

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

CRR No.574 of 2022

Date of decision : 22.08.2023

Paramjit Kaur

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Buta Singh Bairagi, Advocate
for the petitioner.

PANKAJ JAIN, J.

The petitioner is a complainant. He has preferred revision against order dated 17th of August, 2021 passed by Appellate Court whereby conviction against the accused Joginder Singh and Dalip Singh has been upheld but they have been ordered to be released on probation.

2. Petitioner preferred complaint against the respondents. Respondent No.2 Joginder Singh is her husband. Respondent No.3 Dalip Singh is the father-in-law and respondent No.3 Ajaib Kaur @ Jai Kaur is the mother-in-law. After 11 years a complaint was filed by the petitioner claiming that husband and her parents-in-law gave her beatings. Trial Court held them guilty and sentenced as under :

Name of convict	Offence U/s	Imprisonment Rigorous Imprisonment	Fine	In default of payment of fine Rigorous Imprisonment
Joginder Singh	325 IPC	Two years	Rs.1,000/-	30 days
	324 IPC r/w S.34 IPC	One year	Rs.500/-	15 days
	323 IPC r/w S.34 IPC	Six months	-	-
Dalip Singh	325 IPC	Two years	Rs.1,000/-	30 days
	324 IPC	One year	Rs.500/-	15 days
	323 IPC	Six months	-	-
Ajaib Kaur @ Jai Kaur	325 IPC r/w S.34 IPC	Two years	Rs.1,000/-	30 days
	324 IPC r/w S.34 IPC	One years	Rs.5,00/-	15 days
	323 IPC r/w S.34 IPC	Six months	-	-

3. In the appeal preferred by the respondents Appellate Court convicted Joginder Singh and Dalip Singh holding them guilty of offence punishable under Sections 323 and 325 read with Section 34 IPC but set aside the judgment *qua* Ajaib Kaur. Modifying the sentence the Appellate Court ordered release of both the convicts on probation observing as under :

“33. I have given careful thought to the above said prayer of learned counsel for the appellants and have gone through the record to find it a fit case to show some leniency. Perusal of record would reveal that the appellants have already suffered pangs of trial for the last more than five years. It is a matrimonial dispute. The age of one of the appellants viz. Dalip Singh is approximately 70 years. Taking into account all the facts and circumstances and also bearing in

mind that the appellants are not previous convicts, I find it fit case where order of sentence can be modified.

34. Consequently, the order of sentence is modified. Instead of maintaining sentence of imprisonment, both the appellants are ordered to be released on probation on their furnishing probation bonds in the sum of ₹50,000/- each with one surety in the like amount for a period of one year with an undertaking not to commit such offence again and to maintain peace and tranquility during all this period, failing which they shall be called upon to receive the sentence and their appeal against the sentences shall also be deemed to have been dismissed.”

4. The only contention raised by counsel for the petitioner is against the benefit of release on probation having been extended to Joginder Singh, the husband. Counsel for the petitioner has relied upon order dated 14th of March, 2018 placed on record as Annexure P-1 claiming that Joginder Singh accused being a prior convict ought not have been granted the benefit of release on probation and the finding recorded *qua* him of not being a prior convict is against the record.

5. I have heard counsel for the petitioner and have gone through records of the case.

6. Perusal of the judgment passed by the Appellate Court would reveal that the Trial Court while extending the benefit of probation to the respondents/accused has recorded satisfaction w.r.t. circumstances of the case including the nature of the offence and the

character of the offenders and found that the accused were required to be extended the benefit of release on probation.

7. Law w.r.t. release on probation has been well explained by Apex Court in **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 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 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.”

8. Coming on to the plea raised by counsel representing the petitioner w.r.t. the Joginder Singh being a prior convict, the same is found to be misconceived. Annexure P-1 is an order passed by the Family Court whereby accused Joginder Singh has been sentenced to imprisonment as a mode of recovery and not on account of conviction. Thus, no fault can be found with the finding recorded by the Lower Appellate Court w.r.t. Joginder Singh being not a prior convict.

9. In view of settled proposition of law laid down by the Apex Court in **Ishar Das v. State of Punjab** (supra), this Court is satisfied that the Appellate Court granted benefit of probation to the respondents on opinion formulated as required by law. There is no legal infirmity in the discretion exercised by the Appellate Court that would warrant interference by this Court while exercising revision jurisdiction under Section 401 Cr.P.C. which stands culled out 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 : Patalapathi Narayana Gajapathi Raju and others v. Bonapalli Peda Appadu and another** and **AIR 1968 Supreme Court 707 : Mahendra Pratap Singh v. Sarju Singh**).”

10. Thus, taking into consideration the facts and circumstances

of the case and in view of the ratio of law laid down by the Apex Court in **Bindeshwari Prasad Singh's case** (supra), no case for exercising revisional jurisdiction is made out.

11. Consequently, the present revision petition is dismissed.

August 22, 2023	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No