

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

271

CRR-271-2021 (O&M)

Date of Decision: 31.08.2023

JAGTAR SINGH AND ANR

... Petitioners

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rajesh Chokkar, Advocate
for the petitioners.

Ms. Geeta Sharma, DAG Haryana.

HARNARESH SINGH GILL, J.(Oral)

The present petition has been filed by the petitioners-accused challenging the judgment dated 22.02.2021 passed by the learned Lower Appellate Court vide which the appeal preferred against judgment of conviction and order of sentence dated 16.08.2017 passed by the learned Judicial Magistrate, 1st Class, Hansi, District Hisar, was dismissed.

2. Vide judgment dated 16.08.2017 passed by the learned Judicial Magistrate 1st Class, Hansi, District Hisar, the petitioners had been convicted under Section 61 of the Punjab Excise Act, 1914, in FIR No.239 dated 21.06.2013, registered at Police Station Sadar, Hansi and sentenced to undergo rigorous imprisonment for a period of one year, for having been found in possession of about 4800 bottles of illicit liquor without any licence and to pay fine, along with the default clause.

3. Aggrieved against the said judgment and order, the petitioners preferred an appeal before the learned Lower Appellate Court,

which was dismissed vide judgment dated 22.02.2021.

4. Still aggrieved, the present petition has been filed against both the aforesaid judgments.

5. On 10.03.2021, the following order was passed by a Coordinate Bench of this Court:-

'At the outset, learned counsel for the petitioners submits that the petitioners are only pressing this petition on the quantum of sentence and not on the merits thereof, with them having been sentenced to one year's simple imprisonment and with a fine of ₹2,000/- each imposed upon them, after their conviction for the commission of an offence punishable under Section 61 of the Punjab Excise Act, 1914.

He further submits that the petitioners are first time offenders and consequently they may be granted the benefit of probation for the period of the sentence upon them, rather than actual incarceration.....'

6. Today also, during the course of arguments, learned counsel for the petitioners reiterates the said stand. He submits that the present FIR was registered on 21.06.2013 and that the petitioners have been facing the agony of protracted trial for the last 10 years approximately and that out of the total sentence of one year, the petitioners have already undergone the actual sentence of about 5 months.

7. In support of his contentions, learned counsel for the petitioners relies upon the order dated 07.05.2003 passed by a Coordinate Bench of this Court in Buta Singh vs State of Punjab, 2004 (3) RCR (Criminal) 914; order dated 21.01.2015 passed in Nachhattar Singh vs State of Punjab, 2015 (3) RCR (Criminal) 281 and order 07.10.2010

passed in Shishpal and another vs State of Haryana, 2011 (1) RCR (Criminal) 267.

8. Alternatively, it is submitted by the learned counsel for the petitioners that as the petitioners are the first offenders with no previous antecedents, their case may be considered for release on probation. Such prayer is made on the ground that the trial has protracted for the last 10 years and out of the total sentence, the petitioners have already undergone about five months.

9. On the other hand, learned State counsel, while opposing the limited prayer made by the learned counsel for the petitioners, submits that the Courts below have wrongly sentenced the petitioners for one year, whereas as per the statutory provisions of Section 61 of the Punjab Excise Act, the petitioners ought to have been sentenced for a minimum period of two years. He would, thus, argue no indulgence is called for in the present petition.

10. I have heard the learned counsel for the parties.

11. Having heard counsel for the parties and after going through the record available, this Court does not find any ground to interfere with the impugned judgments of conviction rendered by the courts below and as such, the same are affirmed.

12. As regards to quantum of sentence, as noticed above, learned counsel for the petitioners has contended that petitioners are first offenders and facing the agony of trial since the date of registration of FIR i.e. 21.06.2013; that they are not previous convicts and have already undergone about 5 months upto 07.12.2021, when sentence imposed on

them was suspended during pendency of this revision petition.

13. Answering the similar questions of law, the Hon'ble Supreme Court in Isher Dass vs. State of Punjab, AIR 1972 Supreme Court 1295 (1) held as under:-

“7. The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under 317 the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act. In this respect we find that sub-section (1) of section 4 of the Probation of Offenders Act contains the words "notwithstanding anything contained in any other law for the time being in force". The above non-obstante clause points to the conclusion that the provisions of section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the other conditions prescribed are fulfilled. Those conditions are (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the 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, and (3) the accused in such an event enters 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 behavior. Sub-section (1) of section 6 of the above mentioned Act, as stated earlier,

imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court 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 sections 3 or 4 of the Act but to award a sentence of imprisonment to him. The underlying object of the above provisions 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. So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life, he shall not be sentenced to imprisonment unless there exist reasons which justify such a course. Such reasons have to be recorded in writing.

