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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-38673-2019 (O&M)
Date of decision: 16.02.2024

Rameshwar ...Petitioner

versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Chanderhas Yadav, Advocate
for the petitioner

Mr. Vikas Bhardwaj, AAG, Haryana.

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Harpreet Singh Brar, J. (Oral)

1. The petitioner has approached this Court by filing the present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of order dated 13.08.2019 (Annexure P-7 colly) passed by learned Chief Judicial Magistrate, Jhajjar whereby the concession of probation granted to the petitioner was revoked in FIR No.92 dated 16.05.1995 filed under Sections 323, 325, 34 of the IPC registered at Police Station, Jhajjar. Resultantly, vide order of sentence dated 14.08.2019 (Annexure P-7 colly), the petitioner was sentenced as under:

Offence	**Sentence**
Section 323/34 IPC	Rigorous imprisonment for 1 year and a fine of Rs. 1000/-, in default of which rigorous imprisonment of 3 months
Section 324/34 IPC	Rigorous imprisonment for 2 years and a fine of Rs. 2000/-, in default of which rigorous imprisonment of 6 months
Section 325/34 IPC	Rigorous imprisonment for 3 years and a fine of Rs. 3000/-, in default of which rigorous imprisonment of 9 months

2. The facts, briefly, are that on 16.05.1995, at about 11:15 AM, the petitioner-accused along with co-accused-Baljeet voluntarily caused grievous injuries to complainant-Balwant Singh by assaulting him with a brick. The complainant was rescued by one Sohan Lal. Thereafter, when the complainant and his wife were on their way to Civil Hospital, Jhajjar, they were attacked and manhandled by the petitioner and the co-accused again. After assessing all material on record, the learned trial Court convicted the petitioner vide judgment dated 07.01.2003 (Annexure P-1). Aggrieved by the same, he preferred an appeal before the learned Additional Sessions Judge, Jhajjar, which was allowed vide judgment dated 10.09.2005 (Annexure P-2) and the accused were acquitted. Thereafter, the complainant filed a revision petition before this Court which was allowed and the matter was remitted back to the learned Additional Sessions Court to be decided afresh.

4. After re-appreciating the facts of the case, the conviction of the petitioner was maintained however, the order of sentence was modified to grant the benefit of probation to the petitioner by the learned Additional Sessions Judge vide judgment dated 18.12.2013 (Annexure P-4). The period of probation was fixed for one year and it was ordered that in the event of registration of any other case of a serious nature against the petitioner, the quantum of sentence will be revisited by the learned trial Court. Thereafter, the petitioner was arrayed as an accused by his by his brother-Raghunath (respondent no.2) in FIR No. 765 dated 03.11.2014 filed under Sections 323, 325, 34 of the IPC registered at Police Station Jhajjar alleging that the petitioner, along with his sons and wife, attacked the respondent no. 2 in his own house and inflicted serious injuries thereby committing another offence during his probation period. Respondent no. 2 filed a complaint before the learned

Chief Judicial Magistrate, Jhajjar, seeking cancellation of the benefit of probation as its conditions were violated by the petitioner. The learned Chief Judicial Magistrate set aside the probation granted to the petitioner vide impugned order dated 13.08.2019 (Annexure P-7) and he was sentenced as mentioned above.

CONTENTIONS

5. Learned counsel for the petitioner contends that the petitioner is now a 75 years old man who has been falsely implicated in FIR No.765 dated 03.11.2014 just one month short of completion of his probation period. Learned trial Court has fallen into error by cancelling probation of the petitioner as the same was granted by a Court superior to it. Further, the learned trial Court failed to consider the report of the District Probation Officer (Annexure P-6) which attests to the good character of the petitioner.

6. Moreover, while granting probation vide judgment dated 18.12.2013, the learned Additional Sessions Judge specifically ordered that the probation can only be cancelled if a case of serious nature is registered against the petitioner. The FIR No. 765 dated 03.11.2014 has been registered under Section 323, 325 and 34 of the IPC which cannot be considered to be of a serious nature. The learned trial Court has also not followed the provisions of Probation of Offenders Act, 1958 (hereinafter 'the Act'). As such the impugned order dated 13.08.2019 (Annexure P-7) cancelling the probation of the petitioner deserves to be set aside.

