

(2028) 12 SHI CK 0001

Himachal Pradesh HC

Case No: Criminal Revision No. 303 Of 2015

Hasan Ali

APPELLANT

Vs

State Of H.P

RESPONDENT

Date of Decision: Dec. 15, 2028

Acts Referred:

- Indian Penal Code, 1860-Section 380, 457
- Payment of Bonus Act, 1965-Sector 4, 6
- Probation Of Offenders Act, 1958-Section 4, 4(1)
- Code Of Criminal Procedure, 1973-Section 245(2), 285(2), 306(2), 309(2)

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: S.C. Sharma, Rajeev Sharma, Ajit Sharma

Final Decision: Allowed/Disposed Of

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the judgment dated 01.04.2015, passed by learned Additional Sessions Judge-II, Shimla (learned Appellate Court) vide which the order dated 05.07.2014, passed by learned Chief Judicial Magistrate, Shimla (learned Trial Court), extending the benefit of Probation of Offenders Act to the petitioner (accused before the learned Trial Court) was set aside. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present petition are that the Learned Trial Court tried and convicted the accused Hasan Ali of the commission of offences punishable under Sections 457 and 380 of the Indian Penal Code (IPC). The learned Trial Court called for the report of the Probation Officer, who recommended the grant of probation to the accused. Learned Trial Court accepted the report and

extended the benefit of probation subject to the furnishing of personal and surety bonds of ₹50,000/-, undertaking to maintain peace, and good behaviour and not to commit any offence for two years from the date of granting the benefit i.e. 05.07.2014

3. Aggrieved by the benefit extended to the accused, the State filed an appeal, which was decided by the learned Additional Sessions Judge-II, Shimla (learned Appellate Court). Learned Appellate Court held that the convict was aged 54 years. His chances of reformation and rehabilitation were few. The accused was involved in several criminal cases and could not be granted the benefit of the Probation of Offenders Act. Hence, the order passed by the learned Trial Court for extending the Benefit of Probation of Offenders Act was set aside, and the matter was remanded to the learned Trial Court to decide it afresh as per the law.

4. Being aggrieved by the judgment passed by the learned Appellate Court, the petitioner/accused has filed the present petition asserting that the learned Appellate Court erred in setting aside the benefit of the Probation of Offenders Act extended to him. The petitioner was aged 54 years. He had four children, an aged mother, and an ailing wife. The Probation Officer had recommended the grant of probation, and the benefit of the Probation of Offenders Act was rightly extended to him. Therefore, it was prayed that the present petition be allowed and the judgment passed by the learned Appellate Court be set aside.

5. I have heard Mr S.C. Sharma, learned Senior Advocate, assisted by Mr Rajeev Sharma, learned counsel for the petitioner and Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State.

6. Mr S.C. Sharma, learned Senior Counsel for the petitioner, submitted that the learned Trial Court had rightly extended the benefit of the Probation of Offenders Act to the accused, and the learned Appellate Court erred in setting aside the benefit. The conduct of the petitioner was not found blame-worthy from the date of extending the benefit. The benefit of the Probation of Offenders Act cannot be denied simply because the person is aged 54 years and the learned Appellate Court erred in holding otherwise. Therefore, he prayed that the present petition be allowed and the judgment passed by the learned Appellate Court be set aside. He relied upon the judgments of *Som Dutt vs. State of H.P.* (2022) 6 SCC 722, *Gulzar v. State of M.P.* (2007) 1 SCC 619 and *Desh Raj vs. State of H.P.* (2021) 4 Shim. LC 2411 in support of his submission.

7. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the petitioner was involved in the commission of similar offences earlier, and the learned Trial Court erred in extending the benefit of the Probation of Offenders Act to him. Learned Appellate Court had rightly set aside the order granting the benefit of probation to the petitioner. The benefit of the Probation of Offenders Act is dependent upon the antecedents of a person, and a person having

criminal antecedents should not be granted the benefit of the Probation of Offenders Act. There is no infirmity in the judgment passed by the learned Appellate Court. Hence, he prayed that the revision be dismissed.

8. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

9. The report of the Probation Officer reads that the petitioner was an agriculturist and a transporter. He had four brothers. One brother had retired from the Indian army. His sister was married. He had two sons and two daughters. One was married, and the others were unmarried. The relatives certified the petitioner's character. Some cases were pending against the petitioner. The petitioner had transported the articles belonging to some person, and a false case was made against him. The petitioner did not have a criminal nature, and the incident had occurred suddenly. There was a chance of reformation. Hence, it was recommended that the benefit of the Probation of Offenders Act be extended to the petitioner.

10. The report shows that the Probation Officer had certified the petitioner's character and recommended the grant of probation to him. The learned Appellate Court noticed that criminal cases were pending against the petitioner. However, it was also noticed that the petitioner was acquitted in Sessions Trial No. 43 of 2001, 58 of 2004, 42 of 2001 and 54 of 2004. The acquittal of the person in a criminal case does not show that he had committed the crime rather it shows that he was falsely implicated. Thus, the acquittal of a person cannot be held against him.

