

(1980) 09 MP CK 0055

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 30 of 1975

Jailal Singh Teja Singh

APPELLANT

Vs

Ram Avtar Deviram and another

RESPONDENT

Date of Decision : 26-09-1980

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 222
Penal Code, 1860 (IPC) — Section 392
Probation of Offenders Act, 1958 — Section 6

Citation : (1981) JLJ 539

Hon'ble Judges : K.K. Dube, J; A.R. Navkar, J

Bench : Division Bench

Advocate : N.P. Mittal, for the Appellant; W.N. Kulsreshth, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Navkar, J.—This is a petition under Article 226 of the Constitution of India, for quashing the order passed by the Board of Revenue in Revision No. 89-111/78.

2. The facts of the case are that Devi Ram, Patel of village Jora Khurd, Tahsil and District Morena, expired and because of his death, the post of Patel for the said village, became vacant. For appointment of the Patel, the Sub-Divisional Officer, Morena registered a case and on 11-5-1977, passed an order of appointment of Patel after taking votes as Patel. In the said voting, Ram Avatar got 284 votes and Jai Lal Singh got 168 votes. As Ram Avatar got more votes than Jai Lal Singh, the Sub-Divisional Officer, appointed him as a Patel. Aggrieved by this order, Jai Lal Singh filed an appeal before the Collector, Morena, but the same was dismissed on 18-7-1977. A second appeal was preferred before the Additional Commissioner. On 22-2-1978, the second appeal was allowed, holding that against Ram Avatar there was a conviction u/s 392 of the Indian Penal Code and he was sentenced for one year's rigorous imprisonment by the Judicial Magistrate, First Class. Against that order of conviction, Ram Avatar filed an

appeal and in that appeal, on 22-3-1975, the Additional Sessions Judge gave him benefit u/s 6 of the Probation of Offenders Act, 1958 (hereinafter referred to as the Act), holding that he is below 21 years of age and asked him to file bonds and sureties of Rs. 1,500 for good behaviour for a period of one year. The learned Additional Commissioner held that in these circumstances, Ram Avatar cannot be appointed as a Patel as he has incurred disability under the Rules framed u/s 222 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as the Code). Therefore, accepting the appeal, the learned Additional Commissioner appointed Jai Lal Singh as a Patel. Against that, Ram Avatar went before the Board of Revenue in revision. The revision was accepted by the Member, Board of Revenue and he set aside the order of the Courts below and passed the order in the following manner:

(Translated in English)

(i) The duties of Patel be entrusted to the Patwari till permanent arrangement of the Patel is done,

(ii) A special report regarding the general character be called for from the Police pertaining to Ram Avatar and if it is certified to be good, then he be declared as Patel.

(iii) If Ram Avatar's character is not found to be good, then the procedure of election of the Patel be followed again. Besides Ram Avatar, all others be given and opportunity to file their applications and action for appointment of Patel be taken according to law.

Aggrieved by this order, the present petition is filed by Jai Lal Singh.

3. There is no dispute regarding the facts of the case. The first submission made by the learned counsel for the petitioner is that Ram Avatar was not eligible to contest the election for appointment of Patel, because he was convicted of an offence u/s 392 of the Indian Penal Code and, therefore, he has incurred a disqualification as mentioned in Rule 2 (vii) of the Rules framed u/s 222 of the Code. But, the learned counsel had to accept that against this conviction, an appeal was filed before the Additional Sessions Judge and he has given benefit of the Act to Ram Avatar. The reply to this by the learned counsel, appearing for non-petitioner No. 1 Ram Avatar is that as soon as the benefit is given u/s 6 of the Act, the disability incurred by the non-petitioner will come to an end. He has relied on section 12 of the Act. Section 12 of the Act runs as under:

12. Removal of disqualification attaching to conviction 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 u/s 4, is subsequently sentenced for the original offence.

Relying on this section, the learned counsel for non-petitioner No. 1 wants to submit that as the disqualification attaching to conviction has come to an end, Ram Avatar was eligible to contest the election. Further, he submitted that this objection was taken subsequently when the election was over. Therefore, we are of the opinion that bar of Rule 2 (vii) u/s 222 of the Code will not come in the way of Ram Avatar to contest the said election.

4. The next submission made by the learned counsel for the petitioner was that when the benefit of the Act was given to Ram Avatar, his age was not less than 21 years. Therefore, the order passed by the learned Additional Sessions Judge will not help Ram Avatar in removing the disqualification attaching to his conviction. Suffice it to say that against the order by which Ram Avatar was released under the Act, no action was taken and as such, whether Ram Avatar was entitled for such a benefit or not, we cannot decide on merits. We will have to uphold the finding of the learned Additional Sessions Judge that he was below 21 years of age and, therefore, he was given benefit under the Act.

