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

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Reserved on: 31.10.2022

Pronounced on: 23.11.2022

+ **CRL.REV.P. 482/2018**

PARMINDER KHETARPAL

..... Petitioner

Through: Petitioner in person.

versus

STATE OF NCT DELHI & ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition has been preferred under Section 397 read with Section 401 and 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") against the impugned judgment and order dated 14.03.2018 passed by learned Special Judge (PC Act), CBI-03, Dwarka District, Courts, Delhi ("Appellate Court") in Criminal Appeal No. 05/2018, to the extent that respondent no. 2 has been granted benefit of probation, and praying to uphold the order on sentence dated 19.12.2017 passed by the learned Trial Court.

2. The brief facts of the present case are that petitioner had filed a complaint under Section 138 Negotiable Instruments Act, 1881 ("NI

Act”) against the accused/respondent no. 2 and after completion of trial, learned Trial Court *vide* order dated 16.11.2017 convicted respondent no. 2, and *vide* order dated 19.12.2017 sentenced him to undergo simple imprisonment for a period of two months and to pay a compensation of Rs. 80,000/- to the complainant under Section 357(3) Cr.P.C within 30 days from the date of order and in default of payment of compensation to the complainant, respondent no. 2 was to undergo simple imprisonment for a period of six months.

3. Aggrieved by the order of conviction dated 16.11.2017 and order on sentence dated 19.12.2017, respondent no. 2 preferred an appeal bearing CA No. 05/2018 assailing the said orders. Learned Appellate Court *vide* judgment dated 14.03.2018, while upholding the conviction of respondent no. 2 under Section 138 NI Act, 1881, partly set aside the order on sentence dated 19.12.2017, and extended the benefit of probation to respondent no. 2. The relevant portion of judgment dated 14.03.2018, impugned before this Court, is as under:

“46. However, as far as impugned sentence order is concerned, since there is nothing on record to show that appellant was a previous convict and having regard to the offer made by appellant to pay the compensation amount as awarded by the Ld. trial court, this court is of the view that a case for taking a lenient view is made in favour of appellant. Accordingly, part of the impugned sentence order vide which appellant was sentenced to simple imprisonment of two months is set aside. Appellant is given the benefit of probation and is directed to file personal bond of good behaviour and conduct in the sum of Rs.15,000/- with one surety each in the like amount for a period of three months within a week of

passing of this judgment before the Id.trial court, with the condition that he shall remain under the supervision of Probation Officer, Dwarka Court for three months and shall report before the Probation Officer once in every month and shall not commit similar offence during this period of three months and if any such offence is brought to the notice of Ld.trial court this court during this period of three months, then Ld.trial court will be at liberty to impose appropriate sentence upon appellant under Section 138 of the NI Act.

47. Appellant is further directed to pay the amount of compensation of Rs.80,000/- as awarded by the Ld. trial court within 07 days from today failing which he shall undergo simple imprisonment of six months as awarded by the Ld.trial court....”

(emphasis supplied)

4. The petitioner being aggrieved by aforesaid portion of the impugned order, to the extent of grant of probation to respondent no. 2, has filed the present petition.

5. The petitioner, who is present in person, argues that the order *vide* which benefit of probation has been extended to respondent no. 2 is against the law as merely not being a previous convict cannot be a ground for the grant of probation. It is also argued that learned Appellate Court failed to appreciate that respondent no. 2 who was tenant of the present petitioner was in illegal possession of the property for 36 months and possession was handed over to the petitioner only in January 2018 and that too after the petitioner had been compelled to approach the Hon'ble District Court, Dwarka by filing a suit for permanent injunction, possession, recovery of arrears of rent, mesne

profits and damages for illegal use and occupation of the petitioner's property.

6. It is further argued by the petitioner that respondent no. 2 intentionally did not hand over the possession of the rented property for nine months even after vacating the property and has still not paid the arrears of rent as due to the petitioner till date which is approximately Rs. 5,22,000/- along with the maintenance charges of the flat since January 2014 amounting to Rs. 61,435/-. It was contended that learned Appellate Court ignored the fact that respondent no. 2 has been in illegal possession of the petitioner's property from February 2015 to January 2018 which has caused grave financial hardships and harassment to the petitioner and his family members.

