

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

CRR No.2568 of 2008

Date of decision : 02.08.2023

Gurmit Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. P.S. Brar, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

PANKAJ JAIN, J.

Present revision petition has been preferred by a convict in FIR No.97, dated 28th of July, 2004 registered for the offence punishable under Sections 61 (i)(c) of Excise Act, at Police Station Nehianwala.

2. As per the case of the prosecution on 28th of July, 2004 a secret information was received by the police officials that the petitioner is in habit of distilling illicit liquor and the same can be recovered if raid is conducted on the land in his possession. It is claimed that on raid the petitioner was found distiling illicit liquor. Working still was taken into police possession. 15 kgs. of *lahan* and one bottle of illicit liquor was also recovered. Trial Court held

petitioner guilty of offence punishable under Section 61(i)(c) of Punjab Excise Act and sentenced him to undergo rigorous imprisonment for one year and to pay a fine to the tune of Rs.5,000/- and in default of payment thereof to undergo further RI for two months.

3. In appeal preferred by the petitioner, the Appellate Court affirmed the findings recorded by the Trial Court.

4. Counsel for the petitioner while attacking to the findings recorded by the Courts below has argued that no independent witness was associated with the recovery. Thus, there is violation of Section 100 Cr.P.C. He submits that as per the provisions contained in Section 100 Cr.P.C. the Search Officer was under obligation to call upon two or more independent witnesses and to associate a respectable inhabitant of the locality. Leave aside association but no attempt was made to join public witnesses. Counsel submits that both the Courts below have erred in appreciating the fact that working still cannot distill the illicit liquor and the illicit liquor can only be distilled if the *lahan* is heated up and the steam vapors are cooled down. But as per statement of PW-2 HC Gurburwinder Singh the cooling material is missing at the place of recovery. He thus submits that the findings recorded by the Courts below deserve to be set aside. It has been further contended that the petitioner is a 60 year old man who is a first

time offender and is a sole bread earner of his family who has already faced protracted trial for last more than 19 years and thus in case the findings *qua* conviction are to be affirmed, the petitioner be granted benefit of probation.

6. I have heard counsel for the parties and have gone through records of the case.

7. Law w.r.t. exercise of of revisional jurisdiction has been well laid down by Apex Court in the case of **Bindeshwari Prasad Singh @ B.P. Singh and others vs. State of Bihar (Now Jharkhand) and another, 2002 AIR (SC) 2907** wherein it has been held that -

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice

requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See **AIR 1951 Supreme Court 196 : D. Stephens v. Nosibolla**; **AIR 1962 Supreme Court 1788 : K.C. Reddy v. State of Andhra Pradesh**; **(1973) 2 SCC 583 : Akalu Ahir and others v. Ramdeo Ram**; **AIR 1975 Supreme Court 1854 : Patakalapati Narayana Gajapathi Raju and others v. Bonapalli Peda Appadu and another** and **AIR 1968 Supreme Court 707 : Mahendra Pratap Singh v. Sarju Singh**).

8. I do not find any legal infirmity that can persuade me to interfere while exercising revisional jurisdiction in the findings of guilt of the petitioner recorded by the Courts below.

9. Plea raised by counsel for the petitioner regard extending benefit of probation to the petitioner however, merits consideration. Law w.r.t. release of convict on probation has been well laid down by the Apex Court in the case of **Ishar Das v. State of Punjab, AIR 1972 Supreme Court 1295** wherein it has been held as under :

“The Probation of Offenders Act received the assent of the President on May 16, 1958 and was published in the Gazette of India dated May 19, 1958. According to Sub-section (3) of

section 1 of that Act, it shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State. The fact that the Act was in force in the State of Punjab before the sample of ice cream was taken from the appellant has not been disputed before us. Section 3 of the Act gives power to the court to release certain offenders after admonition. According to that section, where 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 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. The relevant part of sub-section (1) of section 4 and sub-section (1) of section 6 of the Act read as under :

"4(1) When any person is found guilty of having committed on 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 behavior."

"6(1) When any person under twenty-one years of age is 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."

The Probation of Offenders Act, as observed by Subba Rao, J. (as he then was) speaking for the majority in the case of *Rattan Lal v. State of Punjab, 1964(7) SCR 676*, 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. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years, an injunction is issued to the court not to sentence them 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 offenders, it is not desirable to deal with them under sections 3 and 4 of the Act.

5. It is Manifest from plain reading of sub-section (1) of section 4 of the Act that it makes no distinction between persons of the age of more than 21 years and those of the age of less than 21 years. On the contrary, the said sub-section is applicable to persons of all ages subject to certain conditions which have been specified therein. Once those conditions are fulfilled and the other formalities which are mentioned in section 4 are complied with, power is given to the court to release the accused on probation of good conduct. Section 6 of the Act deals specifically with persons under twenty-one years of age convicted by a court for an offence punishable with imprisonment other than imprisonment for life. In such a case an injunction is issued to the court not to sentence the young offender to imprisonment, unless the court is of the view 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 release him after admonition under section 3 or on probation of good conduct under section 4 of the Act.”