5. The next submission made before us by the learned counsel for the petitioner is that for removal of disqualification, if the Court deals with the offence under sections 3 and 4 of the Act, then alone, the disqualification can be removed. But if the Court deals with a person found guilty u/s 6, then, provisions of section 12 of the Act will not be attracted and his disqualification attaching to conviction cannot be removed. We will have to refer to sections 3, 4 and 6 of the Act. Section 3 of the Act, refers to power of Court to release certain offenders after admonition. The offences mentioned are under sections 379, 380, 381, 404, 420 of the Indian Penal Code, 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. But while giving benefit under this section, the Court will have to see the nature of the offence and the character of the offender. The result of section 3 of the Act is that Court can release the convicted person after due admonition. Now, coming to section 4 of the Act, the Court has power to release certain offenders on probation of good conduct. This section is applicable to any person who is found guilty of having committed an offence not punishable with death or imprisonment for life. But, for giving the benefit under the section, the Court will have to consider the circumstances of the case, including the nature of the offence and the character of the offender. Under this section, the accused has to enter into a bond with or without sureties to appear and receive the sentence when called upon during such period, not exceeding three years. Under this section, the accused person can be released on probation on his executing a personal bond for good behaviour and the Court may direct that in the meantime, the accused will keep peace and be of a good behaviour. Section 6 of the Act refers to offenders who are under twenty-one years of age. If the Court finds that the person found guilty is less than twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment

unless it 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 section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so. Section 6(2) of the Act further imposes a restriction in the following manner:

For the purpose of satisfying itself whether it would not be desirable to deal u/s 3 or section 4, with an offender referred to in sub-section (1), the Court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

Relying on these three sections, the submission of the learned counsel for the petitioner is that the case of Ram Avatar was not dealt by the Sessions Court either u/s 3 or section 4 of the Act, but u/s 6 of the Act. Therefore, the disqualification incurred by him because of his conviction cannot be removed by virtue of provisions of section 12 of the Act. His submission is that section 3, 4 and 6 are independent of each other and as section 6 is not mentioned in section 12 of the Act, Ram Avatar will suffer the disqualification attaching to his conviction of an offence under the Indian Penal Code as said above and he will not be eligible for contesting the election for the post of Patel. We cannot accept this submission of the learned counsel. This very point was considered in *Shivcharan Lal Vs. The State*, in which the Court has said as under:

The probation of Offenders Act is a legislative step in the direction of a long felt social reform. The modern trend in criminal jurisprudence is to reform and rehabilitate a person found guilty of a crime rather than to avenge the injury excepting in serious offences or offences the incidence of which pollutes the whole fabric of society. This is clear from the provisions of the Probation of Offenders Act when the nature of the offence regulates the grant of benefits and the offences under the Prevention of Corruption Act; the Suppression of Immoral Traffic in Women and Girls Act etc. have been excluded from its purview u/s 18 of the Act. Section 3 empowers a Court to release an offender after admonition, if he is found guilty of having committed offence specified in that section or any offences punishable with imprisonment of not more than 2 years or fine or both under the Penal Code or any other law provided he is not a previous convict. Section 4 authorises a Court to release an offender on probation on his entering into a bond with or without sureties to appear for receiving sentence when called upon during such period not exceeding three years and in the mean time to keep the peace and to be of good behaviour. Under both these sections the Magistrate has to have "due regard to the circumstances of the case including the nature of the offence and the character of the offender" and considerations of expediency in giving the benefit to an offender. Section 6 imposes restriction on imprisoning an offender under 21 years of age. Whether section 6 is independent of sections 3 and 4, is the question to which I am called upon to answer. IN my opinion the answer to this question is in the negative. Section 3 is confined to offence of

specified nature and to offences which are punishable with imprisonment upto two years and the offender is let off with a mere admonition. Section 4 relates to offences which are not punishable with death or imprisonment for life. It makes no reference to the age of the offender. Section 6 provides that when an offender is under 21 years of age and is found to be guilty of an offence punishable with an imprisonment but not with imprisonment for life, the Court shall not sentence him to imprisonment unless it 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 section 4 and further when the Court passes a sentence of imprisonment on such an offender it shall record its reasons for doing so. In my opinion section 6 is in the nature of a proviso of sections 3 and 4. The Legislature has expressed a special tenderness for offenders under 21 years of age and has couched the section with a command that no offender under 21 years of age shall be sentenced to imprisonment if he is found guilty of an offence not punishable with imprisonment for life unless the Court records its reason for not extending to him due benefits under sections 3 and 4. The Court is conferred with the power to call for a report from a Probation Officer for assistance while granting or denying the benefit under sections 3 and 4 to such an offender. In the scheme of the Act it would appear that the orders envisaged are (a) admonition; (b) bond for good behaviour. Section 6 is an additional command to a Magistrate that an offender under 21 years of age shall not be sent to imprisonment and shall be given the benefits of section 3 or 4 as the circumstances of the case justify. It is a restriction on imprisonment of persons under 21 years of age. Mechanism has been provided to obtain from a Probation Officer report concerning the character, mental and physical condition of the offender and for consideration of the report obviously to assess "the why" of the crime and the impact of imprisonment before giving or denying the offender of the benefits of section 3 or 4. The denial of the benefit is required to be supported by written reasons enabling superior Courts to scrutinise whether the grounds for refusal are reasonable or not. There are other provisions in the Act such as section 8, which relates to variation of the conditions of probation and section 9 which deals with the procedure in case an offender failed to observe the conditions of a bond. Both these sections only speak of section 4 because that section alone relates to a bond and not section 6. It could not be the intention of the Legislature that if a bond had been given by an offender under 21 years of age there could be no variation in the condition of his bond and he could with impunity disobey the conditions of the bond.

