

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

104+202

CRR-803-2011(O&M)

Date of order: 03.05.2024

Charanjit Kaur @ Parminder Kaur

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Mansur Ali, Advocate
Mr.Tushaar Madaan, Advocate
for the petitioner.

Ms. Aakanksha Gupta, AAG Punjab.

Mr. Jagjit Singh, Advocate
for respondent No.2.

Nidhi Gupta, J.

CRM-18920-2011

This is an application under Section 482 Cr.P.C. for exemption from filing certified copies of judgment dated 30.07.2007 passed by learned Judicial Magistrate, 1st Class, Phagwara; and Grounds of Appeal before Sessions Judge, Kapurthala dated 31.08.2007.

After going through the contents of the application, which is supported by affidavit of the applicant/petitioner, the same is allowed subject to all just exceptions.

CRM-29859-2022

This is an application under Section 482 Cr.P.C. for bringing on record additional evidence Annexure A1 to A3 (Medical Reports).

After going through the contents of the application, which is supported by affidavit of the applicant/petitioner, the same is allowed subject to all just exceptions; and Annexure A1 to A3 are taken on record.

MAIN CASE

Challenge in the present petition filed by the wife is to the judgment dated 16.12.2010 passed by learned Additional Sessions Judge, Kapurthala, whereby judgment of conviction dated 30.07.2007 passed by learned Judicial Magistrate, 1st Class, Phagwara, in case FIR No.8 dated 08.01.2002 registered under Sections 498-A, 406 and 120-B IPC at Police Station Sadar Phagwara, has been modified.

2. Learned counsel for the petitioner inter alia submits that the petitioner/complainant was married to respondent No.2 on 04.12.1994, according to Sikh rites. Due to matrimonial differences, the petitioner was constrained to file the above said FIR against her husband/respondent no.2 and his parents. Upon trial, respondent no.2 was convicted and sentenced to 1 year imprisonment. However, in appeal filed by the respondent No.2, learned Appellate Court has passed the impugned order dated 16.12.2010.

3. Learned counsel for the petitioner vehemently submits that the impugned order dated 16.12.2010 deserves to be set aside in view of the fact that, although the learned Appellate Court has upheld the conviction of the accused, however, has modified the sentence to the extent that in case respondent No.2 deposits Rs.2,50,000/- within one month, then he will be allowed to furnish probation bond under Section

4(1) of the Probation of Offenders Act, 1958 (hereinafter referred to as “the Act”); and it was further ordered that respondent No.2 be released on probation under Section 4(1) of the Act on his furnishing personal bond in the sum of Rs.25,000/- with one surety in like amount for a period of one month, undertaking to keep peace and be good behaviour for a period of one year and to appear in the Court as and when called upon the by Court to undergo the remaining sentence during this period.

4. Learned counsel submits that the learned Appellate Court has exceeded its jurisdiction in passing the judgment dated 16.12.2010. It is submitted that merely because the accused is in Government job does not constitute a ground to grant him the benefit of probation. In the facts and circumstances of the case, a lenient view could not have been taken, as the accused have ruined the life of the petitioner. In actual fact, maximum sentence ought to have been awarded to the accused. It is contended that the impugned order has been passed without application of mind and without citing any justifiable reason.

5. Learned counsel refers to the provision of Section 4(1) of the Act and submits that it has been stipulated therein that while granting probation, it is mandatory to keep in mind the “nature of the offence” and “character of the offender”. It is contended that in the present case, the impugned judgment shows that both factors have not been considered by the learned Appellate Court. In support, learned counsel relies upon the judgments of the Hon’ble Supreme Court in **“Nilgiris Bar Association Vs. T.K. Mahalingam”** Law Finder Doc ID # 39773, 1998 AIR (SC) 398, and in

“Mohd. Hashim Vs. State of U.P. & Others” Law Finder Doc ID # 813129, 2017 (2) SCC 198.

6. Per contra, learned counsel for respondent No.2/husband submits that in compliance of directions of the learned Appellate Court, respondent No.2 had duly deposited the amount of Rs.2,50,000/- within the stipulated period. It is submitted that probation was granted to respondent No.2 in the year 2010 and till date, there is no other case against him. In support, learned counsel relies upon judgment of the Hon’ble Supreme Court in **“Ramesh Kumar @ Babla Vs. State of Punjab” Law finder Doc ID # 760252, 2016 (13) SCC 280.**

