

(2012) 11 P&amp;H CK 0090

## High Court Of Punjab And Haryana At Chandigarh

Case No: C.R.R. No. 2093 of 2012

Gurinder Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Nov. 27, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 360, 361, 401
- Penal Code, 1860 (IPC) - Section 406, 498A
- Probation of Offenders Act, 1958 - Section 4, 6

**Citation:** (2013) 1 DMC 60**Hon'ble Judges:** Mehinder Singh Sullar, J**Bench:** Single Bench**Advocate:** Deepak Sharma, for the Appellant; Gaurav Verma, AAG Haryana, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Mehinder Singh Sullar, J.

The matrix of the facts & evidence, unfolded during the course of trial, culminating in the commencement, relevant for deciding the instant revision petition and emanating from the record, is that, initially, in the wake of complaint of complainant Ravinder Kaur (PW 1), a criminal case was registered against her husband Gurinder Singh (petitioner-convict) and his parents Balwant Singh & Balwinder Kaur, vide FIR No. 484 dated 16.8.2000, on accusation of having committed the offences punishable under sections 406 & 498A IPC by the police of Police Station Ambala Cantt. Having completed all the codal formalities, Balwant Singh and Balwinder Kaur, parents-in-law of the complainant, were acquitted. At the same time, main accused Gurinder Singh (petitioner-convict), husband of the complainant, was convicted and sentenced to undergo rigorous imprisonment for a period of one year each, to pay a fine of 200/- and in default of payment of fine, to undergo

further simple imprisonment for a period of 10 days for the commission of offences punishable under sections 406 & 498A IPC. However, both the substantive sentences were ordered to run concurrently by the Trial Court, by way of impugned judgment of conviction dated 11.8.2010 & order of sentence dated 12.8.2010 (Annexure P2).

2. Aggrieved thereby, the appeal (Annexure P1) filed by the petitioner-convict was partly accepted and he was acquitted of the charge u/s 406 IPC. However, the conviction & sentence awarded for the commission of an offence punishable u/s 498A IPC were maintained by the appellate Court, by means of impugned judgment dated 14.6.2012.

3. The petitioner-convict still did not feel satisfied and preferred the present revision petition, to challenge the impugned judgments of conviction & orders of sentence, invoking the provisions of section 401 Cr. PC.

4. After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, there is no merit in the instant revision petition, as regards the conviction of petitioner-convict is concerned.

5. During the course of preliminary hearing, the learned counsel did not assail the pointed conviction of petitioner-convict. However, he prayed that his case be considered only qua quantum of sentence. Consequently, a Coordinate Bench of this Court (Rameshwar Singh Malik, J.) passed the following order on 28.8.2012:-

Learned counsel for the petitioner, at the very outset submits that he does not intend to challenge the conviction of the petitioner. He further submits that let the present petition be considered only qua quantum of sentence of the petitioner. Learned counsel for the petitioner also submits that the petitioner has already undergone actual sentence of more than two and half months. Notice to A.G. Haryana, for 4.10.2012.

6. In this view of the matter, the impugned judgments of conviction and orders of sentence of fine are hereby maintained as such.

7. Be that as it may, the learned counsel then contended with some amount of vehemence that the petitioner-convict is a first offender, guilty of matrimonial dispute and the Courts below did not record any cogent reasons to negate his plea to release him on probation. He prayed that the petitioner-convict is entitled to the benefit of probation.

8. At the very outset, it is not a matter of dispute that the aims and object of the Probation Act came to be decided by Hon"ble Apex Court in case [Jugal Kishore Prasad Vs. State of Bihar](#), . Having considered the scope of the Probation Act, it was, inter alia, ruled as under (para 6):-

The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act" is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consequence with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals.

9. Sequelly, relying upon the principle laid down in case [Ishar Das Vs. The State of Punjab](#), the same view was again reiterated by Hon We Supreme Court in case [Arvind Mohan Sinha Vs. Amulya Kumar Biswas and Others](#), -

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 rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attached to convicts often render the remedy worse than the disease and the year purposes 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 stick. 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 reformed 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 Sikin 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) page 162) Edwin R. Sutherland raises it to a status of a convicted offender. (Principles of Criminology, 4th Edn. (1947) page 383).

10. Such thus being the legal position and material on record, now the short & significant question, though important, that arises for determination is, as to

whether the petitioner-convict is entitled to the benefit of probation or not ?

11. Having regard to the rival contentions of learned counsel for the parties, to me, the answer must obviously be in the affirmative.