Further, section 12 provides the removal of the disqualification attached to a conviction. It lays down that notwithstanding anything contained in any other law a person found guilty of an offence and dealt with under the provisions of sections 3 and 4 shall not suffer disqualification if any, attaching to a conviction of an offence under such law. This section also speaks of the bond obtained u/s 4 regardless of the fact whether he is a person under or above 21 years of age, it could not have been the intention of the Legislature that an offender under 21

years of age dealt with u/s 6 shall suffer from the disqualification while a person dealt with u/s 4 and who was above 21 years of age, shall be saved from disqualification attached to a conviction. I accept the arguments advanced by the learned counsel for the State that section 6 only deals with a situation with reference to the age of an offender and in essence the bond is obviously obtained u/s 4 and therefore section 6 is not independent of section 4.

Moreover section 11 which deals with appeals and revisions and powers of Court in that behalf consists of 4 sub-sections. Sub section (1) provides that notwithstanding anything contained in Code of Criminal Procedure or in any other law an order made in that Act may be made by any Court, empowered to try and sentence an offender to imprisonment and also by High Court or any other Court when the case comes before it in appeal or in revision. In other words the benefit under the Act could be also granted by Courts exercising appellate or revisional jurisdiction. Sub-section (2) of section 11 provides that notwithstanding anything contained in the Code of Criminal Procedure where an order u/s 3 and 4 is made by the Court trying the offender, an appeal shall lie to the Court to which appeals ordinarily lie from the sentences of the former Court. This sub-section clearly provides for an appeal against orders passed under sections 3 and 4 of the Act. Sub-section (3) deals with persons under 21 years of age and if he has not been given the benefit u/s 3 or 4 and any sentence is imposed against him where an appeal lies from such an order of sentence or has been preferred or not then notwithstanding anything contained in the Code of Criminal Procedure or any other law the Court to which an appeal ordinarily lies from the sentence of former Court may either on its motion or an application made to it by the convicted person or the Probation Officer, call for and examine the record of the case and pass such order thereon as it thinks fit. This sub-section again shows special case bestowed by the Legislature for offenders under 21 years of age. If benefit that could have been given to such a person, has been declined by the Court whether there is an appeal or not suo motu or at the instance of the Probation Officer a Court could grant the benefit under sections 3 and 4 to a person covered by section 6. Sub-section (4) of section 11 provides that where as order has been made under sections 3 and 4 in respect of any offender, the Appellate Court or the High Court in exercise of its powers of revision may set aside such order and in lieu thereof pass sentence on such offender according to law. This indicates that while exercising appellate or revisional jurisdiction a Court can set aside an order passed under sections 3 and 4. If the interpretation suggested by Mr. Chatterjee is accepted then the result would be that benefit given to a person covered by section 6 could never be interfered with by an Appellate Court. Such could not have been indeed the intention of the Legislature.

Therefore, relying on the reasoning mentioned above in the said judgment, we are of the opinion that section 6 is not an independent section. It only lays down a duty on the Court to see that an offender who is below 21 years of age is not sent to jail if the Court comes to the conclusion that, looking to the nature of the offence and the character of the offender, the benefit under sections 3 and 4 of

the Act be given to him. If the Court feels that the offender should not be given the benefit under sections 3 and 4, then, the Court can send the offender to imprisonment, but for doing so, the Court will have to record the reason therefor. But, if it wants to give benefit under sections 3 and 4 of the Act, then, it will call for the report of the Probation Officer and consider the report, if any and if the offender is given benefit of section 3 or section 4 of the Act, then u/s 12 of the Act, his disqualification attaching to conviction will be removed. Therefore, taking all these sections together, we are of the opinion that even though section 6 is not mentioned in section 12 along with sections 3 and 4, the intention of the Legislature is that if the Court wants to act u/s 6 of the Act, the benefit under the said Act can be given by taking aid of only under sections 3 and 4 thereof. Therefore, we are of the opinion that the submission made by the learned counsel cannot be accepted and because Ram Avatar was below 21 years of age and the Court gave him the benefit under the Act, the disqualification attaching to him because of conviction, is removed and he was eligible to contest the election for the post of Patel.

6. Then, it was submitted before us that the conditions imposed by the learned Member, Board of Revenue, in the operative part of the Order, are beyond his jurisdiction. But, we are of the opinion that we should not interfere in the directions given by the learned Member of the Board of Revenue. The post of Patel being the post of responsibility, we think that the directions given by the Board of Revenue should be complied with.

7. The result, therefore, is that the petition fails and is dismissed with costs. Counsel's fee Rs. 100. Outstanding amount of security be refunded to the petitioner.