

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

(228)**CRR-513-2015 (O&M)**

Reserved on: 27.03.2023

Date of Pronouncement: 28.04.2023

Ranga Singh

...Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Upender Prasher, Advocate, for the petitioner.

Mr. Amit Shukla, AAG Punjab

HARKESH MANUJA, J.

1. By way of present revision petition challenge has been made to the judgment dated 16.07.2014 passed by the Court of Session Judge, Amritsar whereby, though the judgment of conviction of accused persons/ private respondents passed on 13.08.2013 by the Trial Court (JMIC, Amritsar) has been upheld; but order of sentence has been modified and accused persons have been ordered to be released under Section 4(1) of the Probation of Offenders Act, 1958.

2. Brief facts of the case are that on account of having received MLR No.04/SEP/RK/CH/2007 dated 9.9.2007 of Ranga Singh/ Complainant/ petitioner, his statement was recorded and on the basis of same FIR No.376 dated 11.9.2007 under Sections 323, 341, 34 IPC was registered at police Station Sadar, Amritsar against accused persons/ private respondents and they were put to trial.

3. Trial Court vide its judgment dated 13.08.2013, convicted the accused persons/ private respondents and they were sentenced to undergo 6

months rigorous imprisonment and to pay a fine of Rs.200/- each under Section 323 IPC and in default of payment of fine to undergo further rigorous imprisonment for seven days, besides to undergo 1 month of rigorous imprisonment under Section 325 IPC.

4. An appeal filed by the accused persons/ private respondents against this judgment, though was dismissed upholding their conviction, however, they were ordered to be released on probation by granting benefit under Section 4(1) of the Probation of Offenders Act, 1958 (hereinafter referred as 1958 Act) subject to their furnishing probation bond for a sum of Rs.50,000/- with one surety in the like amount for a period of one year each, with an undertaking to appear and receive the sentence as and when called upon during the period of next one year, and in the meantime to keep peace and be of good behaviour. Petitioner was also granted compensation of Rs. 30,000 i.e. 7,500/- from each of the private respondents.

5. Present revision petition has been filed at the instance of petitioner-complainant impugning the order dated 16.07.2014 passed by the first Appellate Court.

6. Learned Counsel for the petitioner/complainant contends that judgment dated 16.07.2014 is liable to be set aside as while releasing the accused/present private respondents, the learned appellate court is duty bound to consider the report of the Probation Officer concerned as mandated under Section 4(2) of the 1958 Act, and no Court can release a convict on probation without obtaining the report, however, in the present case no such report was called for. He further contends that even after the grant of probation to the private respondents/accused persons, they have threatened the petitioner of dire consequences. He also contends that the compensation awarded to the petitioner is also not adequate.

7. On the other hand, learned State counsel submits that as accused persons/ private respondents were first time offenders, no interference is warranted with the order passed by the Learned Session Judge.

8. I have heard learned counsel for the parties and gone through the paper book as well. While there is substance in the argument raised by the learned counsel for the petitioner that the Court could not release the accused persons/ private respondents on probation without considering the report of the Probation Officer as mandated under Section 4(2) of the 1958 Act, however, this is required to be examined in proper context. It also needs to be taken into consideration that Courts are also empowered to release a convict on probation under Section 360 of Cr.P.C.. With respect to inconsistent applicability and requirements of Section 360 of Cr.P.C. and provisions of 1958 Act, both being applicable in the same domain, displeasure has been expressed even by Hon'ble Apex Court regarding their anomalous nature on numerous occasions. Hon'ble Apex Court in "**Ramesh Dass vs Raghu Nath and Ors.**" in Criminal Appeal No. 313 of 2008 decided on 14.2.2008, observed as below:

"5. Where the provisions of the Probation Act are applicable the employment of Section 360 of the Code is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, who gave birth to the Probation Act and the Code wanted to obviate. Yet the legislature in its wisdom has obliged the Court under Section 361 of the Code to apply one of the other beneficial provisions; be it Section 360 of the Code or the provisions of the Probation Act. It is only by providing special reasons that their applicability can be withheld by the Court. The comparative elevation of the provisions of the Probation Act are further noticed in sub-section (10) of Section 360 of the Code which makes it clear that nothing in the said Section shall affect the provisions of the Probation Act. Those provisions have a paramountcy of their own in the respective areas where they are applicable.

6. *Section 360 of the Code relates only to persons not under 21 years of age convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less, to any person under 21 years of age or any woman convicted of an offence not punishable with sentence of death or imprisonment for life. The scope of Section 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Section 360 of the Code does not provide for any role for Probation Officers in assisting the Courts in relation to supervision and other matters while Probation Act does make such a provision. While Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the Probation Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain parallel provision. **Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results.** The intention to retain the provisions of Section 360 of the Code and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of Section 360 of the Code are wholly inapplicable."*

9. Though the exclusive applicability of provisions of 1958 Act, was subsequently clarified by Hon'ble Apex Court in Criminal Appeal No. 1306 of 2016 decided on 04.04.2019 titled as "**Lakhanlal Alias Lakhan Singh v. State of Madhya Pradesh**", as reproduced here-in-below:

"12. The offence under Section 325 is punishable for a term which may extend to seven years. The sentence imposed upon the appellant is of one year. The finding of the High Court that Section 360 of the Code shall not have any application is misreading of the bare provisions of the Code. Sub-Section (10) of Section 360 of the Code specifically contemplates that the provisions of the 1958 Act or Children Act 1960 or any other law for the time being in force for the treatment,

training or rehabilitation of the youth of the offenders are not affected by the Code. Therefore, the provisions of the Code are not excluded by the 1958 Act. Both the provisions, Section 360 of the Code as well as 1958 Act, are applicable in respect of the offenders before the Court. Therefore, we find that the High Court misread the provisions of the 1958 Act to hold that such Act is not applicable to the offender under the age of 21 years. The Court omitted that Section 6 of the 1958 Act provides that an offender of less than 21 years if 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. Thus, the High Court erred in law in not granting benefit of probation to the appellant for an offence under Section 325 read with Section 34 of the IPC.....