12. What cannot possibly be disputed here is that the object underlying the provisions of sections 4 and 6 of the Probation of Offenders Act, 1958 (for brevity "the Probation Act") and sections 360 & 361 Cr. PC, broadly speaking, is that first offenders be not sent to jail for the commission of less serious offences, on account of grave risk to their attitude to life to which they are likely to be exposed as a result of their association with the hardened and habitual criminal inmates of the jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly make more harm than to reform them, and for that reason, it would perhaps also be to an extent prejudicial to the larger interests of the society as a whole. Perhaps that was the reason that the" mandatory injunction against imposition of sentence of imprisonment has been embodied in Section 6 of the Probation Act. This mandate is inspired by the desire to keep the young delinquent/first offenders away from the possibility of association or close contact with hardened criminals and their evil influence. Therefore, these beneficial provisions have to be liberally construed.

13. The sole intention of the legislature in passing probation laws is to give person of a particular type of chance of reformation, which they would not get if sent to prison. The types of persons, who are in the contemplation of the legislature under the probation laws are those who are not hardened or dangerous criminals, but those who have committed offences under some momentary weakness of character or some tempting situation. By placing the offender on probation," the Court saves him from the stigma of jail life and also from the contaminating influence of hardened prison inmates. Probation also serves another purpose, which is quite significant though of secondary importance. Even, it helps in eliminating overcrowding in jails by keeping many offenders away from the prison.

14. As is amply clear that Section 360 Cr.P.C. deals with order to release the accused on probation of good conduct or after admonition, whereas Section 361 Cr.P.C. posits that "where in any case the Court could have dealt with an accused person u/s 360 or under the provisions of the Probation Act, but has not done so, it shall record in its judgment the special reasons for not having done so."

15. Therefore, the conjoint and meaningful reading of the beneficial provisions of the Probation Act would reveal that non-obstante clause contained in Section 4 points to the conclusions that the provisions of this Section would have overriding effect, shall prevail if the conditions described therein are fulfilled.

16. Meaning thereby, the Court has the ample power to release the first offender of minor offences on probation, keeping into focus the nature & manner of the crime, age of the offender, other antecedents and attending circumstances of the offence

instead of committing him to jail.

17. Likewise, Section 4 of the Probation Act postulates that 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 the 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. The learned State counsel has acknowledged the factual matrix of the case and legal position.

18. Having regard to the nature, manner of the crime, age of the offender, antecedents and other following relatable factors, to me, it would be expedient in the interest and justice would be sub-served, if the benefit of probation is granted to the petitioner-convict, inter alia on the following grounds:

i) The marriage of petitioner-convict was solemnized with the complainant on 17.4.1998 and the criminal case was registered against him on 16.8.2000. In this manner, the petitioner-convict has already faced the pangs and suffered the agony of protracted trial, appeal and revision for the last more than 12-1/4 years.

ii) The petitioner-convict has already undergone the actual sentence of more than 5-1/2 months.

iii) The complainant has already obtained divorce from the petitioner.

iv) The petitioner-convict has remarried after the dissolution of his 1st marriage. Now he has been blessed with two children from the loins of his 2nd wife. He is sole bread winner of his family.

v) He is first offender and there is no history of his previous conviction.

vi) The antecedent and credentials of the petitioner-convict are such that he has not been found involved in any other case.

vii) There is no legal impediment to release him on probation.

viii) Even the modern trend of penology also leans towards the reformation of the offender, so as to make him a useful citizen of the society. No useful purpose was going to be achieved by again sending the petitioner-convict to jail.

19. Therefore, taking into consideration the period of agony of protracted trial, appeal, revision, antecedents of petitioner-convict, nature of offence, totality of other facts & circumstances emanating from the record, as discussed here-in-above,

to my mind, no useful purpose would be served in again sending him to jail to serve out the remaining period of sentence and instead of sending him to prison, he be released on probation under the present set of circumstances. Consequently, it is directed that petitioner-convict be released on probation on his furnishing personal bond (within two months) in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the conditions that he would keep the peace and be of good behaviour, for a period of two years from the date of passing of this order. Needless to mention that in case, he is found to be indulged in any illegal activities, the sentence awarded to him by the appellate Court shall stand revived. The remaining sentence of fine imposed on the petitioner-convict by the appellate Court is hereby maintained.

20. In the light of aforesaid reasons, the instant revision petition is hereby dismissed on merits and the impugned judgment of conviction & order of sentence of fine are maintained. However, the order of sentence is accordingly modified to the extent and in the manner depicted herein above. Needless to mention that natural consequences & compliance will follow accordingly.