10. *Qua* offenders under Excise Act, Full Bench of this Court in **Joginder Singh vs. State of Punjab, 1980 PLR 585** held as under :

“6. Apart from precedent, it deserves notice that section 361 of the Code prescribes that where in any case the court could have dealt with an accused person under Section 360 of the Code, but has not done so, it shall record in its judgment special reasons for not having done so, which again would be pointer to the mandatory nature of the provisions. I would, therefore, hold the provisions of Section 360 of the Code are mandatory in nature.

7. Having held so, one may proceed to examine the matter with

reference to the language of section 360 of the Code itself. The argument that the prescription of a minimum sentence of imprisonment would ipso facto exclude the applicability of this section, cannot easily hold water. It deserves highlighting that the provisions of section 360 of the Code in itself laid down the limitation within which it is to operate. It is attracted as regards persons above 21 years of age only when the conviction is for an offence punishable with fine only or with imprisonment for a term of seven years or less. As regards persons below 21 years of age or any woman, the provision is a little more liberal, and can be applied even for conviction of an offence not punishable with death or imprisonment for life, if no previous conviction is proved against the offender. It would, therefore, be evident that section 360 of the Code itself refers only to the maximum sentences provided for the offence for which an accused person may be convicted with regard to its applicability. Its provisions do not lay down anywhere that in the case of the prescription of minimum sentence, Section 360 of the Code would not be applicable. It may, therefore, be inapt to impose such a bar by a process of interpretation, when the provisions of the section, whilst prescribing its applicability, have laid down no such limitation.

8. to 10. xxx xxx xxx

11. It would inevitably follow from the above that in view of the aforementioned precedent of the final court, the provisions of Sections 4 and 6 of the Probation of Offenders Act would in strictness be applicable to offences under Section 61(1)(c) of the Punjab Excise Act, 1914 as well. Once that is so, one fails to see as to how the position under Sections 360 and 361 of the Criminal Procedure Code 1973 can in any way be different and as to why these would not also be applicable within the limitations prescribed thereunder.”

11. Thus from the perusal of the law laid down in **Joginder Singh vs. State of Punjab** (supra), it is explicit that a person convicted for offence punishable under Section 61(1)(c) of the Excise Act with the minimum sentence prescribed is RI for one year, can be released on probation.

12. Further in '**Tarak Nath Keshari vs. State of West Bengal, 2023' SCC Online 605**, Apex Court held as under :

“10. Even if there is minimum sentence provided in Section 7 of the EC Act, in our opinion, the appellant is entitled to the benefit of probation, the EC Act, being of the year 1955 and the Probation of Offenders Act, 1958 being later. Even if minimum sentence is provided in the EC Act, 1955 the same will not be a hurdle for invoking the applicability of provisions of the Probation of Offenders Act, 1958. Reference can be made to a judgment of this Court in **Lakhvir Singh v. The State of Punjab & Ors (2021) 2 SCC 763.**”

13. Coming on to the question as to whether the petitioner deserves to be released on probation, this Court finds following factors do weigh in favour of the petitioner :

- (i) That the petitioner is a first time offender.
- (ii) The petitioner has not repeated the offence.
- (iii) The alleged recovery was effected in the year 2004 and the petitioner has faced prolonged trial for last more than 19 years .

- (iv) The petitioner remained on bail during the trial and appeal and the present revision and is not stated to have misused the said concession.
- (v) The probation period already stands expired. There is no report that the petitioner violated any of the terms of probation. Reference can be made to law laid down by Apex Court in **State of Karnataka vs. Muddappa, (1999) 5 SCC 732.**
- (vi) The petitioner is 60 year old man who has already suffered incarceration for more than 2 months.

14. Keeping in view the aforesaid circumstances, the petitioner is ordered to be released on probation for a period of two years from the date he furnishes the bonds in that regard to the satisfaction of the Ld. Trial Court. During the period of probation, the petitioner shall not commit any offence and shall maintain his good behaviour. He shall furnish an undertaking before the Trial Court that he would undergo the remaining part of his sentence, if called for to do so by the Court of competent jurisdiction during the course of probation. The petitioner shall execute bonds and undertaking within four weeks from the date of receipt of certified copy of this Court and shall deposit the fine imposed by the Ld. Trial Court and maintained by the First

Appellate Court as litigation expenses.

15. In view of discussion held herein above, the revision petition is partly allowed. The order of sentence stands modified to the extent as aforesaid.

16. The petitioner shall appear before the Trial Court on or before **21st of October, 2023** to submit his undertaking in compliance of the directions given by this Court in Para No.14 *ibid*.

August 02, 2023	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No