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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 12.01.2023

Pronounced on: 17.01.2023

+ **CRL.REV.P. 854/2018**

PARMOD KUMAR KUSHWAHA Petitioner

Through: Mr. Harish Gaur, Advocate

versus

STATE OF DELHIRespondent

Through: Mr. Manoj Pant, APP for State
with SI Giriraj, P.S. Kamla
Market.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been preferred against the impugned judgment dated 05.09.2018 passed by learned Special Judge, CBI (PC ACT) – 06, Central District, Tiz Hazari Courts, Delhi ("Appellate Court") in Criminal Appeal No. 265/2017 titled as "*Pramod Kumar Kushwaha vs State of NCT of Delhi*", and also against the judgment dated 29.06.2017 and order on sentence dated 24.11.2017 passed in the case titled as "*State of Delhi vs Pramod Kumar Kushwaha*" by learned Metropolitan Magistrate,

Central District, Tiz Hazari Courts, Delhi (“Trial Court”) in Case No. 293117/2016, arising out of FIR bearing No. 14/2003 registered as Police Station (“PS”) for offences punishable under Section 304-A of the Indian Penal Code (“IPC”).

2. The brief facts of the case are that on 09.01.2003 at about 10:50 pm, the present petitioner, i.e., Parmod Kumar Kushwaha, along with his colleague technician Inder Mani Sharma (deceased), during the work allotted to them by their company, had reached at Ground Floor, Minto Road Hostel, Block No.1, Delhi, to repair the defective lift no.1. While the petitioner had gone to the machine room on the 12th floor of the hostel building, Inder Mani Sharma had stayed at the ground floor and was in the lift shaft trying to find fault in the lift. The petitioner had suddenly put the lift in motion without giving prior intimation to his colleague, who was trapped in the lift shaft and as a result, he had lost his life due to rash and negligent behaviour of the petitioner. After the completion of the investigation, charge sheet was filed, and charges under Section 304-A IPC were framed against the petitioner.

3. The learned Trial Court *vide* judgement dated 29.06.2017 had convicted the petitioner under Section 304-A IPC and vide order dated 24.11.2017, had sentenced him to undergo rigorous imprisonment for two years and to pay compensation of Rs 1,40,000/- to the legal heirs of the deceased equally under section 357(3) Cr.P.C, and in default to undergo further rigorous imprisonment for six months. Benefit of probation was denied to the convict.

4. Aggrieved by the order of conviction and sentence passed by the learned Trial Court, the petitioner had preferred an appeal. The Appellate Court *vide* judgement dated 05.09.2018, while upholding the conviction under Section 304-A IPC, reduced the petitioner's sentence from two years of rigorous imprisonment to one year. However, the amount of compensation was ordered to remain the same, as well as the period of imprisonment in case of default thereof.

5. During the course of arguments, learned counsel for the petitioner stated that he is not pressing his petition as far as conviction under Section 304-A IPC is concerned. However, it was stated that the order of sentence be modified, and the petitioner be granted benefit of probation. It is argued that the petitioner belongs to a respectable family consisting of his wife, who is a housewife, a son and a daughter. The petitioner's family is solely dependent on the petitioner. It is further stated that the petitioner has no previous criminal involvements.

6. Learned counsel for the petitioner submitted that the fine imposed by the learned Trial Court, i.e., Rs. 1,40,000/-, has already been paid to the legal heirs of the deceased as per order dated 24.11.2017 and the wife of the deceased has placed an affidavit on record that a payment of Rs 1,00,000/- has been received by her. Further, a copy of the receipt and order of the Trial Court regarding the deposit of Rs 40,000/- has also been placed on record. It is also submitted by the learned counsel for the petitioner that the petitioner is also suffering from various age-related ailments and has

undergone surgeries. It is stated that the petitioner is a first-time offender and is entitled to be considered for grant of probation. Further, reliance has also been placed on Sections 3 and 4 of the Probation of Offenders Act, 1958.

7. *Per Contra*, learned APP for the State opposes the prayer of the petitioner and contends that no benefit of probation be given to the petitioner. It is stated that impugned order on sentence passed by learned Appellate Court deserves no interference.

8. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent and have gone through the material on record. Since the learned counsel for petitioner had restricted his arguments to the point of order on sentence and grant of benefit of probation, this Court shall not go into the merits of the case qua the conviction of the petitioner under Section 304-A IPC.

9. The relevant portion of the order on conviction dated 24.11.2017 passed by the learned Trial Court is as under:

“5. I have given my thoughtful consideration to the rival contentions. In the present case, accused Parmod Kumar is convicted for offence under section 304-A IPC for causing death of his fellow colleague due' to his negligence. He was himself a trained technician and he is not expected to be so grossly negligent while performing his duties. It is also established that even after the incident, when lift operator informed him about the incident, he ran away from the spot without even trying to do any rescue work. Family of deceased has suffered irreparable loss. Considering the totality of circumstances and submissions made; I do not find it a fit case for grant of probation. Application dismissed.

