

**CRR-1268-2016 (O&M)****1****835 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-1268-2016 (O&M)
Date of Decision: 14.11.2024****DHARAMBIR SINGH KADIYAN****.....Petitioner****Versus****STATE OF HARYANA AND ANOTHER****.....Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: Mr. Raman Chawla, Advocate
for the petitioner.****Mr. Vikas Bhardwaj, AAG Haryana.************HARPREET SINGH BRAR, J. (ORAL)**

1. The present petition is preferred against the judgment dated 02.12.2013 and order on quantum of sentence dated 03.12.2013 passed by learned Sub Divisional Judicial Magistrate, Siwani vide which petitioner has been convicted under Section 494 of Indian Penal Code and sentenced to undergo rigorous imprisonment for two years with fine of Rs. 1000/- with default mechanism and the said judgment was upheld by learned Additional Sessions Judge, Bhiwani vide judgment dated 07.01.2016.

2. Brief facts of the case of the prosecution are that the marriage of complainant Smt. Sharmila was solemnized with the accused-petitioner on 1.5.1994 as per Hindu rites and ceremonies. The parents of the petitioner used to torture the complainant for bringing less dowry. On 02.10.1998, the complainant was turned out of her matrimonial home by giving beatings by the accused-petitioner. It is further averred that on 3.7.2007, Suresh Kumar,

Chhaju Ram and Prabhu Ram came at the parental house of the complainant

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and disclosed that accused Dharambir-petitioner herein had performed second marriage on 28.6.2007 with one Rameshwari and they were invited in the said marriage. It is further alleged that the accused performed second marriage with Rameshwari in collusion with other co- accused. On the basis of aforesaid allegations, FIR(supra) was lodged.

3. Learned counsel for the petitioner contends that both the Courts below have not extended the benefit of the provisions contained in Section 4 and 11 of the Probation of Offenders Act, 1958 to the petitioner. The petitioner has suffered the agony of trial as the complaint(supra) was filed on 11.04.2008 and complainant has also lodged another FIR No. 290 dated 12.11.2014 under Sections 323, 341, 506 and 34 of Indian Penal Code registered at Police Station Siwani and the petitioner was acquitted by learned Sub Divisional Judicial Magistrate, Siwani vide judgment dated 20.09.2017. The petitioner is having clean antecedents and he is not involved in any other case and the essential ceremonies of marriage to invoke the provisions of Section 494 of Indian Penal Code are not attracted and learned counsel further submits that petitioner is a retired personnel and he wants to lead a life as reformed citizen and contribute towards the society. Therefore, learned counsel further submits that he is not assailing the impugned judgment of conviction dated 02.12.2013 on merits and restricts his prayer to modification of the order of quantum of sentence dated 03.12.2013 to that of the release of the petitioner on probation of good conduct and urged the Court to take a lenient view of the matter as the petitioner has reformed and intend to live his life as law-abiding citizen.

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4. Per contra, learned State counsel opposes the prayer of the petitioner on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, he does not deserve any leniency. However, he could not controvert the fact that the petitioner is not involved in any other case.

5. I have heard learned counsel for the parties and perused the paper book with their able assistance.

6. Section 3 and 4 of the Probation of Offenders Act empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 and 361 of the Cr.P.C (401 and 402 of BNSS) also empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in **Som Dutt and others Vs. State of Himachal Pradesh (2022) 6 SCC 722** speaking through Justice Bela M. Trivedi, has held as under:-

“6....having regard to the fact there are no criminal antecedents against the petitioners, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the petitioners, it is directed that the petitioners shall be released on probation of good conduct.....”

A two Judge Bench of the Hon'ble Supreme Court in **Lakhvir Singh Vs. State of Punjab (2021) 2 SCC 763** speaking through Justice Sanjay Kishan Kaul, has held as under:-

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: 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.”

7. In view of the aforesaid facts and circumstances, the judgment passed by the learned Additional Sessions Judge, Bhiwani awarding a total sentence of two years under Section 494 of Indian Penal Code is upheld, however, having regard to the fact that the petitioner has no criminal antecedents, this court is inclined to give him the benefit of probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the petitioner, he is ordered to be released on probation of good conduct on furnishing a personal bond of Rs. 10,000/- with a surety of the like amount, and on further furnishing an undertaking to keep the peace and good behaviour for a period of one year, to the satisfaction of the concerned trial court within a period of two weeks. The petitioner shall remain under the supervision of the concerned Probation Officer(s) during the aforesaid period. It is further directed that if the petitioner fails to comply with the said directions or commit breach of the undertaking given by him, he shall be called upon to undergo the sentence imposed upon him by the learned Additional Sessions Judge, Bhiwani.

8. With the aforesaid directions, the instant petition stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

14.11.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No