



250      **IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRR-3448-2019 (O & M)**  
**Date of decision: 27.03.2025**

**SURINDER PAL SINGH**

**...PETITIONER**

**V/S**

**STATE OF U.T. CHANDIGARH**

**...RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present:      Ms. Gurpreet Kaur, Advocate for  
                    Mr. Ankur Lal, Advocate  
                    for the petitioner.

Mr. Anil Kumar Lamdharia, Addl. P.P, UT Chandigarh.

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**HARPREET SINGH BRAR, J. (ORAL)**

1.              The present revision petition has been filed against the impugned judgment dated 06.11.2019 passed by learned Additional Sessions Judge, Chandigarh, whereby judgment of conviction dated 12.08.2016 passed by learned Judicial Magistrate Ist Class, Chandigarh has been upheld, however, order of sentence of even date i.e. 12.08.2016 has been modified by releasing the petitioner on probation for one year and directing him to pay a compensation of Rs.1,27,500/- to the complainant, in the case stemming from FIR No.230 dated 11.11.2008 registered under Section 406 IPC at Police Station Sector 31, Chandigarh.

2.              Briefly, the facts of prosecution case are that the Balbinder Kaur, complainant rented out her flat bearing No.2314, Astha Apartment, Sector 48-C, Chandigarh to one Dalip Fauzdar. She had entrusted the petitioner-Surinder Pal Singh, who was her student, to collect the monthly rent from the tenant



through cheques and deposit the same in her savings account with Punjab National Bank, Sector 23, Chandigarh. However, the petitioner cheated the complainant by fraudulently misappropriated the rent amount. On the basis of said statement, FIR (*supra*) was registered.

3. On assessing all the material available on the record, the petitioner was convicted by learned trial Court for commission of an offence punishable under Section 406 of IPC and sentenced him to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs.500/- with default mechanism. Aggrieved by the same, the petitioner preferred an appeal before the learned Additional Sessions Judge, Chandigarh, which was partly allowed vide impugned judgment dated 06.11.2019 as the petitioner was released on probation, on account of maintaining good conduct, for a period of 01 year. He was also directed to pay an amount of Rs.1,27,500/- as compensation to the complainant within a period of two months.

4. Learned counsel appearing on behalf of the petitioner submits that the learned Court below has erred in upholding the conviction of the petitioner. As per the case set up by the prosecution, the petitioner was entrusted with the duty of collecting the rent from tenant-Dalip Fauzdar, by the complainant. However, the petitioner was required to deposit the amount collected as rent in the account of owner after deducting the expenses incurred for maintaining the rental property. He submits that the learned trial Court erroneously convicted the petitioner on the premise that he did not deposit the entire rent amount with the complainant. Further, the learned Courts below have failed to appreciate that a settlement (Ex.DB) was entered into between the parties on 13.10.2008, prior to registration of FIR(*supra*) as per



which, the petitioner has already paid the requisite amount i.e. Rs.10,000/-. Further still, the complainant, in her cross-examination has admitted to the factum of settlement as well as the fact that the petitioner had been allowed to deduct the amount from collected rent which was spent on upkeep of the property. She had also voluntarily stated that the amount has been adjusted from the rent received from the tenant. As such, the offence under Section 406 of IPC is not made out against the petitioner. Lastly, at the most the present matter is a civil dispute regarding the redemption of accounts and no criminal liability can be fastened upon the petitioner qua the same. Therefore, there is no justification in awarding a compensation of Rs. 1,27,500/- on the petitioner at the time of granting probation to him, especially since the cheques in question were of Rs.56,500/-.

5. *Per contra*, learned Additional Public Prosecutor for U.T. Chandigarh submits that the learned trial court has struck a fine balance by releasing the petitioner on probation and also compensating the complainant, who has been deprived of her rightful claim towards the rental income. Moreover, the petitioner had move an application under Section 391 Cr.P.C. but the documents sought to be presented were not sent to CFSL Chandigarh. As such, the learned lower Appellate Court has passed a well reasoned judgment which does not warrant any interference.

6. Having heard learned counsel for the parties and after examining the record of the case with their able assistance, it transpires that the petitioner has not denied collecting the rent or using a part of it towards maintenance. Neither in his statement under Section 313 Cr.P.C., nor during the defence evidence has the petitioner taken a stand that the expenditures made were with



the consent of the complainant. As such, the offence punishable under Section 406 IPC is clearly made out against the petitioner.

7. Further, this Court does not find any perversity in the impugned judgment dated 06.11.2019 passed by the learned lower Appellate Court, whereby conviction of the petitioner was upheld. In fact, taking into account the clean antecedents of the petitioner as well as the fact that he had been facing the agony of trial for the last more than 16 years, the learned Court below has justifiably released him on probation. However, the direction to pay a compensation of Rs.1,27,500/- to the complainant is harsh and unwarranted.

8. Sections 3 and 4 of the Probation of Offenders Act, 1958 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 appellants, 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 appellants, it is directed that the appellants 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.”*

Further still, a two Judge Bench of the Hon’ble Supreme Court in ***Lakahnlal @ Lakahn Singh vs. State of Madhya Pradesh (2021) 6 SCC 100*** has opined as follows:

“15. We find that the attention of the Court was not drawn to sub Section (10) of Section 360 which provides that Section 360 will not affect the provisions of 1958 Act or other similar laws for the time being in force for the treatment, training or rehabilitation of youthful offenders. Still further, Section 4 of the 1958 Act has a non obstante clause, giving overriding effect over any other provisions of law.

16. The conjoint reading of the provisions of both the statutes, we find that the provisions of Section 360 of the Code are in addition to the provisions of the 1958 Act or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders”

9. The Hon'ble Supreme Court in ***Bishnu Deo Shah Vs. State of West Banal AIR 1979 SC 964*** has laid down that it is obligatory on the part of the Court to deal with a convict under the provisions of Section 360 of the Cr.P.C., if he is not convicted for an offence punishable with death penalty or imprisonment for life and additionally, if he is not a previous convict. The overarching object of the provision contained in Section 4 and 6 of the Act and Section 360 and 361 of Cr.P.C. is to provide an opportunity to the first time offenders to reform and not expose them in association with the hardened and habitual criminal inmates incarcerated in the judicial custody.



10. In view of the above, the present petition is partly allowed as the impugned judgment dated 06.11.2019 passed by learned Additional Sessions Judge, Chandigarh, is affirmed with respect to upholding conviction of the petitioner, as well as his release on probation is upheld while the compensation of Rs.1,27,500/- awarded to the complainant is set aside.

11. Pending miscellaneous application(s), if any, also stand(s) disposed of.

March 27, 2025  
manisha

(HARPREET SINGH BRAR)  
JUDGE

|      |                           |        |
|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |