
(2019) 03 P&H CK 0162

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 170 Of 2016 (O&M)

Om Parkash

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision: March 19, 2019

Acts Referred:

Indian Penal Code, 1860 " Section 121, 124, 373, 379, 380, 381, 404, 420, 465, 466, 468, 471#Code Of Criminal Procedure, 1973 " Section 313, 360#Punjab Co-operative Societies Act, 1961 " Section 39#Probation Of Offenders Act, 1958 " Section 3, 4, 12

Citation: (2019) 03 P&H CK 0162

Hon'ble Judges: Harnaresh Singh Gill, J

Bench: Single Bench

Advocate: S.P.Soi, S.S.Cheema

Final Decision: Disposed Off

Judgement

Under

Sections",Sentence awarded

420 IPC,"To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 3,000/- and in default of payment of fine, to further

undergo rigorous imprisonment for one month.

471 IPC,"To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5,000/- and in default of payment of fine, to further

undergo rigorous imprisonment for one month.

petitioner, who is otherwise not reflected to be a previous offender, can be released on probation. Thus, the conviction of the petitioner is, therefore,"

affirmed.,

So far as the prayer of learned counsel for the petitioner for releasing the petitioner on probation on good conduct is concerned, this Court feels that",

the purpose of criminal law justice is not only to bring peace, harmony and discipline in the society, but also to give an opportunity to an erring",

individual to reform himself, so that there is everlasting peace in the society. This view finds support from the judgment of Hon'ble Supreme Court",

in the case of Karamjit Singh Versus State (Delhi Admn.), 2001(9) SCC 161, wherein the following observations were made:",

"Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to,

realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and,

repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a,

criminal case the Court has to weight the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the",

matter of punishment in the case. An act of balancing is what is needed in such a case, a balance between the interest of the individual and the",

concern of the society weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it",

is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the,

parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead life of a normal, useful member",

of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts,

and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has",

to be avoided, again within the permissible limits of law."

So while determining the question of proper punishment in a criminal case the Court has to weigh the degree of culpability of the accused person and,

to afford an opportunity to the individual to reform himself.,

The relevant provisions of law which have been referred to in this case are reproduced below for ready reference:-,

360. Order to release on probation of good conduct or after admonition.,

(1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of,

seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or",

imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being",

had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the",

offender should be released on probation of good conduct, 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 where any first offender is convicted,

by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this",

section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the",

accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).",

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such",

sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or",

additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be",

made or taken.,

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal",

Code (45 of 1860), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is",

proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or",

mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed,"

instead of sentencing him to any punishment, release him after due admonition.",

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.,

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a",

right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender",

according to law: Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been,

inflicted by the Court by which the offender was convicted.,

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this",

section.,

(7) The Court, before directing the release of an offender under sub- section (1), shall be satisfied that an offender or his surety (if any) has a fixed",

place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the,

observance of the conditions.,

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that",

the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.",

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either",

remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court,

may, after hearing the case, pass sentence.",

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or",

any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.Ã¢â¬â",

Section 3 Ã¢â¬â" The Probation of Offenders Act, 1958-",

Power of Court to release certain offenders after admonition:

When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section,

420 of the Indian Penal Code (45 of 1860), or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under",

the Indian Penal Code or any other law, and no previous conviction is proved against him 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 so to",

do, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him to any punishment",

or releasing him on probation of good conduct under Section 4, release him after due admonition.",

Section 12 of Ã¢â¬âThe Probation of Offenders Act, 1958Ã¢â¬â,Ã¢â¬â" Removal of disqualification attaching to conviction.Ã¢â¬â",

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4",

shall not suffer disqualification, if any, attaching to a conviction of an offence under such law: Provided that nothing in this section shall apply to a",

person who, after his release under section 4 is subsequently sentenced for the original offence.",

Section 360 Cr.P.C., leaves no manner of doubt that a Court must consider the age, character or antecedents of the offender and the circumstances in",

which the offence was committed and then decide whether he is entitled to be released on probation of good conduct or not. Section 3 of Probation of,

Offenders Act, 1958, further entitles a convict to release after due admonition if the case falls within the parameters prescribed therein. Section 12 of",

the said Act provides that no disqualification shall attach to a conviction in case a convict has been dealt with under the provisions of Section 3 or,

Section 4 of the said Act.,

The Hon'ble Supreme Court in Chandreshwar Sharma Vs. State of Bihar, (2000) 9 SCC 245, while considering such mandate, has held to the",

following effect:-,

"3. The appellant herein was convicted under Sections 379 and 411 Indian Penal Code and was sentenced to rigorous imprisonment for one year,

as 3.5 kg of nonferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The",

appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the Tiffin",

carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negated and rightly so.",

When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code",

should not be made applicable. Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance.",

From the perusal of the judgment of the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the",

Instead, he is ordered to be released on probation for a period of one year subject to his executing bonds to the satisfaction of the Chief Judicial".

Magistrate concerned, undertaking to keep peace and be of good behaviour for the said period and to appear and receive the sentence as and when",

called upon to do so in case of violation of any of the conditions of the bonds. Petitioner is also directed to pay a sum of Rs. 25,000/- as costs of",

litigation to be paid to the State.,

Revision petition stands disposed of in the above terms.,