

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

110-2 cases
CRA-S-1776-SB-2003
Date of decision: 24.01.2024

Avtar SinghAppellant

Versus

State of Punjab Respondent

CRA-S-1781-SB-2003

Shavinder SinghAppellant

Versus

State of Punjab and another Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.S. Bains, Senior Advocate with
Mr. Aman Raj Bawa, Advocate
for the appellants in CRA-S-1781-SB-2003.

Mr. BD Sharma, Advocate
for the appellant(s) in CRA-S-1776-SB-2003.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

1. Both these criminal appeals arising out of a common judgment, are thus being decided together.
2. Challenge in the present appeal is to the judgment/order dated 05.09.2003, passed by the learned Special Judge, Kapurthala, whereby the appellants were convicted and sentenced to undergo rigorous imprisonment for two years alongwith fine of Rs.3,000/- and in default of payment of the same, to

further undergo rigorous imprisonment for one month for the offence under Section 7 of the Essential Commodities Act, 1955 (for short 'the Act').

3. Succinctly, the facts of the case are that on 28.07.1995, a raid was conducted on the premises of Chaheru Co-op. Agricultural Service Society, Chaheru by Narinder Singh, Fertilizer Inspector headed by ASI Karamjit Singh. Accused Shavinder Singh found there and stock of the fertilizer was lying in the premises of the said society. On asking of the purchase bill, he could not produce the same. Samples were taken and sealed, thereafter sent for examination.

4. After completion of investigation, notices under Section 7 of the Act were served to the accused-appellants by the trial Court.

5. The prosecution, in order to prove its case, examined as many as 5 witnesses. Thereafter, the statements of the accused-appellants were recorded under Section 313 Cr.P.C. whereby incriminating evidence was put to them, which they denied and pleaded innocence. In defence, they did not lead any evidence.

6. The trial Court came to the conclusion that prosecution has proved its case, and accordingly convicted and sentenced as mentioned in para No.2 above.

7. Aggrieved accused-appellants are before this Court.

8. Learned counsel for the appellants, at the outset, give up the challenge to the appeals on merits and prays for extending the benefit of probation in view of the facts that they are the sole breadwinners of their respective families; the incident pertains to the year 1995; first time offenders and never misused the concession of bail granted to them.

9. Learned State counsel submits that after appreciating the evidence led by the prosecution, the trial Court has rightly convicted the accused-appellants.

Thus, he prays for the dismissal of the present appeal. He, however, affirms the factum of non-involvement of the appellants and misused the concession of bail granted to them.

10. Heard the learned counsel on either side and perused the record.

11. Evidently, the trial Court had thoroughly examined the evidence and categorically recorded that the bags containing fertilizers, the details whereof, were given in the complaint, were lying in the premises of accused No.1. As per the report of the Chemical Analyst, the fertilizer contained therein was found to be spurious and non-standard. Thus, there is no scope for interference in the findings recorded and conclusion arrived at by the trial Court. As such, the conviction of the appellants is affirmed.

12. As regards the prayer made on behalf of the appellant is concerned, it would be apposite to make a reference to Section 4 of the Probation of Offenders Act, 1958, which reads thus:

“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.”

13. It would be worthwhile to refer to the judgment of **Ratan Lal vs. State of Punjab**, AIR 1965 SC 444, whereby Hon’ble the Supreme Court, regarding the purpose and object of ‘The Probation of Offenders Act, 1958’ had observed and held that, “The Act 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 condition laid down in the appropriate provision 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 Ss. 3 and 4 of the Act.”

14. Hon’ble the Supreme Court in **Sitaram Paswan and Anr. vs. State of Bihar**, AIR 2005 SC 3534, observed that benefit of probation can be extended at the appellate or revisional stage as well, and held that, “For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of

Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India.”

15. A gainful reference can be made to **Harivallabha vs. State of M.P.**, (2005) 10 SCC 330, and **Dhurukumar vs. State of Maharashtra**, (2017) 9 SCC 411, wherein the respective accused were convicted and sentenced under Section 7 of the Essential Commodities Act, 1955, Hon’ble the Supreme Court considering that they were first time offenders and ought to have been granted the benefit under Section 360 CrPC, released them on probation.

16. Hon’ble the Supreme Court in **Tarak Nath Keshari v. State of West Bengal**, 2023(2) Law Herald (SC) 1391, by observing that even if a minimum sentence is provided in the Essential Commodities Act, 1955, the same will not be a hurdle for invoking the applicability of provisions of the Probation of Offenders Act, 1958 and released the appellant on probation, while considering the fact that the act was committed more than 37 years and he was not involved in any other offence. Similarly in **Naresh Kumar vs. State**, 2001 SCC OnLine Del 557, a case relating conviction under the Essential Commodities Act, 1955, it was held by the High Court that the accused deserved the benefit of probation under Section 4 of the Probation of Offenders Act, 1958, especially in view of the fact that he had

suffered the agony of trial lasting for about five years; the offence was of a technical nature; not a previous convict and also the offence committed by him was not one punishable with life imprisonment.

17. In **Satish vs. State of U.P.**, (2021) 14 SCC 580, Hon'ble the Supreme Court had observed that, "Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free roaming criminals creating havoc in the lives of ordinary peace loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first time offenders ought to be liberally accorded a chance to repent their past and look forward to a bright future. [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112]".

18. Humanistically viewing, the appellants having suffered the ignominy of trial since long; successfully warded off their crime-proneness-an evident learning of a lesson; their socio-economic circumstances, this Court finds extenuation to be implicit. Thus, to strike a balance and serve the interest of justice, the appellants deserve to be granted an opportunity to assure the authorities of their reformation. They be released on probation for a period of one year, on the following conditions as enshrined under Section of the Probation of Offenders Act, 1958:

- (1) They shall execute a bond for good behaviour with two solvent sureties in a sum of Rs.10,000/- each which shall be executed before the trial Court within a period of one month from today.
- (2) The said bond shall be in force for a period of one year.
- (3) They shall be subject to the supervision of the Probation

Officer and subject to the conditions laid down in the Probation of Offenders Act.

- 19. It is clarified that in case there is any breach of the aforesaid conditions, the defaulter-appellant(s) will forthwith be taken into custody and shall have to undergo the sentence awarded to them by the trial Court.
- 20. Appeals stand disposed of accordingly.
- 21. A photocopy of this order be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

24.01.2024

Hemant

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No