7. No other argument is made on behalf of the parties.

8. I have heard learned counsel for the parties and perused the case file in detail.

9. Brief facts of the case as set out by the petitioner/complainant are that the petitioner was married to accused/respondent No.2 on 04.12.1994, according to Sikh rites. Parents of the petitioner spent more than their capacity in the marriage. Dowry articles were given to the petitioner for her own use, which was her Istridhan, yet the accused were not satisfied with the dowry. Respondent No.2 being short-tempered and suspicious, demanded more dowry. On 06.02.1995, mother and brother of the petitioner gave one cooler, washing machine and a sewing machine on the demand of the accused, but after that, the accused started demanding a motorcycle and even a car. On 12.12.1996, some amount was withdrawn by the brother and grandmother

of the petitioner from the bank and given to the accused. Yet, the accused continued to beat the petitioner. Despite the fact that the petitioner and her parents continuously acceded to the demands of the accused, in January 1998, the petitioner was turned out of the matrimonial home. The petitioner was even forced by the accused to resign from her job. Panchayats were also convened in February 1998; July 1998; on 17.11.1999; and lastly, in the year 2000, requesting the accused to rehabilitate the petitioner. However, they refused to do so.

10. It was further alleged by the petitioner that a demand was made by the petitioner side for return of dowry articles, which were entrusted to the respondent-side being istridhan of the petitioner, but all the accused refused to return the dowry articles, which were retained by them. Ultimately, the petitioner was constrained to register the present FIR against respondent No.2/husband and his parents.

11. Perusal of the record of the case shows that, upon registration of FIR challan was presented, and charges were framed against all three accused, whereafter trial commenced. During the course of trial, father-in-law of the petitioner expired. It has come on record that the accused did not examine even a single witness in defence. Learned trial Court vide judgment dated 30.07.2007, acquitted mother-in-law of the petitioner; whereas respondent No.2/husband of the petitioner was convicted and sentenced to undergo rigorous imprisonment for one year under Section 406 IPC; and rigorous imprisonment for one year under Section 498-A IPC; and to pay a fine of Rs.1,000/-; and in default of payment of fine, the respondent No.2 was directed to further undergo

rigorous imprisonment for 15 days. Both the sentences were to run concurrently.

12. Against the aforesaid judgment dated 30.07.2007, three appeals were filed. Criminal Appeal No.57 of 2007 titled as “Bikram Singh Vs. State” was filed by respondent No.2; Criminal Appeal No.58 of 01.09.2007/29.09.2008 titled as “Charanjit Kaur @ Parminder Kaur Vs. Bikram Singh & Another” was filed by the petitioner for enhancement of sentence to respondent No.2; and Criminal Appeal No.66 of 05.12.2007 titled as “State of Punjab Vs. Daljit Kaur” was filed by the State against acquittal of mother-in-law of the petitioner. Both these three appeal were decided by learned Additional Sessions Judge, Kapurthala by a common judgment dated 16.12.2010.

13. The appeal filed by the petitioner i.e. Criminal Appeal No.58 of 2007 titled as “Charanjit Kaur @ Parminder Kaur Vs. Bikram Singh & Another”, seeking enhancement of sentence to respondent No.2, was dismissed. Criminal Appeal No.66 of 2007 titled as “State of Punjab Vs. Daljit Kaur”, filed by the State against acquittal of mother-in-law of the petitioner, was also dismissed. However, in Criminal Appeal No.57 of 2007 titled as “Bikram Singh Vs. State” filed by respondent No.2, the impugned order dated 16.12.2010 was passed with the following directions/observations: –

“21. During the pendency of this appeal, best efforts were made for reunion of the complainant and appellant. Complainant was ready to live with the husband appellant, Bikram Singh, but due to mis-understanding he was not ready.

It has come in the file that Charanjit Kaur was serving privately but she left the job on the asking of appellant. Appellant Bikram Singh, is a Government Employee (Teacher). In case, the sentence part is upheld then he has to go inside (jail) and he will be ousted (suspended) from the Government Job. This appellant Court with due deliberation and after appreciating the facts with the hope that better sense would prevail upon the appellant so that there may be reunion of the parties and in case he sent behind the bar then there will be no chance of rehabilitation of the parties and appellant will become more adamant in desertion of complainant. Under these circumstances, the sentence part of the judgment is modified that in case appellant deposits Rs. 2,50,000/-payable to Charanjit Kaur within one month today in the trial then he is allowed to furnish the probation bond U/s 4(1) of the Probation of Offenders Act, 1958. As such, it is ordered that accused-appellants be released on probation under Section 4(1) of the Probation of Offenders Act, 1958, on his furnishing personal bond in the sum of Rs. 25,000/- with one surety in the like amount for a period of one month, undertaking to keep peace and be of good behaviour for a period of one year and to appear in the Court as and when called upon by the Court to undergo the remaining sentence during this period.