6. In the facts and circumstances of the case, convict Parmod, Kumar Kushwaha is sentenced to undergo simple imprisonment for a period of two years for offence us 304A IPC. Convict is further ordered to pay compensation amount of Rs. 1,40,000/- (Rupees one lakh and forty thousand only) to the aforesaid legal representatives of the deceased W/s, 357(3) Cr.P.C(aforesaid compensation payable by accused shall be equally distributed among all the aforesaid seven legal representatives of deceased). In default of payment of compensation, convict shall undergo further simple imprisonment for a period of six months. Benefit of section 428 Cr.P.C is given to the convict and any previous imprisonment suffered by him in this case shall be set off against the substantive period of imprisonment imposed on him”.

10. The relevant portion of the order on sentence dated 05.09.2018 passed by the learned Appellate Court, modifying the sentence of the petitioner, is as under:

“29. On examining. the impugned judgment, I find that 'judgment is well written and supported with due 'reasoning. The facts and evidence have been appreciated in a proper and logical manner. There is no reason to interfere with the judgment of Ld. Magistrate. I therefore, uphold the judgment of conviction dated 29.06.2017.

30. Coming to the issue of sentence, the appellant/accused has been awarded imprisonment for a period of two years besides compensation. Considering that appellant/accused is 46 years of age, sole bread winner of his family consisting of his wife and two children, and that he has already faced ordeal of trial for a period of 14 years, I feel that it would meet the ends of justice, if sentence of imprisonment is reduced and accordingly, I reduce the sentence of imprisonment to one year. The amount of compensation would remain the same. as also the period of imprisonment in case of default”.

11. The issue for consideration before this court is that whether the petitioner is entitled to get benefit of probation as provided under Sections 3 and 4 of the Probation of Offenders Act, 1958.

12. The power has been given to the Courts under Sections 3 and 4 of the Probation of Offenders Act, subject to certain conditions, to release an offender convicted of an offence punishable with imprisonment for not more than two years, or with fine, or with both. By applying the relevant provisions of the Probation of Offenders Act, it is to be examined that whether the accused is likely to indulge in any crime based on his conduct and the probability of him being reformed and rehabilitated. This view was reaffirmed by the Hon'ble Supreme Court in ***Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460.***

13. Moreover, the purpose behind the enactment of Probation of Offenders Act was highlighted by the Hon'ble Apex Court in ***Lakhvir Singh v. State of Punjab, 2021 SCC Online SC 25*** as under:

“.....to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved....”

14. In the present case, the learned Trial Court had rejected the application for grant of probation filed by the petitioner herein. The learned Appellate Court, while upholding the petitioner's conviction

under Section 304-A IPC, modified the sentence and reduced it to imprisonment of one year along with compensation of Rs 1,40,000/- to be paid to the legal representatives of the deceased.

15. Admittedly, the fine of Rs 1,40,000/- has been paid by the petitioner to the legal heirs of the deceased. The petitioner had paid Rs 1,00,000/- to the wife of the deceased and further deposited Rs 40,000/- in court vide order dated 23.02.2019. It is the case of petitioner that his family is solely dependent on him and that the petitioner is also suffering from various age-related ailments and has undergone surgeries. Also, the petitioner is a first-time offender with no previous criminal records. The FIR in the present case pertains to the year 2003, and the petitioner has already faced trial and has gone through the whole judicial process for almost 20 years. Further, the petitioner had already remained in Judicial Custody for 34 days as of 08.10.2018, as per the nominal roll.

16. The provisions of the Probation of Offenders Act empower the courts to release the convict on good conduct, and the nature of the offence and the behaviour of the convict need to be taken into consideration while granting the probation. The grant of relief of probation under the said Act varies from case to case and thus needs to be scrutinized independently in each case. Considering the overall facts and circumstances of the case, this Court is of the opinion that the benefit of probation under Sections 3 and 4 of the Probation of Offenders Act, 1958, can be extended to the present petitioner. Therefore, the part of the order on sentence dated 05.09.2018 to the extent that the petitioner was sentenced to undergo simple

imprisonment of one year is set aside, and the petitioner is directed to be released on probation on furnishing of bond in the sum of Rs. 10,000/- (for keeping peace and good behaviour) with one surety of like amount for a period of two years, before the concerned Trial Court, within a period of two weeks of receipt of copy of this order. The petitioner shall remain under the supervision of the Probation Officer, Tis Hazari Courts, New Delhi, for two years and shall report before the Probation Officer once every month. In case the petitioner does not maintain good conduct during the period of probation, then he shall be liable to undergo the substantive sentence as awarded by the learned Appellate Court.

17. Since the conviction of the petitioner under Sections 304-A IPC was not challenged during the course of arguments, this Court has not interfered with the findings qua the same in the impugned judgment dated 05.09.2018.

18. Accordingly, the present revision petition is disposed of in the above terms.

19. A copy of this judgment be forwarded to the concerned Trial Court along with the Trial Court Record, for information and compliance.

SWARANA KANTA SHARMA, J

JANUARY 17, 2023/ kss