16. *The conjoint reading of the provisions of both the statutes, we find that the provisions of Section 360 of the Code are in addition to the provisions of the 1958 Act or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”*

10. At the same time it would also be helpful to take a look at the comparative domain of each of these provisions as domain of Section 4 of 1958 is much wider. For the purpose of releasing a convict (with reference to a male person above 21 years of age) on probation under Section 360 of Cr.P.C., offence shall be punishable with fine only or with imprisonment for a term of seven years or less, while Section 4 of 1958 Act would be applicable in cases where offence is not punishable with death or imprisonment for life.

Under Section 360 of Cr.P.C., it is also required that no previous conviction is

4 of 1958 Act. It would also be relevant to take note of Section 3 of 1958 Act that if offence is punishable with imprisonment for not more than two years, then the Court is also empowered to release the convict after admonition without resorting to Section 4 of the 1958 Act.

11. It was in this context that another distinction was also pointed out by Hon'ble Apex Court in **Lakhanlal's case** (supra) as below:

“3. The distinction is that under the 1958 Act, the Court is required to seek report from the Probationary Officer before allowing an offender the benefit of probation apart from satisfying other conditions, whereas there is no such limitation while exercising the powers under Section 360 of the Code.”

12. However, when the Courts are equally empowered to release a convict on probation under Section 360 of CRPC and Section 4 of 1958 Act, harmonious construction would require that report under Section 4(2) of 1958 Act would not be mandatory where provision of Section 360 of Cr.P.C. could also be made applicable. If a Court while exercising its power under Section 360 of Cr.P.C. is empowered to release a convict on probation without report of a probation officer, then to make it mandatory while exercising its power under Section 4(1) of 1958 Act, would be a mere technical nuance. However, if a particular case falls in exclusive domain of Section 4(1) of 1958 Act, then compliance of Section 4(2) would become mandatory. Even otherwise, a legislation which is beneficial to the accused should be made applicable and thus, the accused cannot be made to suffer for not having regarded to this.

13. Though Hon'ble Apex Court in "**M.C.D v. State of Delhi and another**", reported as 2005 (3) R.C.R. (Criminal) 13, held that Court is bound to call for a report as per Section 4(2) of 1958 Act, however it is also to be looked into that in that case accused was also convicted in another case as

14. Apart from that, in “**Mohamed Aziz Mohamed Nasir v. State of Maharashtra**” reported as AIR 1976 (SC) 730, the Hon’ble Apex Court, while examining the applicability of Section 6 of 1958 Act, observed that in case antecedent of accused are before the Court, then the requirement of report can be dispensed with. In present case, benefit of probation has been granted to the private respondents by the Appellate Court upon consideration of circumstances of the case including the antecedent, the nature of offence and the injuries inflicted. Though, the aforementioned case relates to Section 6(2) of 1958 Act whereas the case in hand relates to Section 4(2) of 1958 Act, yet the prerequisites for the Courts to consider before granting benefit of probation under both the provisions are same being the circumstances of the case including the nature of offence and the character of the offender. As all these considerations have been taken care of by the Appellate Court, the requirement of a report from the Probation Officer in the present case can also be dispensed with.

15. In addition to that, in view of Section 361 of Cr.P.C. and numerous judgments of Hon’ble Apex Court and this High Court, it was also obligatory for the Trial Court, to take a decision whether accused persons/ private respondents should be released on probation under 1958 Act and to record special reasons if not intending to do so. In the circumstance that accused persons/ private respondents were the first offenders, and were convicted for offences punishable under Section 323 and 341 of Indian Penal Code which carries maximum punishment for one year, the benefit of probation should have been given to the appellant/accused but no reason was given by learned magistrate as to why benefit of probation could not be given to them.

16. Though, vague allegations have been made by the petitioner that

accused persons/ private respondents are threatening him, but neither there is anything on record to substantiate this claim, nor any complaint filed in this regard and in that circumstance these allegations just appear to be a half hearted attempt to support his claim. In addition to that it also does not appeal to the senses that accused persons be put in jail again after 10 years of their release, that too when they are first time offenders and learned State Counsel has also not pointed out that any other case has been registered against them in last so many years. Accused persons/ private respondents also depend on farming only for their livelihood and therefore, compensation of Rs. 30,000, granted to complainant also does not appear to be on lower side.

17. Therefore, in view of the aforesaid discussion and taking into account all the facts and circumstances of the case, the present revision petition is dismissed.

19. Pending miscellaneous application(s), if any, shall also stand disposed of.

28.04.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned:	Yes/No
whether reportable:	Yes/No