

**(2018) 12 J&K CK 0084**

**In the Jammu And Kashmir High Court**

**Case No :** Miscellaneous Criminal Cases (CRMC) No. 735 Of 2018, IA No. 1 Of 2018

**Mohd. Ashraf & Anr @APPELLANT@Hash State Of Jammu & Kashmir And Anr**

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**Date of Decision :** 28-12-2018

**Acts Referred:**

Code Of Criminal Procedure, 1898 — Section 562  
Probation Of Offenders Act, 1958 — Section 4, 19  
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 307, 324, 326  
Jammu And Kashmir Probation Of Offenders Act, 1966 — Section 4

**Citation :** (2018) 12 J&K CK 0084

**Hon'ble Judges :** Sanjay Kumar Gupta, J

**Bench :** Single Bench

**Advocate :** Sunil Sethi, Mohsin Bhutt, Amit Gupta

**Final Decision :** Dismissed

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## **Judgement**

1. This petition has been filed under Section 562 of Code of Criminal Procedure read with Section 4 of the Probation of Offenders Act for considering the case of the petitioners for grant of benefit of probation while upholding the order of their conviction passed in Criminal Appeal No.9900016/2004 in case titled Mohd. Ashraf and another vs. State of J&K.

2. In this petition, it has been stated that the petitioners were involved in case FIR No. 128/1994 for the commission of offences punishable under Section 307/326/34 RPC and on completion of the investigation, criminal challan was presented before the Court of Sessions Judge Poonch, who on March 31, 2004 convicted the petitioners-accused for commission of offence punishable under Sections 324/34 of RPC and awarded sentence of three years along with fine of Rs. 5000/- each. The petitioners thereafter filed a criminal appeal no.990001/2004 titled Mohd. Ashraf and other vs. State of J&K before this Court which was dismissed by this Court on 16.11.2018 upholding the judgment of conviction but reduced the sentence from three years to one year imprisonment; that petitioner No.2 is presently more than 82 years and petitioner No.1 is of 60

years age; that there is no previous conviction nor the petitioners have been involved in any criminal cases. The provisions of 562 of Cr.P.C. has not been applied while passing the judgment and even Section 4 of the Probation of Offenders Act was not applied, which provided that the accused can be enlarged on probation.

3. State respondent has filed objections thereby stating that petitioners had already been convicted and while convicting the petitioners, this Court did not think it fit to apply the provisions of 562 Cr.P.C; that the accused have committed offences for which they are to be sentenced accordingly.

4. I have considered the contentions raised by the counsel for the parties.

5. Petitioners have sought benefit of two provisions of law; one under section 562 of Cr.P.C., and another under section 4 of Probation of Offender Act. But as per section 19 of Probation of Offender Act, provisions of section 562 Cr.P.C. have been ceased to have effect after coming into force Probation of Offender Act 1966.

6. Section 4 of the Jammu and Kashmir Probation of offenders Act, 1966 reads as under:

"4. Power of Court to release certain offenders on probation of good conduct. -  
(1) When any person is found guilty of having committed an offence and not punishable with death or imprisonment for life 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 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:

Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1), is made, the Court may, if it is of opinion that in the interests of the offender and the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such

period, not being less than one year, as, may be specified therein, and may in such supervision order impose such conditions as it necessary for the due supervision of the offender.

(4) The Court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions, specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the Court may, having regard to the particular circumstances, consider fit to impose for preventing a. repetitions of the same offence or a commission of other offences by the offender.

(5) The Court making a supervision order under sub-section(3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any and the probation officer concerned."

7. From bare perusal of this section, it is evident that provisions of this section are applicable, when court is about to sentence an accused after he is convicted; but once he has already been convicted and sentenced, then this provision is not applicable. Further, the plain reading of the above section 4 of Act, it will show that certain conditions must exist before the benefit of the Probation of Offenders Act is given to a convict, who is above 21 years of age. The first requirement is that the offence committed should not be punishable with death or imprisonment for life. That requirement is undoubtedly being fulfilled in this case. The next condition is that having regard to the circumstances of the case including the nature of the offence and the character of the offender, the Court convicting the accused must come to the conclusion that it is expedient to release him on probation of good conduct. This is the second requirement. If these two requirements exist 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 punishments, direct that he be released on his entering into a bond etc.

8. In present case, petitioners were involved under section 307/326/34 RPC; the date of occurrence is of 18.06.2014; offences under section 307/326/RPC are heinous offences, which carry imprisonment for more than 7 years; however trial court convicted accused /petitioners under section 324/34 RPC on 31.03.2004 and sentenced them for a period of 3 years. In appeal filed by appellants, the conviction under section 324/34 RPC was upheld by this court on 16.11.2018, but reduced the sentence from 3 years to one year taking into the mitigating facts that appellants have faced trial up to 2004 and then appeal for 14 years.

9. Once trial court and this court proceed to pronounce the sentence, I do not think that any illegality has been committed nor the court has forgotten to discharge any statutory obligation imposed upon it. As already held in the present case, neither the trial court nor the appellate Court has formed the opinion from the circumstances on the record that benefit of Probation of

Offenders Act requires to be given to accused/ appellants; even accused / appellants have not made any such application in this regard at any stage of proceeding before trial court or this court, so accused after passing of the sentence have no locus standi at all to make such an application, even on the merits of the case.

10. Hence present petition is dismissed.