22. In the light of discussion made above, the conviction part of judgment stands confirmed and with modification in sentence, the appeal stands dismissed. Trial Court record alongwith a copy of this judgment returned and appeal file be consigned to the Record- room.”

14. Against the above said judgment of the learned Appellate Court, the petitioner had filed a Criminal Revision No.803 of 2011 before this Court, which was disposed of vide order dated 12.03.2012, which reads as follows: –

“Challenge in this petition is to the judgment dated 16.12.2010 passed by the Additional Sessions Judge, Kapurthala in which the judgment dated 30.07.2007 passed by Judicial Magistrate 1st Class, Phagwara has been modified.

Learned counsel for the petitioner submits that in pursuance to the judgment passed by the lower Appellate Court, Rs. 2,50,000/- has been deposited in the trial court by respondent No. 2

In view of the above, no ground is made out to interfere in the judgment dated 16.12.2010 passed by the Additional Sessions Judge, Kapurthala

Accordingly, the present petition stands dismissed.”.

15. The said order was challenged by the petitioner before the Hon’ble Supreme Court by way of Criminal Appeal No.212 of 2016 titled as “Charanjit Kaur Vs. Bikram Singh & Another”, which was disposed of vide order dated 10.03.2016, with the following directions:-

“7. Without expressing any opinion on the pleas advanced on behalf of the appellant and the reply advanced on behalf of respondents, after going through the order under appeal and noticing the summary manner in which the Revision has been dismissed only after noticing that Rs.2,50,000/- has been deposited, we are of the firm view that the impugned order needs to be set aside so that the matter may be sent back to the High Court for re-hearing the parties and fresh decision on merits. We order accordingly. The appeal arising out of S.L.P. (Crl.)No.3695 of 2013 is allowed to the aforesaid extent. Be it noted that we have not gone into the merits of rival submissions and the High Court would be free to take its own decision in matter strictly in accordance with law.”

16. It is in this background that the matter has been placed before this Court.

17. It has been admitted by both the parties that the petitioner as well as respondent No.2 are both retired Government teachers. No child was born out of their wedlock. It is submitted by learned counsel for the petitioner that the petitioner is still willing to resume cohabitation in the matrimonial home with respondent No.2. Perusal of case file shows that even though the matter was referred to Mediation several times the most recent being on 28.02.2024. However, mediation has failed time and again.

18. Coming to the merits of the matter, perusal of impugned order dated 16.12.2010 shows that learned Additional Sessions Judge, Kapurthala, has granted probation in terms of Section 4(1) of the Act. The said Section 4(1) is reproduced hereinbelow:-

“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."

19. A bare reading of the above provision shows that under the said Section, an entirely discretionary power has been conferred upon the Court inasmuch as it has been stipulated therein that if the Court hearing the matter forms an opinion on the basis of the attendant circumstances, which may include the "nature of offence" and the "character of the offender", that it is expedient to release the offender on probation on good conduct, then the Court may exercise such discretion in favour of the offender.

20. In the present case, the impugned order reveals that the learned Appellate Court has duly considered all the attendant factors, including the gravity and the 'nature of offence' which is u/ss 406 and 498-A IPC; and the fact that the learned trial Court had sentenced respondent No.2 for one year. It is to be borne in mind that under Sections 406 and 498-A IPC maximum punishment is for a period of three years and no minimum punishment is prescribed therein. The impugned order has been passed after "*due deliberation*" and after "*appreciating the facts.....under these circumstances the sentence part of the judgment is modified....*". Thus, it

will be incorrect to say that the impugned judgment has been passed without having regard to the circumstances of the case.

21. In adjudging the 'character of the offender', the Id. Appellate Court has taken into account the fact that respondent No.2 is a Government servant. There is no gainsaying that being a government servant would naturally lead to the inference of sound character, as against a common person whose antecedents are not verified or not known. Admittedly, there is no case of moral turpitude against respondent No.2. Admittedly, probation was granted to respondent No.2 as far back as in the year 2010 and till date, there is no other case against him.

22. At this stage, reference may be made to judgment of the Hon'ble Supreme Court relied upon by respondent No.2 in **Ramesh Kumar (supra)**, wherein it has been held as under:-

"B. Indian Penal Code, 1860 Sections 307 and 324 Enmity between parties - Accused causing sample on head of victim, but with, dangerous weapon (sword) - Accused guilty of offence under Section 324 of I.P.C. and under Section 307 I.P.C. - Incident 19 years old - Accused released on probation.

