



**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH**

**CRR No. 51 of 2023 (O&M)**

**Reserved on : 01.07.2024**

**Pronounced on : 03.07.2024**

**Virender**

**...Petitioner**

**Versus**

**State of Haryana and others**

**...Respondents**

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Sunny Tyagi, Advocate  
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

None for respondent Nos. 2 to 6.

**MANISHA BATRA, J.**

1. The instant revision petition has been filed by the petitioner/complainant challenging the judgment dated 02.05.2022, passed by the Court of learned Additional Sessions Judge, Panipat in Criminal Appeal No. 142 of 2020, titled as *Ayub and others vs. State of Haryana*, whereby the appeal filed by the accused/respondent Nos. 2 to 6 against the judgment of conviction and order of sentence dated 02.08.2018 passed by the Chief Judicial Magistrate, Panipat, had been partly allowed and while setting aside the said judgment and order of sentence passed by the trial Court, the accused/respondent Nos. 2 to 6 were ordered to be released on probation on furnishing personal bonds of peace and good behavior in the sum of Rs. 25,000/- each for a period of one year.



2. Brief facts of the case are that the petitioner Virender had got registered an FIR bearing No. 1397 dated 11.10.2014 against the private respondents under Sections 323, 325, 341, 34 of IPC at Police Station City Panipat with the allegations that the accused persons had wrongfully restrained the complainant and caused hurt to him as well as to Dharmender and Rajwant. After completion of investigation, *challan* was presented in the Court. Charges against the accused persons were framed under Sections 323, 325 and 341 of IPC read with Section 34 of IPC, to which they pleaded not guilty and claimed trial.

3. The prosecution examined as many as six witnesses apart from placing on record some documentary evidence. Thereafter, the statements of the accused under Section 313 of Cr.P.C. were recorded and all the incriminating evidence was put before the accused, which they denied and stated that they would lead defence evidence. However, no defence evidence was led by them.

4. The trial Court, after appraising the entire material placed on record as well as after hearing the arguments addressed by the parties, held the accused/respondent Nos. 2 to 6 guilty for commission of offences punishable under Sections 341, 323, 325 of IPC read with Section 34 of IPC and sentenced them to undergo rigorous imprisonment for a maximum period of one year. Aggrieved from the same, the accused persons had preferred an appeal before the appellate Court, which was partly allowed by passing the impugned order and the accused/respondent Nos. 2 to 6 were ordered to be released on probation as mentioned above. Aggrieved of the impugned judgment of the appellate Court, the petitioner, who was the complainant of



the FIR, has come up before this Court by filing the present revision challenging the judgment of the appellate Court.

5. Learned counsel for the petitioner has argued that the judgment passed by the appellate Court granting probation to the accused persons is not sustainable in the eyes of law as the appellate Court has not rightly appreciated the evidence led by the prosecution. It is further submitted that as many as 21 injuries were caused to three injured including complainant, which included grievous injury but the appellate Court had ignored the medical evidence and the testimony of PW-1 Dr. Rakesh and PW-2 Dr. Shalini Mittal and had also ignored the MLRs Ex. PW-2/A, PW-2/C and PW-2/D and had granted benefit of probation to the accused persons. It is therefore, argued that the appellate Court had erred in granting benefit of probation to the accused persons while partly allowing their appeal. Hence, it is urged that the revision petition deserved to be allowed and the impugned judgment is liable to be set aside.

6. Learned State counsel, while admitting the factual position, has also argued on the line of the petitioner and has submitted that the appellate Court has committed grave error in granting benefit of probation to the accused persons.

7. The accused persons/respondent Nos. 2 to 6 are duly served but there is no representation on their behalf.

8. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have also gone through the record carefully.



9. Before delving into this point as well as before considering the prayer made by the petitioner to set aside the impugned judgment passed by the appellate Court releasing the accused persons on probation, let us have a look on the law on this point. The aims and object of the Probation Act came to be decided by Hon'ble Apex Court in case ***Jugal Kishore Prasad v. State of Bihar, 1972 AIR (SC) 2522***. Hon'ble Supreme Court while considering the scope of the Probation Act had held as under:-

"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."

10. Reliance can also be placed upon ***Isher Das v. State of Punjab, AIR 1972 Supreme Court 1295*** and ***Arvind Mohan Sinha v. Amulya Kumar Biswas and others, 1974 AIR (SC) 1818***, wherein Hon'ble Supreme Court had taken the similar view. Relevant paragraph of ***Arvind Mohan Sinha's*** case (supra) reads as under:-



"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 is attached to convicts often render the remedy worse than the disease and the 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 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)."

11. In view of the ratio of law as laid down in afore-cited judgments, the question that arises before this Court is that as to whether the appellate



Court was justified in granting probation to the accused persons or not? In the considered opinion of this Court, the answer to this question must be in the affirmative.

12. 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 of Cr.PC, is that the 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 cause 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 law 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. It helps in eliminating overcrowding in jails by keeping many offenders away from the prison. 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. provides *that "where in any case the Court could have dealt with an accused person under Section 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."*

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

15. 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 appellate Court had observed that the accused persons were neither hardened criminals nor habitual offenders. They had families to support. They were repentant of their acts. The learned State counsel has acknowledged the factual matrix of the case and legal position.

16. In view of the discussion as made above and also considering the attendant facts and circumstances of the case, this Court is of the considered opinion that taking into consideration the agony and trauma, which the accused persons have undergone during protracted trial, appeal, revision, their antecedents, nature of offence, totality of other facts & circumstances emanating from the record, no useful purpose would be served by sending them again into jail to serve out the remaining period of sentence. Accordingly, finding no infirmity or illegality in the impugned judgment, passed by the appellate Court, which is well reasoned one and based on settled proposition of law, the present revision petition is dismissed on merits and the impugned judgment of the appellate Court is upheld.

**03.07.2024**

*Wasem Ansari*

**(MANISHA BATRA)  
JUDGE**

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*