7. On the other hand, learned counsel for respondent no. 2 stated that since the entire compensation amount has already been paid to petitioner under Section 357(3) Cr.P.C., learned Appellate Court had rightly set aside the sentence as respondent no. 2 has clean antecedents. It is also stated that respondent no. 2 had been directed to compensate the petitioner by payment of Rs. 80,000/- which has already been paid and accepted by the present petitioner. It is stated that present petition has been filed with mala fide intention and, therefore, it has been prayed that petition be dismissed with cost.

8. The arguments and contentions raised on behalf of both the parties have been heard.

9. In the given set of facts, it will be useful to first refer to Section 360 of Cr.P.C. and Section 4 of Probation of Offenders Act, 1958 ("P.O. Act").

Section 360 of Cr.P.C. 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)...”

Section 4 of the P.O. Act, 1958 reads as under:

“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."

10. Applying the provisions of Section 4 of the P.O. Act, 1958 in ***Lakhvir Singh v. State of Punjab, (2021) 2 SCC 763***, it was held that while granting beneficial provisions wide interpretation should be given and not a restrictive view. Similarly, while considering the nature of offence, character of the offender and his good conduct, a lenient yet rational view is to be taken by courts taking into account the surrounding circumstances. Provisions under law provide certain grounds which needs to be considered before granting probation. The

conduct of the accused is of the prime importance apart from other factors while deciding whether the benefit is to be given or not.

11. A Co-ordinate bench of this Court in *Dilshad Ahmad v. State (NCT of Delhi)*, 2018 SCC OnLine Del 13081, after considering the nature of the offence, the character of the offender and report of the probation officer, held that it was a fit case to extend the benefit of Section 4 of P.O. Act, 1958 to the appellant.

12. While noting the philosophy behind the P.O. Act, 1958 the Hon'ble Supreme Court in *Rattan Lal v. State of Punjab*, AIR 1965 SC 444 observed:

“4. The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him...”

13. After hearing arguments and having gone through the material on record, it emerges that the petitioner who is the original complainant under Section 138 of NI Act, 1888 is only aggrieved by the fact that instead of upholding the order on sentence, also while upholding the order on conviction, the Appellate Court had shown undue leniency in the present case and the benefit of probation could not have been extended to respondent no 2 as he had harassed him by non-payment of rent.

14. As far as release of respondent no. 2 on probation is concerned, there is no bar in extending the said benefit in a case under section 138 of Negotiable Instruments, Act, 1881. There is no reason in the present case to deny the benefit of Section 4 of the Probation of Offenders Act,

1958 or Section 360 Cr.P.C. to the respondent no. 2. The learned Appellate Court did not commit error in holding that respondent no. 2 had no criminal antecedents.

15. The conduct of the respondent no. 2 in the present case was duly taken into consideration by the learned Appellate Court and accordingly conditions were imposed for availing the benefit of probation. As per the impugned order, respondent no. 2 was directed to pay compensation to the petitioner to a sum of Rs. 80,000/-, which has been duly paid. The period of probation as per impugned judgment dated 14.03.2018 has already been undergone by respondent no. 2 and during the said period, no report had been submitted by Probation Officer to show that there was any violation of the conditions which were imposed upon respondent no. 2 by the Appellate Court. Further, the allegations of him being in illegal possession of the property are of civil nature and thus create no obstacle in granting the benefit. Thus, considering the overall facts and circumstances of the case, the learned Appellate Court was justified in extending the benefit of probation and has rightly upheld the conviction but altered the sentence.

16. For the above stated reasons, there is no infirmity or perversity in the findings of the learned Appellate Court while extending the benefit of probation to respondent no. 2, and thus, need no interference.

17. Accordingly, the present petition is dismissed being devoid of merits.

SWARANA KANTA SHARMA, J

NOVEMBER 23, 2022/kss