8. According to section 18 of the Probation of Offenders Act, the aforesaid Act shall not affect the provision of subsection (2) of section 5 of the Prevention of Corruption Act, 1947 (Act 2 of 1947). The last mentioned provision, namely, sub-section (2) of section 5 of the Prevention of Corruption Act, prescribes, in the absence of special reasons, a minimum sentence of imprisonment for a term of not less than one year for those convicted 318 under section 5 of that Act. If the object of the legislature was that the provisions of the

Probation of Offenders Act should not apply to all cases where a minimum sentence of imprisonment is prescribed by the statute, there was no reason to specify subsection (2) of section 5 of the Prevention of Corruption Act in section 18 of the Probation of Offenders Act. The fact that out of the various offenses for which the minimum sentence is prescribed, only the offence under sub-section (2) of section 5 of the Prevention of Corruption Act has been mentioned in section 18 of the Probation of Offenders Act and not the other offenses for which the minimum sentence is prescribed, shows that in case of such other offenses the provisions of Probation of Offenders Act can be invoked.

9. The provisions of Probation of Offenders Act, in our opinion, point to the conclusion that their operation is not excluded in the case of persons found guilty of offenses under the Prevention of Food Adulteration Act. Assuming that there was reasonable doubt or ambiguity, the principle to be applied in Construing a penal act is that such doubt or ambiguity should be resolved in favour of the person who would be liable to the penalty (see Maxwell on Interpretation of Statutes, p. 239, 12th Edition). It had also to be borne in mind that the Probation of Offenders Act was enacted in 1958 subsequent to the enactment in 1954 of the Prevention of Food Adulteration Act. As the legislature enacted the Probation of Offenders Act despite the existence on the statute book of the Prevention of Food Adulteration Act, the operation of the provisions of Probation of Offenders Act cannot be whittled down or circumscribed because of the provisions of the earlier enactment, viz. Prevention of Food Adulteration Act. Indeed, as mentioned earlier, the non-obstante clause in section 4 of the Probation of Offenders Act is a clear manifestation of the intention of the legislature that the

*provisions of the Probation of Offenders Act would have effect notwithstanding any other law for the time being in force. We may also in this context refer to the decision of this Court in the case of **Ramji Missir v. State of Bihar, 1962 Supp. 2 S.C.R. 745** wherein this Court while dealing with the Probation of Offenders Act observed that its beneficial provision,, should receive wide interpretation and should not be read in a restricted sense. Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by the fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above, 21 years of age found guilty of offenses under the Prevention of Food Adulteration Act. As regards persons under 21 years of age, however, the policy of the law appears to be that such a person in spite of his conviction under the Prevention of Food Adulteration Act, should not be deprived of the advantage of Probation of Offenders Act which is a beneficent measure and reflects and incorporates the modern approach and latest trend in penology.”*

14. The aforesaid view has been reiterated in Prem Ballab v. State of (Delhi Admn), AIR 1977 Supreme Court 256.

15. Keeping in view the totality of facts and circumstances of the case in hand as well as law laid down by the Hon’ble Supreme Court in the case of Isher Dass (supra), this Court is of the considered view that the criteria of minimum sentence for an offence is no reason for denying

benefit under the provisions of the Probation of Offenders Act, 1958.
There is no legal impediment to release the petitioners on probation.

16. In view of the above, the revision petition is partly accepted and while affirming the judgments of conviction passed by the Courts below, the order of sentence is modified to the extent that petitioners—accused are ordered to be released on probation of good conduct on their furnishing probation bonds for a period of one year to the satisfaction of the learned Illaqa Magistrate/trial Court. During this period of probation, the petitioners shall not commit any offence and be of good behavior. They shall also give an undertaking that they would undergo the remaining part of their sentence, if called for to do so by a Court of competent jurisdiction during the period of probation, in case of violation of any condition of the bonds.

Disposed of in the above terms.

31.08.2023

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No