

(2009) 04 P&H CK 0325

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 1544 of 2004

Ranjit Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 23, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 360, 361
- Probation of Offenders Act, 1958 - Section 3, 4, 6
- Punjab Excise Act, 1914 - Section 1, 14, 16, 61(1)(c), 61(l)(c)

Citation: (2009) 31 CriminalCC 974

Hon'ble Judges: Kan Waljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: P.S. Dhaliwal, for the Appellant; Mehardeep Singh, AAG, Punjab, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.

Case of the prosecution is that on secret information received, police party on 15th July, 1996 in a room of me tubewell, found the petitioner distilling illicit liquor. At the time of raid, accused was found feeding the fire. The working still was dismantled and cooled down. One drum containing 25 kg lahan, one shikala with a hole, one chapney, three cane pieces, one plastic pipe, one iron balla and one can of plastic were found in possession of the petitioner. Case FIR No.144/1996 was registered at Police Station Jandiala u/s 16/1/14 of Punjab Excise Act.

2. Petitioner was tried. Trial Court found the petitioner guilty and convicted him for the above said offence and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for three months.

3. Aggrieved against the same, petitioner filed an appeal. The appellate Court maintained the conviction, however reduced the sentence awarded to the petitioner

to one year rigorous imprisonment.

4. Counsel for the petitioner has stated that in the present case, occurrence pertains to year 1996. Petitioner has already suffered a protracted trial of 13 years. It has further been submitted that in the order, where quantum of sentence was determined, it was noticed by the trial Court that petitioner was aged 20 years. Therefore, the petitioner, being less than 21 years of age, ought to have been released on probation. Counsel for the petitioner has not assailed the conviction of the petitioner and has accepted the evidence of the witnesses.

5. Counsel for the petitioner has relied upon a judgment of this Court in *Pakhar Singh v. State of Punjab* 2007(1) RCR(Cri) 396, wherein reliance was placed on the Supreme Court judgment titled [Ishar Das Vs. The State of Punjab](#), and *Joginder Singh v. State of Punjab*, 1980 PLR 585. With respect to Ld. single Judge of this Court, para 6 and 7 of the judgment is reproduced below:

"6. In [Ishar Das Vs. The State of Punjab](#), , Hon"ble Supreme Court held that sub-section (1) of Section 4 of the Probation of Offenders Act containing the non-obstante clause, would have over-riding effect and shall prevail if the other conditions prescribed were fulfilled. It was held as follows:

"The question which arises for determination is whether despite the fact mat a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under the Prevention of Food Adulteration Act, the Court can resort to the provision of the Probation of Offenders Act. In this respect we find that sub-section (1) of Section 4 of the Probation of Offenders Act, contains the words "notwithstanding anything contained in law for the time being in force." The above non obstante clause points to the conclusions that the provisions of Section 4 of Probation of Offenders Act would have overriding effect and shall prevail if the other conditions prescribed are fulfilled. Those conditions are (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) me Court finding him 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 and (3) the accused in such an event enters 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. Sub-section (1) of Section 6 of above mentioned Act, as stated earlier, imposes a duty upon the Court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the Court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him u/s 3 or 4 of the Act but to award a sentence of imprisonment."

7. In *Joginder Singh v. State of Punjab*, 1980 PLR 585, a Full Bench of this Court also held that mere prescription of the minimum sentence u/s 61(1)(c) of the Act was no bar to the applicability of Sections 360 and 361 Cr.P.C. Further that the same was not a special reason for denying the benefit of probation to a person convicted thereunder. It was further held that on the same reasoning, there was no bar to the applicability of Sections 4 and 6 of the Probation of Offenders Act. The Full Bench held as follows:

"To conclude on the legal aspect, therefore, it must be held that the mere prescription of the minimum sentence u/s 61(1)(c) of the Punjab Excise Act, 1914 is no bar to the applicability of Sections 360 and 361 of the Criminal Procedure Code, 1973 and the same is not a special reason for denying the benefit of probation to a person convicted thereunder. In the alternative, it is equally no bar to the applicability of Sections 4 and 6 of the Probation of Offenders Act. The answer to the question posed at the outset is rendered in the negative."

6. According to the counsel for the petitioner, petitioner has not only suffered a protracted trial but he has remained in custody for a period of thirteen days.

7. I am in agreement with the submissions made by Mr.P.S.Dhaliwal. Accordingly, the order of conviction is being maintained, however, order of sentence is set aside and petitioner is ordered to be released on probation for a period of one year. Petitioner shall execute bonds to the satisfaction of Chief Judicial Magistrate, Amritsar with an undertaking to keep peace and maintain good conduct for a period of one year. However, sentence of fine is enhanced to Rs. 10,000/-, which shall be treated as cost of litigation.

With these observations, present revision petition is disposed off.