution of agreements, and has been rightly convicted and sentenced. It is stated that impugned order on sentence deserves no interference.

8. I have heard the learned counsel for petitioner as well as learned counsel for respondent and have gone through the material on record. Since the learned counsel for petitioner restricted his arguments to the point of order on sentence and grant of benefit of probation, this Court

shall not go into the merits of the case qua the conviction of the petitioner under Sections 420/120B IPC.

9. The relevant portion of the order on sentence dated 28.04.2015 passed by the learned Trial Court is as under:

Keeping in view the facts and circumstances of the case and submissions of the Id. APP for the state and learned counsel for convicts, I am of the view that no benefit of probation can be give and I hereby sentence the convicts Ramesh Kumar and Seema Ravi to undergo for a period of two years Rl each and fine of Rs.1,000/- each in default two weeks SI to each for the offence punishable under section 420/120B IPC.

10. The relevant portion of the order on sentence dated 19.01.2018 passed by the learned Appellate Court, modifying the sentence of the petitioner, is as under:

“...The complainant in the present case has neither got his money back nor has got the property in question. Though the Ld. counsel for the appellant / convict submitted that a civil suit is pending, the fact of the matter is that this transaction is not just a mere business transaction to be covered under the civil law. The appellant / convict Seema Rani is a mature woman knowing fully well what she was setting about to do. The only extenuating factor that has been highlighted is that she has lost her husband. However, it cannot be overlooked that the late husband had also been convicted of the very same offences. The son had faced trial as a CCL and has apparently been acquitted. Thus, the circumstances do not warrant the release of the appellant/ convict Seema Rani either U/s 360 Cr.PC or under the Probation of Offenders Act.

In the course of the entire trial of this case since 2010 the appellant / convict Seema Rani including her late husband have only protested their innocence without even denying the execution of the documents and subjecting the complainant to

continued loss. The rigour of trial if applicable to the appellant / convict Seema Rani is equally applicable to the complainant who was present in the Court and informed the Court that he has not received his money nor the property in question.

After considering the facts and circumstances of the case, this Court is of the view that a fine of Rs.1,75,000/- and simple imprisonment for a period of six months will meet the ends of justice in this case. In default of the payment of fine, the appellant/convict Seema Rani will undergo simple imprisonment for a further period of six months. No separate punishment is being imposed under Section 120B IPG. The appellant/convict be taken into custody to serve the sentence. Her bail bond and surety bond stand cancelled. Benefit of Section 428 Cr.PC be given to the convict...”

11. The issue for consideration before this court is that whether the petitioner is entitled to get the benefit of probation as provided under Section 3 and 4 of the Probation of Offenders Act, 1958. For the purpose of reference, the said provisions are reproduced hereinunder:

“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.*

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

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.”

12. The power has been given to the Courts under Sections 3 and 4 of the Probation of Offenders Act, subject to certain conditions, to release an offender who is convicted of an offence punishable with imprisonment for not more than two years, or with fine, or with both. By applying the relevant provisions of Probation of Offenders Act, it is to be examined that whether the accused is likely to indulge in any crime based on his conduct and the probability of him being reformed

and rehabilitated. This view was reaffirmed by the Hon'ble Supreme Court in ***Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460.***

13. Moreover, the purpose behind the enactment of the Probation of Offenders Act was highlighted by the Hon'ble Apex Court in ***Lakhvir Singh v. State of Punjab, 2021 SCC Online SC 25*** as under:

“...to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

14. In the present case, the question of granting probation was considered by both the learned Trial Court as well as learned Appellate Court and the same was rejected at both the stages. The learned Appellate Court while upholding the conviction of the petitioner under Sections 420/120B IPC, had modified the sentence and reduced it to simple imprisonment for a period of six months along with fine of Rs.1,75,000/-. It is, however, pertinent to note that the Appellate Court, while denying the benefit of probation to the petitioner, had also observed that the complainant had not got her money back, and had accordingly imposed a fine of Rs.1,75,000/-.

15. Admittedly, the fine of Rs.1,75,000/- has now been paid by the petitioner and the same has been received by the complainant. It is also the case of the petitioner that she, being an illiterate, was not aware of her actions and had clearly misunderstood the consequences of the same. It is further the case of the petitioner that she was a home maker

and had signed on the papers as she was advised by her husband. As per material on record, the husband of the petitioner has already expired during the course of pendency of the appeal before the learned Appellate Court. The minor son of the petitioner was made to face trial as a CCL and was acquitted in the case. The FIR in the present case pertains to the year 2010 and the petitioner has already faced trial and has gone through the whole judicial process for more than 12 years and is currently about 53 years of age. Further, the petitioner had already remained in judicial custody for 15 days as on 02.02.2018 as per the nominal roll. Sentence of the petitioner was suspended on 08.02.2018, which would amount to 21 days in judicial custody.

16. The provisions of the Probation of Offenders Act empower the courts to release petitioner on good conduct, and the nature of the offence and the conduct of the petitioner needs to be taking into consideration while granting the probation. The grant of relief of probation under the said Act varies from case to case and thus needs to be scrutinized independently in each case. Section 3 of Probation of Offenders Act specifically empowers the Court to extend the benefit of probation in case of a conviction under Section 420 IPC.

17. Considering the overall facts and circumstances of the case, this Court is of the opinion that the benefit of probation under Section 3 and 4 of Probation of Offenders Act can be extended to the present petitioner. Therefore, the part of the order on sentence dated 19.01.2018 to the extent that petitioner was sentenced to undergo a simple imprisonment of six months is set aside and petitioner is directed to be released on probation on furnishing of bond in the sum of Rs. 25,000/-

(for keeping peace and good behaviour) with one surety of like amount for a period of two years, within a period of one week of receipt of copy of this order before the concerned Trial Court. Petitioner is also directed to pay a fine of Rs.75,000/- to the complainant, and petitioner shall remain under the supervision of Probation Officer, Saket Courts, New Delhi for two years and shall report before the Probation Officer once every month. In case petitioner does not maintain good conduct during the period of probation, then she shall be liable to undergo the substantive sentence as awarded by the learned Appellate Court.

18. Since the conviction of the petitioner under Sections 420/120B IPC was not challenged during the course of arguments, this Court has not interfered with the findings qua the same in the impugned judgment dated 09.01.2018 .

19. Accordingly, the present revision petition is disposed of in the above terms.

20. A copy of this judgment be forwarded to the concerned trial court along with the Trial Court Record, for information and compliance.

SWARANA KANTA SHARMA, J

NOVEMBER 24, 2022/kss