By the judgment and order under appeal dated 19.10.2015 the High Court of Punjab & Haryana at Chandigarh dismissed criminal appeal bearing No. CRA S 1003 - SB of 2002 and confirmed the conviction of appellant under Section 307 of the I.P.C. by the Additional Sessions Judge, Adhoc, Patiala for which appellant has been ordered to undergo rigorous imprisonment for three years and also to pay a fine of Rs.2000/-.

XXX

7. Accordingly the appeal is allowed in part by converting appellant's conviction under Section 307 I.P.C. to one under Section 324 I.P.C. On the question of sentence, it is pertinent to note that the occurrence took place in 1997. In his statement under section 313 of the Code of Criminal Procedure the appellant gave his age in 2002 as 36 years. He claimed that he and others went to the place of occurrence on getting information that his brother Sanjay Kumar was assaulted by Ramesh Kumar (Complainant). He brought his brother to Police Station and lodged a report. As noticed by trial court, parties are involved in civil as well as criminal litigation from before. High Court has noted that appellant, as per custody certificate, is not involved in any other case. In such circumstances it is not deemed necessary to send the appellant immediately to Jail custody after about 19 years of the occurrence when he appears to be 50 years of age and fully settled in life.

8. In view of aforesaid, in our view the ends of justice would be met by granting benefit of Probation of Offenders Act to the appellant. We order accordingly and direct that the appellant be released on executing appropriate bond before the trial court to appear and receive sentence of rigorous imprisonment for 1(one) year when called upon to do so and in the meantime to keep the peace and be of good behaviour.”

23. From the above pronouncement it is clear that in far worse circumstances, the Hon’ble Apex Court granted benefit of probation. The present case stands on a much better footing.

24. As regards judgments relied upon by the learned counsel for the petitioner needless to say this Court can even have no issue with the judgment of the Hon’ble Supreme Court in case of **Nilgiris Bar Association (supra)**, wherein it has been held as under:-

“9. By the words so couched in the sub-section Parliament has taken care to emphasise that before the relief (envisaged in the provision) is granted court must take into account the circumstances of the case, among which "the nature of the offence and the character of the offender" must have overriding considerations. After bestowing judicial consideration on those factors, the court must form an opinion as to whether it would be appropriate in that case to release the particular accused therein as envisaged in the sub-section. This Court has observed time and again through various decisions that the benefits mentioned in Sections 3 and 4 are subject to the limitations laid down in those provisions and that the word 'may' in Section 4 of the Act is not to be understood as 'must'. Ramji Missar v. State of Bihar, AIR 1963 Supreme Court 1088; Rattan Lal V. State of Punjab, 1964(7) SCR 676; Isher Das v. State of Punjab, AIR 1972 Supreme Court 1295; Ram Parkash v. State of Himachal Pradesh, AIR 1973 Supreme Court 780.

10. When considering the nature of the offence the court must have a realistic view on the gravity of the offence, the impact which the offence could have had on the victims and whether considerations of deterrence can be overlooked etc. No fixed yard-stick can be laid down to measure the nature of the offence for affording or denying the reliefs envisaged in Section 4 of the Act. However, as the court is enjoined to take into consideration the character of the offender it is well to remember that character is not the abstract opinion in which the offender is held by others. The word "character" is not defined in the Act. Hence, it must be given the ordinary meaning. According to Webster's New International Dictionary "character" means "an attribute, or quality especially a trait or characteristic which serves as an index to the essential or intrinsic nature of a person". In Black's Law Dictionary

"character" is defined as "the aggregate of the moral qualities which belong to and distinguish an individual person; the general result of the one's distinguishing attributes". The celebrated lexicographer has at the same time pointed out the following aspects also about the subject:

"Although character and reputation are often used synonymously, the terms are distinguishable. 'Character' is what a man is, and 'reputation' is what he is supposed to be in what people say he is. 'Character' depends on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present."".

25. I am in complete agreement with the view expressed here in above. It is further my considered opinion that the present case falls within the parameters laid down in the above pronouncement of Law. Not just the learned Appellate Court, but even this Court has bestowed judicial consideration on the necessary factors, such as the nature of offence as also the character of the offender, and then formed the opinion that the respondent no.2 be released on probation. In fact, it is only upon consideration of all the attendant facts and circumstances can a determination be made as to whether the offender ought to be granted probation or not. As correctly noticed here in above, no definite yardstick can be laid down to measure the above factors. As such, it is my considered view that nothing is made out before this Court that the learned Appellate Court has used its power under Section 4(1) of the Act incorrectly.

26. In view of the above, present petition is **dismissed**.

27. Pending application(s) if any also stand(s) disposed of.

03.05.2024

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No