

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP No. 4457 of 2023

Reserved on: 29.11.2023

Date of Decision: 08.12.2023.

State of H.P. ...Appellant/Non-Applicant

Versus

Subhash Chand ...Applicant/convict

Coram

Hon'ble Mr. Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes.

For the applicant/convict : Mr. P.S. Goverdhan, Senior Advocate with Mr. Rakesh Thakur, Advocate.

For the appellant/non-applicant : Mr. Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

This order will dispose of an application under Section 4 of the Probation of Offenders Act, 1958 for releasing the applicant/accused on probation.

2. It has been asserted that the applicant was aged 29 years at the time of the commission of the offence. He is married

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

and has two school going children aged about 14 years and 08 years. The applicant's wife is posted as a clerk in the office of Sub Divisional Collector, Nahan. The mother of the applicant is dependent upon him. The applicant has no criminal antecedents. A criminal case was registered against him vide FIR No. 57 of 2011, dated 3.4.2011 in which he was acquitted. The applicant is in a regular Government job and is employed as a driver in Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni. The applicant has faced the trial for five long years and was acquitted on 11.02.2010. He has already spent 18 years in litigation. Hence, the benefit of the Probation of Offenders Act be granted to the petitioner.

3. I have heard Mr. P.S. Goverdhan, learned Senior Counsel, assisted by with Mr. Rakesh Thakur, learned Counsel for the applicant and Mr. Jitender Sharma, learned Additional Advocate General for the respondent-State.

4. Mr. P.S. Goverdhan, learned Senior Counsel for the applicant submitted that the applicant has deep roots in the society. He is a Government servant and he should be given a chance to reform himself. He has relied upon the judgments of

the Hon'ble Supreme Court in *Paul George Vs. State of NCT of Delhi 2008 (4) SCC 185* and the judgments of this Court in *Ram Rattan Vs. State of H.P. 1989 (1) Shim. LC 359* and *State of H.P. Vs. Kushal Singh 1997 (2) Cur.LJ 235* in support of his submission.

5. Mr. Jitender Sharma, learned Additional Advocate General for the respondent-State opposed this submission.

6. I have given considerable thought to the submissions at the bar and have gone through the record carefully.

7. It was laid down by the Hon'ble Supreme Court in *Dalbir Singh Versus State of Haryana (2000) 5 SCC 82* that the benefit of the Probation of Offenders Act cannot be granted to a person convicted of the commission of offences punishable under Sections 279, 304-A of IPC. It was observed:

“11. Courts must bear in mind that when any plea is made based on S. 4 of the PO Act for application to a convicted person under S. 304-A of I.P.C., road accidents have proliferated to an alarming extent and the toll is galloping up day by day in India and that no solution is in sight nor suggested by any quarters to bring them down. When this Court lamented two decades ago that "more people die of road accidents than by most diseases, so much so the Indian highway are among the top killers of the country" the saturation of accidents toll was not even half of what it is today. So V. R. Krishna Iyer, J., has suggested in the said decision thus :

"Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under S. 304-A, I.P.C. and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy-duty vehicles and speeding menaces."

12. In *State of Karnataka v. Krishna alias Raju (1987) 1 SCC 538* this Court did not allow a sentence of fine, imposed on a driver who was convicted under S. 304-A, I.P.C. to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the offence of driving a bus callously and causing the death of a human being. In that case, this Court enhanced the sentence to rigorous imprisonment for six months besides imposing a fine.

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences of visiting the victims and their families, Criminal Courts cannot treat the nature of the offence under S. 304-A, I.P.C. as attracting the benevolent provisions of S. 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that rash driving need not necessarily cause an accident, or even if any accident occurs it need not necessarily result in the death of any human being, or even if such death ensues he might not be convicted of the offence, and lastly, that even if he is convicted he would be dealt with leniently by the Court. He must always keep in his mind the fear psyche that if he is convicted of the offence of causing the death of a human being due to his callous driving of a vehicle he cannot escape from a jail

sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to the callous driving of automobiles.”

8. A similar view was taken in *Thakur Singh v. State of Punjab*, (2003) 9 SCC 208, wherein it was observed:-

6. Learned counsel lastly made an alternative plea that the Probation of Offenders Act may be applied to secure his job. This Court has held in *Dalbir Singh v. State of Haryana* [(2000) 5 SCC 82] that the Probation of Offenders Act cannot be invoked in cases involving rash or negligent driving of the bus resulting in death of human beings.”

9. In *State of Punjab v. Balwinder Singh*, (2012) 2 SCC 182, it was held:-

13. It is a settled law that sentencing must have a policy of correction. If anyone has to become a good driver, must have better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in *Dalbir Singh* [(2000) 5 SCC 82: 2004 SCC (Cri) 1208].

10. Therefore, in view of these binding precedents, it is not permissible to grant the benefit of the Probation of Offenders Act in an offence involving rash and negligent driving. Hence this prayer is rejected and the application is dismissed.

11. Be listed for hearing the accused on the quantum of offence on **14.12.2023**.

(Rakesh Kainthla)
Judge

___December, 2023
(Chander)