11. Learned Appellate Court held that the petitioner was aged 54 years and the chances of his reformation were bleak. This finding cannot be sustained. It was laid down by the Honble Supreme Court in *MCD v. State of Delhi*, (2005) 4 SCC 605: 2005 SCC (Cri) 1322: 2005 S OnLine SC 900 that the Probation of Offenders Act applies to all persons irrespective of their age. It was observed at page 611:

22. We have already reproduced Section 4 of the POB Act. It applied to all kinds of offenders, whether under or above 21 years of age. This section is intended to attempt possible reformation of an offender instead of inflicting on him the normal punishment for his crime. The only limitation imposed by Section 6 is that, in the first instance, an offender under twenty-one years of age will not be sentenced to imprisonment. While extending the benefit of this case, the discretion of the court has to be exercised having regard to the circumstances in which the crime was committed, the age, character and antecedents of the offender. Such exercise of discretion needs a sense of responsibility. The offender can only be released on probation of good conduct under this section when the court forms an opinion, having considered the circumstances of the case, the nature of the offence and the character of the offender, that in a particular case, the offender should be released on probation of good conduct. The section itself is clear that before applying the

section, the Magistrate should carefully take into consideration the attendant cir-cumstances

12. A similar view was taken in *Yakub Abdul Razak Memon v. State of Maharashtra*, (2013) 13 SCC 1 : (2014) 7 SCC (Cri) 1: 2013 SCC OnLine SC 257, wherein it was observed at page 1013:

2939. Section 4 of the Probation of Offenders Act applies to all kinds of offenders, whether under or above the age of 21 years. This section is intended to attempt the possible reformation of an offender instead of inflicting upon him the normal punishment for his crime. It is submitted that it is settled law that while extending the benefit of the said provision, this court has to exercise its discretion having regard to the circumstances in which the crime was committed, viz., the age, character and antecedents of the offender. It is also settled law that such exercise of discretion needs a sense of responsibility. The section itself is clear that before applying the same, this Court should carefully take into consideration the attendant circumstances.

13. Therefore, the benefit of the Probation of Offenders Act could not have been denied on the ground that the petitioner was aged 54 years.

14. It was laid down by the Honble Supreme Court in *Nagarajan v. State of T.N.*, (2025) 7 SCC 479: 2025 SCC OnLine SC 1126 that the purpose of probation is to afford a chance to the criminal to reform. It was observed at page 496:

41. Lastly, in *Arvind Mohan Sinha v. Amulya Kumar Biswas*, (1974) 4 SCC 222: 1974 SCC (Cri) 391, Y.V. Chandrachud, J. (as his Lordship then was) arising from a conviction under the Customs Act, 1962 succinctly delineated the purpose, purport and object of the Probation Act in the following words: (SCC pp. 225-26, paras 11 & 13)

11. 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 re-habilitated in society. A jail term should normally be enough to wipe out the stain of guilt, but the sentence the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attaches to convicts often render the remedy worse than the disease, and the very purpose 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 re-formed 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. Elkin 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) p. 162]. Edwin H. Sutherland raises it to the status convicted offender. [Principles of Criminology, 4th Edn. (1947) p. 383]

13. There is no foundation for the fear that offenders released on probation may hold society to ransom, and society may therefore look upon the release of offenders on probation as the triumph of criminals over the weaknesses of law. An offender released on probation is convicted but not forthwith sentenced in the sense of penal laws. Under the disposition made by the Court, the sentence is suspended during the period of probation. Section 4(1) of the Act provides that instead of sentencing the offender at once, the Court may direct his release on his entering into a bond to receive sentence when called upon during the probationary period and in the meantime to keep the peace and be of good behaviour. Thus, it is only in a limited, though a socially significant, sense that the Act constitutes an exception to the broad and general principle of criminal law embodied, for example, in Sections 245(2), 258(2), 306(2) and Section 309(2) of the Code of Criminal Procedure, that a sentence shall follow on a conviction.

15. A similar view was taken in Som Dutt (supra), Gulzar (supra) and Desh Raj (supra).

16. In the present case, the report of the Probationary Officer does not show anything against the petitioner. His character was certified by his relatives, and the Probation Officer had recommended the grant of probation to him. Therefore, in these circumstances, the learned Trial Court was justified in granting the benefit of probation to the petitioner, and the learned Appellate Court erred in setting aside the order passed by the learned Trial Court.

17. In view of the above, the present petition is allowed, and the judgment dated 01.04.2015 passed by learned Additional Sessions Judge-II, Shimla, is ordered to be set aside, while the order passed by the learned Trial Court is ordered to be restored.

18. The present petition stands disposed of and so are the pending miscellaneous application(s), if any.