7. *Per contra* learned State counsel opposes the prayer of the petitioner on the ground that the present petition is not maintainable, as the Act provides for an appeal against the order passed under Section 3 and 4 of the Act whereas the impugned order in the present petition is passed under Section 9 of the Act. As such, the present petition is wholly misconceived and not maintainable. It is further stated that the petitioner has caused injuries to his brother by forcibly

entering his house regarding which an FIR has been registered. The petitioner has violated the terms of his probation and the learned trial Court has correctly cancelled the same.

OBSERVATIONS AND ANALYSIS

8. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the probation of the petitioner was cancelled by learned Chief Judicial Magistrate Ist Class, Jhajjar vide order dated 13.08.2019 (Annexure P-7) under Section 9 of the Act, after the petitioner was arrayed as an accused in FIR No. 765 dated 03.11.2014 filed under Sections 323, 325, 34 of the IPC registered at Police Station Jhajjar, which is a violation of the condition imposed by the learned Additional Sessions Judge vide judgment dated 18.12.2013(Annexure P-4) while granting probation. Section 9(3) of the Act reads as follows:

> ***"9. Procedure in case of offender failing to observe conditions of bond.***
> *(3) If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith—*
>
> *(a) sentence him for the original offence;* ***or***
>
> *(b) where the failure is for the first time, then, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees."*

A bare reading of Section 9(3) of the Act indicates that if the conditions of probation are violated, the offender can either be sentenced for the original offence or a fine of Rs. 50/- can be imposed on the offender, given it is a first time violation.

9. The Act only allows for appeal against orders passed under Section 3 and 4 of and not against the order passed under Section 9. Since leaving the accused remediless would be the travesty of justice, therefore, to cure the same, the

inherent powers of the High Court under Section 482 of Cr.P.C. can be invoked against an order passed under Section 9 of the Act as held by the Hon'ble Supreme Court in **Pratap Singh v. State of Himachal Pradesh 2002 (4) PLJR 117**. Further, a two Judge bench of the Hon'ble Supreme Court in **M. Viswanathan v. M/s. S.K. Tiles & Potteries P. Ltd. & Ors 2010 (4) SCC (Cri) 298**, while discussing the scope of Section 482 of the Cr.P.C. has observed that the inherent powers of the High Court can be exercised to secure the ends of justice and rectify any wrongs that have crept in course of administration of justice. Speaking through Justice Dr. Arijit Pasayat, the following was held:

> *"14. Exercise of power under section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified*

by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice"

10. The petitioner is an elderly man of 75 years of age who has been suffering the agony of trial since 1995. He has peacefully spent 11 months out of the probation period of 12 months, without recording any untoward incident. A perusal of the complaint filed by respondent no.2, based on which FIR No. 765 dated 03.11.2014 was registered and the probation of the petitioner was cancelled, indicates that no specific role has been attributed to him. The District Probation Officer-cum Superintendent, District Jail, Rohtak in his report dated 03.07.2019 (Annexure P-6) in view of the petitioner's consistent good behaviour, advanced age and social status, noting that he has served as member of the Panchayat on one occasion and Sarpanch twice, has also recommended mercy.

11. Justice and compassion are mutually inclusive. While accountability and fairness are integral facets of justice, the idea of just justice can only be realised through compassion. However, the said purpose cannot be achieved if justice is dispensed only on the anvil of accountability in a mechanical manner, devoid of context and nuance. By applying the idea of just justice to the factual matrix of this case, this Court finds it outrageously unfair to send an elderly man, of 75 years of age, to undergo custody of 3 years by sentencing him for the original offence under Section 9(3)(a) of the Act and invokes its inherent powers under Section 482 of the Cr.P.C. to grant the benefit of Section 9(3)(b) of the Act to the

petitioner instead and imposes a fine of Rs. 50/- on the petitioner for violating conditions of his probation, in order to do full and complete justice as such an approach is warranted to further the cause of fairness which is intrinsic to the idea of justice. In a society rife with conflict and apathy, the goodness of justice must not be perceived as aloof and stiff, therefore this Court is obligated to take a more sensitive approach to the plight of the petitioner in view of his age and to ensure that he is not rendered remediless by adopting a hyper-technical approach.

CONCLUSION

12. Keeping in view the facts and circumstances of the case, the impugned order dated dated 13.08.2019 (Annexure P-7), whereby the probation of the petitioner was cancelled, is set aside subject to him depositing Rs. 50/- with the trial Court within a period of 30 days from receiving a certified copy of this order.

13. The instant petition is allowed in above terms.

(HARPREET SINGH BRAR)
JUDGE

February 16, 2024
Pankaj*

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*