

CRR-3537-2018 (O&amp;M)

217

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

CRR-3537-2018 (O&amp;M)

Date of decision: September 01, 2023

Anand Parkash Kalra (deceased) through his LRs

....Petitioners

versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** None for petitioners.

Mr. Karan Garg, AAG Haryana.

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**ARUN MONGA, J. (ORAL)****CRM-37827-2018**

For the reasons stated in application, same is allowed. Delay of 138 days in filing revision petition is condoned, subject to all just exceptions.

**Main case (O&M)**

Revision herein is for setting aside impugned order dated 02.02.2018 passed by learned Additional Sessions Judge, Hisar and to restore judgment/ order dated 11.11.2013/ 13.11.2013 passed by learned Sub-Divisional Judicial Magistrate, Hansi, District Hisar. Vide impugned order dated 02.02.2018, learned Additional Sessions Judge, Hisar partly allowed the appeal preferred by respondent No.2-accused against aforesaid judgment/ order of learned SDJM, Hansi while *inter alia* setting aside order of sentence dated 13.11.2013 and ordered to release respondent No.2/ accused on probation on furnishing personal bonds of peace and good behavior for a period of one year in the sum of Rs.25,000/- with one surety in like amount.

2. Succinct factual background, as noted in the judgment of trial Court, reads as under:-

*“2. Briefly stated the facts of complaint are that the accused Ram Parkash sold land measuring 13 Marla i.e. 400 Sq. Yards being 40/93 share of 1 Kanal, 11 Marla, bearing Khasra No. 1238//1/2/2 as per Jamabandi for the year 1997-98, situated near Baba Banda Bahadur School, Hansi. Vide registered sale deed No. 588, dated 19.05.2003, for a sum of Rs.60,000/- and its possession was also delivered. The accused Ram*

*Parkash did not tell the complainant before the agreement on the time of registration of sale deed that he and his wife Smt. Satya Rani had already mortgaged the entire land of said Khasra No. with State Bank of India, Hansi, in the year 1987 and had taken a loan on the said land. The accused did not disclose the factum of mortgaging the said land with State Bank of India, Hansi, in order to grab his money and to cheat him and received Rs.60,000/- from the complainant deliberately in order to cheat him. The complainant came to know about the mortgage deed of the said land when State Bank of India, Hansi, had filed a civil suit titled a 'State Bank of India vs. M/s Shiv Shakti Tin Products'. Which was decided on 3.11.2001 by the Court of Shri J. B. Gupta, the then Addl. Civil judge (Sr. Divn.), Hansi, and the proceedings of auction of the land were initiated. Earlier to this, complainant was not aware of such cheating as committed by the accused Ram Parkash and thereafter he moved a complaint to Deputy Superintendent of Police, Hansi but no action was taken thereon. Hence, the present complaint that accused has committed an offence punishable under Section 420, 463, 464, 465, 468 IPC."*

3. It is averred in the revision that respondent No.2/ accused cheated the petitioners/ complainant for an amount of Rs.60,000/- received on account of sale of land measuring 13 Marla i.e., 400 Sq. Yards being 40/ 93 share of 1 Kanal, 11 Marla, bearing Khasra No.1238//1/2/2 as per Jamabandi for the year 1997-98, situated near Baba Banda Bahadur School, Hansi, vide sale deed No.588 dated 19.05.2023, which in actual, was already mortgaged with the State Bank of India by respondent No.2 and his wife. Petitioners came to know of the same when a Civil Suit preferred by the State Bank of India was decided and proceedings of auction of land in question were initiated. It is further asserted that learned trial Court had rightly convicted respondent No.2 accused under Section 420 of IPC, vide judgment dated 11.11.2013 and sentenced him, vide order of sentence dated 13.11.2013, to undergo simple imprisonment for a period of 01 year and to pay fine of Rs.1,000/-; in default of payment of fine, to further undergo simple imprisonment for 20 days.

3.1. It is further averred that aggrieved against aforesaid judgment/ order, respondent No.2 preferred an appeal before learned Additional Sessions Judge, Hisar, which was allowed vide judgment dated 09.06.2015 and respondent No.2 was acquitted of the charge leveled against him.

3.2. It is averred that petitioner challenged the aforesaid judgment dated 09.06.2015 of acquittal before this Court vide CRA-S-187-2016, which was partly allowed vide judgment dated 21.12.2016 and the judgment/ order dated 09.06.2015 was

quashed and set aside, and appellate proceedings were remanded to the lower Appellate Court for fresh hearing and disposal according to law.

