

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

220

Date of order: 26.02.2024

CRR-855-2014 (O&M)

Asha Rani & Another

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CRR-876-2014 (O&M)

Sudesh

.....Petitioner(s)

Vs.

State of Haryana & Others

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Nikhil Ghai, Advocate and
Mr. Gurjas Gill, Advocate and
Mr. RajatSingla, Advocate
for the petitioners(in CRR-855-2014).

Mr. Deepak Goyal, Advocate
for the petitioner (in CRR-876-2014) and
complainant (in CRR-855-2014).

Mr. Parmod K. Parmar, Advocate
for respondents No.4 to 7 (in CRR-876-2014).

Mr. Aditya Pal Singla, AAG Haryana.

Nidhi Gupta, J.

CRR-876-2014

Challenge in the present petition is to judgment dated
30.01.2014 passed by the Additional Sessions Judge, Jhajjar dismissing the
appeal of the petitioner-complainant against order dated 6.03.2013, vide

which the respondents No.4 to 7 were acquitted and respondents No.2 and 3 were awarded a meager sentence of 2 years rigorous imprisonment and fine of Rs.1000/- for offence punishable under Section 107 read with Section 494 IPC.

CRR-855-2014

Challenge in the present petition is to judgment dated 30.01.2014 passed by the learned Additional Sessions Judge, Jhajjar, upholding the judgment of conviction dated 06.03.2013 and order of sentence dated 07.03.2013 passed by learned Chief Judicial Magistrate, Jhajjar, whereby petitioners were sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a sum of Rs.1000/- each as fine for the commission of offence punishable under Section 107 and Section 494 IPC.

2. Both matters are being disposed of by common order as they arise out of common judgments, facts and circumstances, as also same FIR No.178 dated 02.05.2007 registered under Sections 498-A, 494, 406 and 506 IPC at Police Station Jhajjar. For the sake of convenience, facts/parties/Annexures are being referenced from CRR-855-2014.

3. Brief facts of the case are that the complainant Sudesh moved an application to the effect that her husband earned his livelihood by giving money on interest. After selling some property, he had received Rs.15,00,000/- but he kept all the money with him and was not giving a penny to her and not even paying the school fees of her children. She

moved an application before the police and then it was revealed that her husband Ravi had married another woman, namely Asha who was her cousin sister. But when the police officials asked him to give the proof of marriage, he refused. On her asking, he sometimes admitted the marriage and sometimes denied the same. She asked her husband to return the jewellery, money and other material things, so that she could pay the school fees of her children but he flatly refused. At that time Asha, her mother, Sanjay, wife of Sanjay and brother-in-law of Asha were all present. He abused her. The police kept her husband in custody and sent her home and after some time, Sanjay, Asha, her mother and others, came to her house, abused her and took away a motorcycle. She again went to the police station but her husband was not there. Thereafter, present FIR No.178 dated 02.05.2007 was registered under Sections 498-A, 494, 406 and 506 IPC at Police Station Jhajjar, against the petitioners and other accused persons. However, vide the impugned judgment dated 06.03.2013 passed by the learned Chief Judicial Magistrate, Jhajjar the petitioners have been convicted for commission of offence only under Sections 107 and 494 IPC, and acquitted under Sections 498-A and 406 IPC; whereas the remaining accused have been acquitted of all the charges.

4. Vide order of sentence dated 07.03.2013, the petitioners were sentenced to undergo rigorous imprisonment for a period of two years and to pay a sum of Rs.1000/- each as fine for commission of offence punishable under Section 107 IPC. The petitioners were further directed to undergo rigorous imprisonment for a period of 2 years and to

pay a sum of Rs.1000/- each for commission of offence punishable under Section 494 IPC. Both the sentences were directed to run concurrently.

5. Thereafter, the petitioners filed an appeal before the learned Additional Sessions Judge, Jhajjar, against their conviction under sections 107 and 494 IPC vide judgment dated 6.3.2013; whereas by way of separate appeal the complainant also challenged the said judgement dated 06.03.2013 against acquittal of the petitioners under sections 498-A and 406 IPC, and also challenged the acquittal of the remaining accused.

6. Vide common judgment dated 30.01.2014, appeal filed by the complainant was dismissed; whereas conviction of the petitioners was modified to the extent that petitioner No.2 Ravi Kumar was convicted only under Section 494 IPC, and petitioner No.1 Asha was convicted under Section 109 IPC read with Section 494 IPC. Further, sentence awarded to the petitioners by the learned trial court was modified as under:-

Ravi Kumar

Offence	R.I.	Fine	In default Simple Imprisonment
494 IPC	Two years	Rs.50,000/-	Six months

Asha

Offence	R.I.	Fine	In default Simple Imprisonment
109 IPC read with 494 IPC	One year	Rs.25,000/-	Two months

7. Hence, present revision petitions.

8. Learned counsel for the petitioners inter alia submits that petitioner No.2/Ravi Kumar has served his sentence of two years whereas petitioner No.1/Asha was awarded one year of rigorous imprisonment, out of which she has already undergone 5 months and is currently out on bail as her sentence was suspended vide order dated 04.07.2014. It is prayed that accordingly, benefit under the Probation of Offenders Act, 1958 (hereinafter referred to as "the Act") be accorded to petitioner No.1. In support, learned counsel refers to judgment of the Hon'ble Allahabad High Court in **"Sant Lal & Another Vs. State of UP"** **Criminal Revision No.5112 of 2009 Neutral Citation No.2019:AHC:126390**. Relevant part of aforesaid judgment **Sant Lal (supra)** is reproduced hereinbelow:-

"Section 4 of the Act deals with the powers of Court to release certain offenders on probation of good conduct which is as follows:-

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."

