



CRR No. 711 of 2011 (O&M)
Date of decision: 20.05.2024

...Petitioner

...Respondent

Mr. Neeraj Poswal, AAG, Haryana.

1. The instant revision petition had originally been filed by three petitioners, namely Kuldeep Singh, Nihal Singh and Parmeshwari, while challenging the judgment of conviction dated 21.05.2008 and order on quantum of sentence dated 23.05.2008, passed by the Court of learned Judicial Magistrate First Class, Hisar (*hereinafter referred to as 'the trial Court'*) in Criminal Case No. 332-I of 2001/2004, titled as ***State vs. Kuldeep Singh and others***, arising out of FIR No. 366 dated 22.08.2001, registered under Sections 498-A, 406, 506 read with Section 120-B of IPC at Police Station City Hisar, District Hisar, whereby all three of them were held guilty and convicted for commission of offence punishable under Section 498-A read with Section 120-B of IPC and were sentenced to undergo rigorous imprisonment for one year and six months respectively with default. They also challenged the

judgment dated 15.03.2011, passed by the Court of learned Additional Sessions Judge, Hisar (*hereinafter referred to as 'appellate Court'*) in Criminal Appeal No. 71 of 2008, titled as ***Kuldeep Singh and other vs. State of Haryana***, whereby the conviction of petitioner No. 1 Kuldeep Singh was maintained under Section 498-A of IPC and his conviction under Section 120-B of IPC was set aside, whereas the petitioner Nos. 2 and 3 were extended benefit of probation one year and were also directed to pay compensation to the tune of Rs.15,000/- each to the complainant.

2. It will be relevant to mention here that on 28.04.2011, in view of the statement given by learned counsel for the petitioners that he did not press the petition on behalf of petitioner Nos. 2 and 3, the same was ordered to be dismissed qua them. Learned counsel for petitioner No. 1 also did not press the grounds as taken in the revision petition and restricted his argument to the extent that benefit of probation be granted to petitioner No. 1 as well, and the compensation to be paid to the complainant could be enhanced. The petition was admitted on 28.04.2011. The sole consideration before this Court is as to whether the prayer made by the petitioner for extending benefit of probation can be accepted or not?

3. As mentioned above, the petitioner No. 1 had been held guilty by the trial Court for commission of offences punishable under Sections 498-A and 120-B of IPC. However, the appellate Court maintained his conviction only for commission of offence punishable under Section 498-A of IPC and upheld the order of the trial Court, whereby he was awarded the rigorous imprisonment for a period of one year and to pay fine to the tune of Rs. 5,000/- and in default of payment of fine, to further undergo simple

imprisonment for a period three months. Much water has flown since then. The present revision petition is pending since the year 2011. The petitioner No. 1 is facing rigours of litigation from the last more than 14 years. The petitioner has already undergone actual imprisonment a period of 01 month and 18 days and in the intervening period, he is not involved in any other criminal case. He is leading happy and peaceful life with his family. Hence, learned counsel for the petitioner has urged that the petitioner is entitled to the benefit of probation.

4. The victim/respondent No. 2 Kiran Bala was impleaded as respondent No. 2 in this petition, vide order dated 28.04.2011 and notice was issued to her but there is no representation on her behalf. Vide same order, she was compensated with Rs. 30,000/- by the petitioner on the direction of this Court while enlarging petitioner on bail. Learned State counsel has no serious objection to the limited prayer made by the petitioner.

5. Before considering the prayer made by the petitioner to release him on probation, let us have a look on the law on this point. The aims and object of the Probation Act came to be decided by Hon'ble Apex Court in case ***Jugal Kishore Prasad v. State of Bihar, 1972 AIR (SC) 2522***. Hon'ble Supreme Court while considering the scope of the Probation Act had held as under:-

"The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo

imprisonment in jail. The above object is in consequence with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals."

6. Reliance can also be placed upon *Isher Das v. State of Punjab*, *AIR 1972 Supreme Court 1295* and *Arvind Mohan Sinha v. Amulya Kumar Biswas and others*, *1974 AIR (SC) 1818*, wherein Hon'ble Supreme Court had taken the similar view. Relevant paragraph of Arvind Mohan Sinha's case (supra) reads as under:-

"The Probation of Offenders Act is a reformatory measure and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attached to convicts often render the remedy worse than the disease and the year purposes of punishment stands in the danger of being frustrated. In recalcitrant cases punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime. But the novice who strays into the path of crime ought, in the interest of society, be treated as being socially sick. Crimes are not always rooted in criminal tendencies and their origin may lie in psychological factors induced by hunger, want and poverty. The Probation of

Offenders Act recognises the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the offender can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a convict who, after a jail term, is apt to think that he has no more to lose or fear may breed a litter of crime. The object of the Probation of Offenders Act is to nip that attitude in the bud. Winifred A Sikin describes probation as a system which provides a means of re-education without the necessity of breaking up the offender's normal life and removing him from the natural surroundings of his home. (English Juvenile Courts (1938) page 162) Edwin R. Sutherland raises it to a status of a convicted offender. (Principles of Criminology, 4th Edn. (1947) page 383)."