3.3. Pursuant thereto, vide impugned judgment 02.02.2018, learned first Appellate Court partly allowed the appeal of respondent No.2 while *inter alia* setting aside order of sentence dated 13.11.2013 and ordered to release respondent No.2/ accused on probation on furnishing personal bonds of peace and good behavior for a period of one year in the sum of Rs.25,000/- with one surety in like amount.

4. I have perused the submissions in the revision and perused the record.

5. Judgment dated 02.02.2018 to the extent of upholding the conviction has not been impugned.

6. Adverting to the release of respondent No.2 on probation of good conduct, impugned herein, learned Appellate Court gave following reasoning:

“16. *The learned Advocate for the appellant submitted that the appellant is an old aged person. He is not a habitual offender. The execution of alleged sale deed was a result of bilateral mistake. Since the appellant is sole bread earner of the family, his case should be considered for releasing him on probation. This submission made by the learned Advocate for the appellant is worth merit. Section 361 of the Criminal Procedure Code lays down that*

**361. Special reasons to be recorded in certain cases -** *Where in any case the Court could have dealt with –*

*(a) an accused person under Section 360 or under the provisions of the Probation of offenders Act, 1958, but has not done so, it shall record in its judgment the special reasons for not having done so.*

*Section 4 of the Probation of Offenders Act, 1958 lays down that where a person could be considered for release on probation if the offence committed by him is not punishable with death or imprisonment for life. Section 468 of Indian Penal Code prescribes a maximum punishment which may extend to seven years on imprisonment. Therefore, the conjoint reading of Section 4 of Probation of offenders Act and Section 361 of Criminal Procedure Code makes it is very clear that the Court is bound to consider the case of convict for probation if the offence alleged against him is not punishable with death or imprisonment for life. In the present case, the learned lower Court considered the case of the appellant for probation but did not release him on probation. However, the learned lower Court was under an obligation to pass a speaking order as to why the appellant was fit to be released on probation. Reliance in this regard is placed on **Daljit Singh and others Versus State of Punjab, (2006) 6 SCO 159** and **RameshDass Versus Raghunath and others (2008) 4 SCC 588**. Since the appellant is an old aged man, he is not a habitual offender and he has no criminal antecedents, and the matter between the parties is more of a civil nature than criminal, this Court is of the view that the present case was a fit case where the appellant was entitled to the benefit of probation.*

17. *In the light of above discussion, the order on sentence dated 13.11.2013 passed by the learned lower Court is liable to be set aside and*

*the appellant is entitled to be released on probation on furnishing bonds of peace and good behaviour with one surety in the like amount. The Point of Determination - II is accordingly decided in favour of the appellant.”*

7. Probation of Offenders Act, 1958 (for short “Act”) was enacted in order to save offenders in appropriate cases from being habitual offenders by providing them with a chance to reform rather than dumping into jails. For ready reference, Section 4 of Act is reproduced herein below:

**“Section 4 of The Probation of Offenders Act, 1958**

*4. Power of court to release certain offenders on probation of good conduct.—*

*(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 behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.*

*(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.*

*(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.*

*(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.*

*(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.”*

8. There is no gainsaying that the relevant statutory provisions and the principles underlying and pertaining to release of offenders on probation, instead of

straightaway sentencing them, need to be kept in mind by the Courts while passing sentencing orders.

9. Objectives and principles of criminal law as envisioned in the provision *ibid*, apart from deterrence against committing crime against society, are inter-alia focused on the reformation of offenders, which inheres the concept of probation. Modern criminal justice system often aims to balance punishment with rehabilitation, emphasizing the potential for positive change in individuals who have committed crime. The goal of criminal law extends beyond mere punishment. While punishment serves to deter and hold individuals accountable for their actions, there is a growing recognition of the importance of addressing the underlying factors that contribute to criminal behaviour. This perspective emphasizes the potential of offenders to reform and reintegrate into society as law-abiding citizens. Probation is one of the mechanisms used to achieve this reformation objective. In certain cases, certain offenders may be asked to remain under community supervision rather than being incarcerated. During such probation period, the offender can be put to follow certain conditions, such as regular reporting to a probation officer, participating in counselling or treatment programs and maintaining employment or education. The aim is to provide support, guidance and opportunities for the offender and to address the root causes of their criminal behaviour and develop positive life skills. Close monitoring and guidance provided during probation can help the offender make positive changes in their life and reduce the likelihood of reoffending.

9.1. Overall, the concept of focusing on reformation and using alternatives to imprisonment, such as release on probation, reflects a more holistic approach of criminal justice that takes into account the potential for positive change and the overall betterment of both the individual and society.

