

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.65 OF 2022

Manik Janardhan Kalaskar,
Age : 81 Years, Occ. Pensioner,
R/o. House No. 302, Civil Hudco
Colony, Savedi Road, Dist. Ahmednagar.

Applicant
(Orig. Informant
Appellant)

V E R S U S

1. The State of Maharashtra,
Through Topkhana Police Station,
Ahmednagar
2. Dilip Kundlik Shelke,
Age : 61 Years, Occ. Service
3. Lata Dilip Shelke,
Age : 51 Years, Occ. Household
4. Vivek Dilip Shelke,
Age : 39 Years, Occ. Service,

All resident of House No.340-A, Samata
Chowk, Civil Hudco, Ahmednagar
District Ahmednagar

.. Respondents
(R. Nos. 2 to 3 Ori. Accused)

CORAM : S. G. MEHARE, J.

DATE : 12.06.2023

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the
consent of the respective learned counsels.

2. A small question that arises before the Court is whether the benefit of the Probation of Offenders Act granted to the respondent Nos. 2 to 4/accused is legal and correct and whether the report of the Probation Officer is obligatory under Section 4 of the Probation of Offenders Act.?

3. A few facts of the case are that the respondents were tried for the offences punishable under sections 323, 452, 504 and 506 read with Section 34 of the Indian Penal Code. The learned Chief Judicial Magistrate, Ahmednagar, granted benefits to respondents Nos. 2 and 4 under The Probation of Offenders Act and acquitted respondent no. 3.

4. Dissatisfied with the judgment and order of the learned C.J.M, the present petitioner/complainant had preferred an appeal under Section 372 of the Cr. P. C against respondents Nos.2 and 4, who were released on bond under the above Act, and respondent No. 3. The learned Sessions Judge, Ahmednagar, dismissed his Criminal Appeal No. 163 of 2017 on 22.12.2021.

5. The learned counsel for the applicant would argue that respondent no.2/accused No.1 had made false statements before the learned C.J.M that he was in service if he would be convicted for more than 24 hours and fine of Rs. 50/-, he will lose his job. In fact, on that

date, he was already retired from the service; therefore, he had secured the benefit of the Probation of Offenders Act on the false statement. As far as respondent no.4 is concerned, he would argue that in the absence of a report about his good behaviour from the Probation Officer, the benefit ought not to have been granted to him.

6. As far as the acquittal of respondent no.3 is concerned, he would argue that evidence against her has not been properly appreciated, and she has been incorrectly acquitted. Therefore, the impugned judgment and order warrant interference.

7. Per contra, the learned counsel for respondents would argue that as per proviso to Section 4 of the Probation of Offenders Act, calling the report of the Probation Officer is not mandatory; however, the Court shall consider the report of the Probation Officer, if any, available with it. Calling for the report of the Probation Officer for exercising the powers under Section 4 is discretionary. The Probation of Offenders Act is a social legislation, having an object to giving a chance to show improvements in the social behaviour of the accused held guilty. While granting benefits under Section 4 of the Probation of Offenders Act, the Court has to bear in mind the facts and circumstances of each case, the nature of the offence, its general effect

on the society and character of the offender, etc.

8. He further argued that the Court considering the facts has correctly extended the benefit under Section 4 of the Probation of Offenders Act. Since it was social legislation, the accused need not pray for the benefit, but the Court itself has to consider this aspect and extend the benefit under the said Act. As far as the acquittal of respondent no.2 is concerned, there is no evidence against her; therefore, she has been correctly acquitted.

9. The learned counsel for the applicant could not satisfy the Court that making a false or incorrect statement to claim the benefit under the Probation of Offenders Act disentitled him to the benefit under the said Act.

10. Sub-Section 4 of Section 11 empowers the appellate Court or the High Court, in the exercise of its power of revision, to set aside the order granting benefit under Sections 3 and 4 of the Probation of Offenders Act and, in lieu thereof, pass sentence of such offender according to law. The Court granting or extending the benefit under the provisions of the Probation of Offenders Act has to examine the facts and circumstances of each case, the nature of the offence, its general effect on society and the character of the offender, etc. There

was nothing on record to show that respondents Nos. 2 and 4 were convicted or charged with any criminal offence. It was a dispute between the neighbours for a trivial reason. If, in such circumstances, the benefit is granted, it may not have an adverse effect on society. There were no complaints against respondents Nos. 2 and 4 that they had no good character. The reason assigned by both Courts granting benefits under the Probation of Offenders Act appears correct and proper. There are no grounds to interfere with the benefit extended to respondents Nos. 2 and 4.

11. Regarding the acquittal of respondent No. 3, there is no material to hold her guilty. None of the Courts has committed an error on the face of the record for exercising power under Sections 397 read with Section 401 of the Cr. P.C.

12. Reading Section 4 of the Probation of Offenders Act, it appears that calling for a report of the Probation Officer is not mandatory for extending the benefit to the class of accused mentioned in the said section.

13. For the above reasons, the Court is not satisfied that the impugned orders warrant interference. As a result, the petition fails. Hence, the following order:-

ORDER

- (i) The Revision Application stands dismissed.
- (ii) Rule stands discharged.

(S. G. MEHARE)
JUDGE

ysk