
(1984) 05 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 463 of 1981

S.I.Gurbux Singh, Police, Amritsar

APPELLANT

Vs

Om Parkash, D.S.P., Amritsar and anr.

RESPONDENT

Date of Decision : 17-05-1984

Acts Referred:

Citation : (1984) 05 P&H CK 0069

Hon'ble Judges : S.S.Dewan, J

Advocate : Gurbachan Singh, A.L. Behal, Advocates for appearing Parties

Judgement

S.S. Dewan, J.

1. In this revision, the only point involved is as to whether the provisions of the Probation of Offenders Act would apply to the present case where the respondents were convicted under S. 330. Indian Penal Code. The trial Magistrate while convicting the respondents for the said offence released them on probation of good conduct under S. 360(1) of the Code of Criminal Procedure read with S. 4(1) of the Probation of Offenders Act on their furnishing bonds in the sum of Rs. 5,000/ each with one surety in the like amount with the direction to appear and receive sentence when called upon during the period of 3 years and in the meantime to keep peace and be of good behaviour The respondents challenged their conviction by filing an appeal before the Sessions Judge, Amritsar. The complainant feeling dissatisfied filed Criminal Revision No. 570 of 1977 in this Court for awarding adequate sentence to the accused respondents. This Court vide order dated March 7, 1990, without expressing any opinion on the merits of the case, directed that the revision petition be sent to the learned Sessions Judge, Amritsar, with the direction that the same may be decided by him alongwith the appeal filed by the opposite party. The learned Additional Sessions Judge, Amritsar, vide his order dated November 15, 1980, dismissed the appeal filed by the respondents and also the revision filed by the petitioner by observing that subS. (2) of S. 11 of the Probation of Offenders Act provides appeal to the Court to which appeal ordinarily lie against an order under Ss. 3 or

4 of the Probation of Offenders Act and, therefore the revision was not competent. The complainant has now challenged this order through the present revision.

2. Whether a revision or appeal lies against the order of the trial Magistrate releasing the accused under S. 4 of the Probation of Offenders Act stands concluded against the petitioner by a Division Bench decision of this Court in State (Union Territory Chandigarh) v. Manjit Singh and others, 1984(1) Recent Criminal Reports 185 : 1984(1) I.L.R. 25 wherein it has been held as under :

"that on a plain reading of subsection (2) of section 11 of the Probation of Offenders Act, 1958, it would emerge that an appeal against an order passed by any Court trying the offender under section 3 or section 4, would lie to that Court to which appeal ordinarily lies from the former Court. For locating the forum of appeal, subsection (2) aforementioned beckons us to the Code of Criminal Procedure. Subsection (3) of section 374 of the Code of Criminal Procedure," 1973, confers on any person the right or appeal to the Court of Sessions, if convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the First Class or the Second Class Clauses (b) and (c) of Subsection (3) of the said section which provides for an appeal against sentence fall in the category of special provisions providing for an appeal against the sentence, because appeal from sentence in terms of clauses (b) and (c) is not always competent in view of the provisions of clauses (b), (c) and (d) of section 376 of the Code. Section 377 of the Code on the other hand provides for an appeal to the High Court at the instance of the State Government against inadequacy of the sentence imposed by the trial. Court. Therefore, reading subsection (2) of Section 11 of the Probation of Offenders Act with section 377(1) of the Code, it is clear that an appeal ordinarily, lies, to the High Court under the Code. As such an appeal in the case at the instance of the State Government against the order under section 4 of the Offender's Act passed by the trial Magistrate can be maintained only in the High Court."

3. Mr. A. L. Behal, learned counsel for the petitioner, has strenuously urged that the respondents being the police officials should not have been extended the benefit of the Probation of Offenders Act for the said offence. This matter seems to be concluded by a Supreme Court decision in State Gujarat v. V.A. Chauhan, (1983) Supreme Court Cases (Cri) 319, wherein it has been observed that the accused having been given the benefit of the Probation of Offenders Act by the Courts below, in the interest of justice such an order should not be interfered with after so many years. It is not disputed that the present case, the occurrence took place in the year 1977 and the respondents have gone through protracted trial since then. Taking into consideration the dictum laid down in V.A. Chauhan's case. (supra), I do not think it proper in the interest of justice to interfere with the impugned orders at this stage after so many years. The revision petition it accordingly dismissed.