



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 177 OF 2023

Sadashiv Bhanudas Balgude,
Age 73 years, Occu. Agri.,
R/o. Balgude Vasti, Patewadi,
Taluka Karjat, District Ahmadnagar .. Applicant

Versus

1. Tukaram Mahipati Shinde,
Age: 58 years, Occu: Agri,
2. Ashok Tukaram Shinde,
Age: 31 years, Occu: Agri,
3. Shobha Tukaram Shinde,
Age: 53 years, Occu: Agri,
All above R/o. Patewadi, Taluka Karjat,
District Ahmednagar
4. The State of Maharashtra
Through Police Inspector,
Police Station Karjat,
Taluka Karjat, District Ahmadnagar .. Respondents

Mr. Shambhuraje V. Deshmukh, Advocate for Applicant;
Mr. Sudheer R. Zambare, Advocate for Respondents No.1 to 3;
Mr. A. S. Shinde, APP for Respondent No.4

CORAM : S. G. MEHARE, J.

DATE : 26-08-2024

PER COURT :-

1. Heard the learned counsel for the applicant/informant, the learned counsel for respondents No.1 to 3/accused and the learned A.P.P. for respondent No.4/State.

2. The applicant has challenged the impugned judgment and order of the learned Additional Sessions Judge, Shrigonda, passed

in Criminal Appeal No.39 of 2019, dated 19.04.2023, granting the benefit of section 4 of the Probation of offenders Act to release respondent No. 1 to 3/accused.

3. The facts of the case reveal that the accused/respondents No.1 to 3 were convicted for the offences punishable under Sections 324 and 323 read with Section 34 of the Indian Penal Code. The learned trial Court had rejected the prayer to extend the benefit under Section 4 of the Probation of Offenders Act, 1958 (for short, "the Act"). Since it was a conviction, the appeal was preferred before the learned Additional Sessions Court, Shrigonda. However, the learned Additional Sessions Judge, by impugned order granted the benefit of Section 4 of the Act to respondents No.1 to 3/accused.

4. The learned counsel for the applicant has vehemently argued that entire aspects which were reiterated before the Sessions Court refusing the benefit of the Act were considered by the learned trial Court. The trial Court has assigned the reasons for declining the benefit. In the circumstances, the learned Additional Sessions Judge could not have taken a different view. He ought to have considered that the offence was grave. For no reasons, the injured/complainant was mercilessly beaten. Respondents No.1 to 3 were aggressive. There were no

circumstances including nature of offence and character of respondents No.1 to 3 to extend the benefit under Section 4 of the Act. He submits that the order granting benefit to respondents/accused is contrary to the principles of law. Hence, it warrants interference.

5. The learned A.P.P. and the learned counsel for respondents/accused submit that as per Section 11 of the Act, the First Appellate Court and Revisional Court have power to extend the benefit under the Act. Section opens with obstante clause. Therefore, appellate or revisional Court has correctly invoked power to exercise power under Section 4 of the Act. They submit that the trial Court ought to have considered the report of the Probation Officer as provided Sub-Section (2) of Section 4 of the Act. Post-conviction conduct of the accused was specifically brought to the notice of the Court that they did not involve in the crime and they were living their normal life. Granting benefit does not prejudice the applicant. The Act has an object. Hence, the first Appellate Court has correctly granted the benefit of section 4 of the Act.

6. Perused the impugned judgment and order.

7. The report of the Probation Officer was called. The Probation Officer, on making inquiry, expressed his opinion that it

was the fit case to grant benefit of the Act. Post-conviction conduct of the applicants/accused was specifically mentioned in the report. They were living their normal life and not involved in any other crime. The learned First Appellate Court considered the facts, nature of the offences as well as character of the offenders and granted benefit of Section 4 of the Act.

8. The Act has been enacted for rehabilitation purpose. It's object is to avoid imprisonment of the person covered by this Act, so as to give an opportunity to the offenders to reform themselves rather than turning into hardened criminals. As the object of the said Act is to avoid imprisonment of the person covered by the provisions of that Act, the said object cannot be set at naught by imposing a sentence of the fine which would necessarily entail imprisonment in case there is a default in the payment of fine.

9. The facts before the Court were that the contesting respondent was age old and sufferer from cancer. More particularly, the learned first Appellate Court has correctly appreciated the circumstances in which the incident happened. On the contrary, the trial Court was unknown to law and incorrectly observed that if the offender would be given the benefit, there would be a wrong message to the society. This is not a ground anywhere in the Act to deny the benefit under Section 4 of the

Act. However, under this Section, trial Courts are unnecessarily bothering the effects of granting probation. The Courts are bound by the provisions of the Law. They are expected to implement the provision of law and assist the system to achieve the object of the law. The Indian Criminal Jurisprudence is based on the theory of reformation. Reading the reasons of the learned First Appellate Court, the Court is satisfied that it has correctly exercised the power under Section 4 of the Act. Therefore, it does not warrant interference.

10. For the above reasons, Criminal Revision Application stands dismissed.

(S. G. MEHARE)
JUDGE

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