10. I need not labour all over again as issue involved herein has already been dealt with by me in similar case bearing CRM-A-38-MA-2017 titled Nasri Vs. State of Haryana. For ready reference, relevant portion of the aforesaid judgment is reproduced herein below:

*“Probation can thus also be termed as an alternative form of punishment envisaged within the criminal justice system. In my opinion, following*

*principles or what can be termed as potential benefits of release on probation ought to be kept in mind by the learned sentencing Courts below for exercise of judicial discretion to grant probation, provided a deserving case is made out.*

- a) **Nature of the Offense:** The severity and type of offense committed by the individual are important considerations. Less serious offenses, such as non-violent crimes or violent but arising out of self defense or first time offenses, might make an individual more eligible for probation.*
- b) **Individualized Justice:** Before grant of the benefit of release on probation, one has to take into consideration the individual circumstances of the offender viz., the nature of the crime vis-a-vis the potential for positive change. It allows for tailored sentencing that considers the unique needs and characteristics of the offender, promoting a more just and proportionate response to the offense.*
- c) **Criminal History:** A convict's prior criminal history must be assessed to determine if they have a pattern of repeat offenses. A history of violent or serious crimes might make an individual less likely to be granted probation.*
- d) **Rehabilitation Potential:** The offender's willingness and potential to rehabilitate play a significant role. If there's evidence that the individual is committed to changing their behavior, participating in counseling, and addressing the underlying causes of their criminal activity, they ought to be considered for probation.*
- e) **Compliance with Probation Terms:** Convicts on probation are required to follow specific conditions, such as regular reporting to a probation officer, avoiding criminal activity, and attending counseling or rehabilitation programs. A person's willingness and ability to comply with these terms would influence their eligibility for probation.*
- f) **Preventing Recidivism:-** Probation, as an alternative to incarceration, can indeed help prevent first-time offenders from becoming habitual or "hardened" criminals. By providing rehabilitation and support services, probation aims to address the underlying factors that contribute to criminal behaviour, giving offenders a chance to change their ways.*
- g) **Community Ties:** An assessment of offender's ties to the community, such as family, employment, and stable housing ought to be carried out. Strong community ties can indicate a support system that can help prevent further criminal activity.*
- h) **Risk to Public Safety:** The safety of the community is a crucial factor. Assessments are made to determine whether releasing an individual on probation poses a low risk of committing new offenses or harming others.*
- i) **Reducing Overcrowding:-** Probation can help alleviate the overcrowding of jails and prisons. Non-violent offenders who are eligible for probation can be kept under community supervision, freeing up space in correctional facilities for more serious offenders.*
- j) **Promoting productivity:-** By allowing offenders to remain in the community and engage in productive activities such as work, education, or community service, probation can contribute to making them productive members of society. This, in turn, can lead to them contributing as taxpayers instead of being a burden on the State.*

- k) **Second chance and Reformation:-** Probation offers a second chance to offenders by allowing them to avoid imprisonment and providing an opportunity for reformation. Through counselling, treatment, and supervision, offenders can address the root causes of their criminal behaviour and work towards positive change.*
- l) **Reintegration into Society:** Probation allows offenders to maintain ties with their families, jobs and communities, which can enhance their chances of successful reintegration after their sentence. This reduces the likelihood of recidivism and helps break the cycle of criminal behaviour.*
- m) **Compensation to the aggrieved:** Court can even ask the offender to pay compensation (by way of penalty) to the aggrieved person as means of retribution or penance as a pre condition of release on probation.*
- n) **Probation Officer Assessment:** Probation officer may be asked by a court to conduct an assessment of the offender to gather information about their background, behavior, and potential for rehabilitation. Such an assessment would help take an informed decision regarding probation.*
- o) **Judicial Discretion:** In the end, depending on facts and circumstances of the case, it is the discretion of court to determine whether to grant probation. It shall consider all relevant factors and balance the interests of rehabilitation, public safety, and justice in the decision-making process. The goal of probation is to offer an alternative to incarceration that addresses the individual needs of the offender while maintaining public safety.”*

11.           Keeping the aforesaid in mind, I am thus of the view that the release of the convict/respondent No.2 herein on probation, as in the present case, can indeed serve the dual purpose of deterrence and reformation. By allowing release on probation, the aim herein is to deter his future criminal conduct, while also providing an opportunity for reform and rehabilitation.

12.           In the premise, instant revision petition is hereby dismissed.

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

(ARUN MONGA)  
JUDGE

September 01, 2023  
mahavir

Whether speaking/reasoned:           Yes/No

Whether reportable:                    Yes/No