7. In view of the ratio of law as laid down in aforecited judgment, the question that arises before this Court is that as to whether the petitioner is entitled to the benefit of probation or not ? In the considered opinion of this Court, the answer to this question must be in the affirmative.

8. The object underlying the provisions of Sections 4 and 6 of the Probation of Offenders Act, 1958 (*for brevity "the Probation Act"*) and Sections 360 & 361 of Cr.PC, is that the first offenders be not sent to jail for the commission of less serious offences, on account of grave risk to their attitude to life to which they are likely to be exposed as a result of their association with the hardened and habitual criminal inmates of the jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly cause more harm than to reform them, and for that reason, it would perhaps also be to an extent prejudicial to the larger interests of the society as a whole. Perhaps that was

the reason that the mandatory injunction against imposition of sentence of imprisonment has been embodied in Section 6 of the Probation Act. This mandate is inspired by the desire to keep the young delinquent/first offenders away from the possibility of association or close contact with hardened criminals and their evil influence. Therefore, these beneficial provisions have to be liberally construed.

9. The sole intention of the legislature in passing probation laws is to give person of a particular type of chance of reformation, which they would not get if sent to prison. The types of persons, who are in the contemplation of the legislature under the probation law are those who are not hardened or dangerous criminals, but those who have committed offences under some momentary weakness of character or some tempting situation. By placing the offender on probation, the Court saves him from the stigma of jail life and also from the contaminating influence of hardened prison inmates. Probation also serves another purpose, which is quite significant though of secondary importance. It helps in eliminating overcrowding in jails by keeping many offenders away from the prison. Section 360 Cr.P.C. deals with order to release the accused on probation of good conduct or after admonition, whereas Section 361 Cr.P.C. provides *that "where in any case the Court could have dealt with an accused person under Section 360 or under the provisions of the Probation Act, but has not done so, it shall record in its judgment the special reasons for not having done so."*

10. Therefore, the conjoint and meaningful reading of the beneficial provisions of the Probation Act would reveal that non-obstante clause contained in Section 4 that points to the conclusion that the provisions of this

Section would have overriding effect, shall prevail if the conditions described therein are fulfilled. Meaning thereby, the Court has the ample power to release the first offender of minor offences on probation, keeping into focus the nature & manner of the crime, age of the offender, other antecedents and attending circumstances of the offence instead of committing him to jail.

11. Likewise, Section 4 of the Probation Act postulates that 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 the 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. The learned State counsel has acknowledged the factual matrix of the case and legal position.

12. In view of the discussion as made above and also considering the attendant facts and circumstances of the case, the petitioner is granted benefit of probation on the following grounds :

- i) The marriage of petitioner was solemnized with the daughter complainant on 26.12.2000.
- ii) The petitioner has already undergone the actual sentence of 01 month and 18 days.

- iii) Two co-accused, namely Nihal Singh and Parmeshwari, had been extended the same benefit by the appellate Court.
- iv) He has sufficiently compensated the victim by paying her an amount of Rs. 30,000/-.
- v) He is a first offender and there is no history of his previous conviction.
- vi) The antecedent and credentials of the petitioner are such that he has not been found involved in any other case.
- vii) There is no legal impediment to release him on probation.
- viii) Even the modern trend of penology also leans towards the reformation of the offender, so as to make him a useful citizen of the society. No useful purpose was going to be achieved by again sending the petitioner-convict to jail.

13. Therefore, taking into consideration the agony and trauma, which the petitioner has undergone during protracted trial, appeal, revision, his antecedent, nature of offence, totality of other facts & circumstances emanating from the record, I am of the considered opinion that no useful purpose would be served by sending him again into jail to serve out the remaining period of sentence and instead of sending him to prison, he be released on probation. Accordingly, it is directed that petitioner be released on probation on his furnishing personal bond (within one month) in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the conditions that he would keep the peace and be of good behaviour, for a period of one year from the date of passing of this order and shall disclose his present address and phone number before the trial Court in the form of an affidavit at the time of furnishing bonds. Needless to mention that in case, he is found to be indulged in any illegal activities, the sentence awarded to him by the appellate Court shall stand revived.

14. As such, the instant revision petition is hereby dismissed on merits and the impugned judgment of conviction & order of sentence of fine are maintained. However, the order of sentence is accordingly modified to the extent and in the manner depicted herein above.

15. Needless to mention that natural consequences & compliance will follow accordingly.

20.05.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>