*Thus the philosophy of the Probation of Offender Act 1958 is reformatory. Hon'ble Supreme Court in **Ratan Lal v. State of Punjab AIR 1965 S.C. 444**, while discussing the purpose and object of the Act, has observed in para no. 4, as follows:-*

"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."

Section 4 of the Act clearly provides that it has over riding effect on any other law for the time being enforced; which means that if the nature of the offence comes within purview of this section, the Court is bound to release the accused on the Probation."

9. Learned counsel for the complainant vehemently opposes the prayer made on part of the petitioners and submits that

petitioner No.2/Ravi Kumar during subsistence of his first marriage with the complainant, had performed a second marriage with petitioner No.1 Asha, and co-accused family members of petitioner No.1 i.e. her mother Sudesh, brother-in-law Sanjay, his wife Sunita, her father Ram Karan and Shri Bhagwan, had all instigated petitioner No.2 to perform second marriage. One child was born out of the wedlock of the petitioners, who is in their custody. Thus, offence of the petitioners has been proven on record. Therefore, partial acquittal of the petitioners, and acquittal of the remaining accused is on the face of it illegal. It is submitted that therefore, petitioner No.1 does not deserve the concession under the Act. It is further pointed out that one of the accused namely Ram Karan/father of petitioner No.1 has died during pendency of the trial.

10. Ld. Counsel reiterates that the prosecution has duly proved the case against private respondents. It is submitted that mother of petitioner No.2 Ravi Kumar namely Kitabo (PW2) had appeared in the witness box and specifically admitted that she had married her son i.e. Ravi Kumar/petitioner No.2 to the complainant namely Sudesh. Two children were born out of their wedlock. But thereafter, her son had developed relations with petitioner No.1 Asha, with whom he performed second marriage. It is submitted that accordingly, the petitioners had done this with the active connivance and cooperation of the remaining accused and therefore, they had all inflicted cruelty upon the complainant and hence, their acquittal under Sections 498-A and 406 IPC deserves to be set aside.

11. Learned State Counsel files custody certificate dated 23.02.2024 of petitioner No.1, which is taken on record. As per the custody

certificate, out of total sentence of 1 year, petitioner No.1 has undergone custody of 5 months and 24 days.

12. No other argument is made on behalf of the parties. I have heard learned counsel for the parties.

13. On 02.05.2014, a Co-ordinate Bench of this Court had passed the following order:-

“Learned counsel for the petitioners states that the petition qua petitioner No.2-Ravi Kumar be dismissed as not pressed.

Ordered accordingly.

As regards petitioner No.1-Asha Rani, learned counsel for the petitioners restricts the prayer to the quantum of sentence by saying that he has nothing to argue as regards the merits of the case.

Notice of motion for 30.06.2014.”

14. It is in this background that the counsel for the petitioners has restricted his argument to the quantum of sentence and has prayed that the petitioner no.1 be granted the benefit of the Act. I find some merit in this prayer. It has come on record that due to the present conviction, petitioner No.2 has already lost his job. It has also come on record that petitioner No.2 has transferred his ancestral and self-acquired assets in favour of the complainant and their two children. This fact has not been denied by counsel for the complainant. Admittedly, the petitioners now have a minor child who is in their care and custody, and for whose welfare they are responsible. As such, I find no benefit to anyone in depriving the minor child of his mother. Petitioner no. 1 has already

undergone almost half of her sentence of one year. The welfare of the minor child of the petitioners also has to be kept in mind. Accordingly, in these circumstances I am inclined to take a lenient view. Reliance may be placed upon judgment of Hon'ble Supreme Court in "**Som Dutt & Others Vs. State of Himachal Pradesh**" 2022 (6) SCC 722; "**Ramesh Kumar @ Babla Vs. State of Punjab**" (2016) 13 SCC 280; and "**Lakhvir Singh Etc. Vs. The State of Punjab & Another**" Criminal Appeal Nos.47-48 of 2021 decided on 19.01.2021.

15. Thus, in view of the factual and legal position noticed above, the present revision petition bearing No.CRR-855-2014, is **partly allowed**. The conviction of both the petitioners is upheld. Petitioner No.2 has already served his sentence. However, in case of petitioner No.1, it is directed that petitioner No.1 shall be released on probation of good conduct under Section 4 of the Act on furnishing a personal bond with surety of like amount; and on furnishing an undertaking to keep peace and good behavior for the remaining period of sentence, to the satisfaction of the learned trial Court concerned. It is further directed that if petitioner No.1 fails to comply with the said directions or commit breach of undertaking given by her, she shall be called upon to undergo the remaining period of sentence imposed.

16. As regards acquittal of the remaining accused persons, challenged by the complainant in CRR 876–2014, the learned Courts below have given concurrent findings that there is no direct or indirect evidence against them. In respect of offence Section 494 IPC, the learned Courts below have returned the finding of fact that as per the marriage certificate

of the petitioners, the remaining accused were not found to be eyewitnesses of the second marriage. Learned counsel for the complainant has shown nothing to the contrary to this Court.

17. Accordingly, revision petition bearing No.CRR-876-2014 stands **dismissed**.

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

26.02.2024

Sunena

(Nidhi Gupta)

Judge

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