
(1970) 11 OHC CK 0003

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 97 of 1970

Raghu Mallik and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 18-11-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 561A

Penal Code, 1860 (IPC) — Section 323, 325, 326

Probation of Offenders Act, 1958 — Section 3, 4, 4(1)

Citation : (1970) 36 CLT 1325

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : D. Sahu and S.F. Ahmad, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S. Acharya, J.—This is an application u/s 561-A, of the Code of Criminal Procedure to remit the substantive sentence of R.T. passed against the Petitioners by the judgment of this Court in Criminal Revision No. 486/67, and to release them after admonition or on probation of good Conduct under Sections 3 or 4 respectively of the Probation of Offenders Act, 1956, (herein after referred to as the Act).

2. It has been decided by a Division Bench of this Court in Criminal Misc. No. 178/66 that this Court in exercise of its inherent power u/s 561-A, Code of Criminal Procedure has the jurisdiction to review, recall or modify its previous decision in a criminal revision when it is necessary for securing the ends of justice; for preventing abuse of the process of the Court; and/or to give effect to any order under the Code of Criminal Procedure. The Petitioners in this application pray for the remittance of the sentence passed against them on the basis of the provisions of Sections 3 and 4 of the Probation of Offenders Act, on the ground that it would meet the ends of justice in this particular case. Mr. Dhal,

the learned Standing counsel, fairly concedes that this Court has jurisdiction to entertain such a petition.

3. Petitioner No. 1 Raghu Mallik was convicted by the trial Court u/s 325, Indian Penal Code and was sentenced to undergo R.I. for 5 months. Petitioner No. 2 Hari Mallik was convicted u/s 323 and sentenced to undergo R.I. for 3 months. In appeal their convictions and the sentences passed thereunder, as stated above, were upheld by the Sessions Judge, Puri. In Criminal Revision No. 486/67 preferred by both the Petitioners, this Court, while upholding their respective convictions as aforesaid, reduced the sentence of imprisonment passed against the Petitioner No. 2, was reduced to R. I. for one month only.

4. Mr. Sahu, the learned Counsel for the Petitioners in the aforesaid revision, raised various contentions during the hearing of the criminal revision, which were 8011 dealt with and discussed in my judgment delivered in the said revision. In para 8 of the said judgment Mr. Sahu's last submission, mentioned as such, for the reduction of the sentences passed by the Courts below against the Petitioners, was considered, and the same were reduced as stated above. The prayer for the application of the provisions of the Probation of Offenders Act in favour of the Petitioners was not at 8011 mentioned in any manner in the above mentioned revision petition, and was not urged in course of the bearing of the revision, as otherwise that matter would have been dealt with and disposed of before taking up the question of the reduction of the sentence. Moreover this question was not taken up before the trial Court and also in the appellate Court, as there is no discussion or consideration of this aspect of the matter in the judgment of both the Courts below, and there is no mention of the same in the grounds taken in the memorandum of appeal. The Additional Sessions Judge dealt at length the various aspects of the case which were urged in appeal, and be specifically mentioned in the penultimate paragraph that "The above were the only points that were urged before me in this appeal and they have been answered in the way as stated above. "From all these it is quite evident that the Petitioners and/or their counsel, at all the three above mentioned stages, never considered this to be a fit case where they could legally ask for the application of the provisions of the Act in favour of the Petitioners. As the relief now sought for was never prayed for in both the Courts of fact and in revision in this Court, I do not have before me any report from the concerned Probation Officer. There is nothing on record as to whether the Petitioners have a fixed place of abode or regular occupation at a particular place where they are likely to live during the period of their release if at all on Probation, and/or about the character of these offenders u/s 4 both the above factors, and u/s 3 the later one are imperative considerations for the passing of an order under the said sections. Thus it is not possible for me at this stage to legally pass an order in accordance with the provisions of the said sections of the Act.

5. Apart from the above considerations, the Court, in passing an order either u/s 3 or 4 of the Act, must be, of the opinion that the Circumstance of the case

including the nature of the offence, is such that it is expedient to release the offender after due admonition (under Section 3) or on probation of good conduct (under Section 4). Mr. Sahu, the learned Counsel for the Petitioners stated that the injuries inflicted on the persons of p.w.s. 1 and 2 were caused in course of mutual assault and the parties belong to Harijan community, and as such they should not be made to undergo Rigorous imprisonment imposed against them, and that this is a fit case in which sentence passed against them should be remitted by applying the provisions of Sections 3 and 4 of the Probation of Offenders Act. On hearing the counsel of both the parties and on a perusal of my judgment in the Criminal Revision I feel that this is not a fit case where the provisions of either Section 3 or 4 of the Probation of Offenders Act should be applied. Once a guilty person forms an impression that he can with impunity commit serious offences and will get off with no punishment because of the beneficial provisions of the Act, then that obviously would increase crime in the society. Misplaced sympathy in the application of the aforesaid provisions would nullify the very object for which this Act has been enforced.

6. The Petitioner No. 1 has been convicted u/s 326, Indian Penal Code as it was proved on the evidence on record that he caused a grievous injury on p.w. 1. The prosecution story indicates that p.w. 1 was mercilessly assaulted by this Petitioner along with others as a result of which he sustained a compound fracture of the left radius, another simple fracture of the right radius and a contusion on the left shoulder, which disabled him for a quite long time. Petitioner No. 2 joined Petitioner No. 1 in the above incident, and on the evidence on record he has been found guilty for an offence u/s 323, Indian Penal Code for causing a lacerated wound with a lathi on the left foot of p.w. 2. In the said incident p.w. 2 sustained one simple fracture of the right radius, one lacerated wound, on the left foot, and one contusion with abrasion on the left shoulder. The above injuries on p.w.s. 1 and 2 indicate the serious nature and the gravity of the occurrence in which these two Petitioners participated. There is again nothing to indicate that the Petitioners, in participating in the said incident, succumbed to sudden provocation or did the aforesaid Act in a thoughtless manner, being under the influence of others. Rather the offences committed by the Petitioners smack of a deliberate effort on their part. I am therefore satisfied that the nature of the offences and the circumstances in which these two Petitioners participated and committed the said offences do not entitle them to be released under Sections 3 or 4 of the Act.

7. In the case reported in *Jai Biswal and Others Vs. Harekrushna Swain*, cited by Mr. Sahu, the Petitioners were released u/s 4(1) of the Act on the findings that the Petitioners therein were all permanent residents of particular village, and two of them had fixed occupation and the others were regular cultivators. The Hon'ble Judge, on a consideration of the circumstances of that case and the nature of the offence and the characters, arrived at the finding that the particular case before him was a fit one in which Section 4(1) should be applied. This reported case will not be of any help to the Petitioners, & the findings

therein are not in conformity with the facts and findings of the present case before me.

8. On the above considerations I feel that this is not a fit case where the inherent jurisdiction of the Court could be invoked on any of the grounds mentioned in paragraph 2 above, I do not find any merit in this petition, which is accordingly dismissed.