

**(2024) 03 GAU CK 0028**

**In the Gauhati High Court**

**Case No :** Criminal Revision Petition No. 532, 610 Of 2022

Urmila Das

APPELLANT

Vs

State Of Assam

RESPONDENT

**Date of Decision :** 11-03-2024

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 397, 401, 482  
Probation of the Offenders Act, 1958 — Section 4, 4(2), 5, 11, 11(2)  
Indian Penal Code, 1860 — Section 34, 406

**Citation :** (2024) 03 GAU CK 0028

**Hon'ble Judges :** Robin Phukan, J

**Bench :** Single Bench

**Advocate :** A. Paul, B. Sharma, Dr. N. Deka

**Final Decision :** Disposed Of

## Judgement

1. By this common judgment it is proposed to hear and dispose of Criminal Revision Petition No. 532/2022 and Criminal Revision petition No. 610/2022, as legality, propriety and correctness of the same judgment and order, dated 26.09.2022, passed by the learned Sessions Judge, Darrang, Mangaldai, in Criminal Appeal No.07/2021, is being questioned in both the petitions and as the parties involved in both the petitions are also identical and as identical questions of law are involved in both the petitions.

2. In Criminal Revision Petition No. 532/2022, under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, the petitioner, namely, Smti. Urmila Das, has challenged the correctness or otherwise of the judgment and order dated 26.09.2022, passed by the learned Sessions Judge, Darrang, Mangaldoi, in Criminal Appeal No.07/2021, preferred under sections 11/11(2) of the Probation of the Offenders Act. It is to be mentioned here that vide impugned judgment and order dated 26.09.2022, learned Sessions Judge, Darrang had interfered with judgment and order dated 04.03.2021, passed by the learned Judicial Magistrate 1st Class, Darrang, Mangaldai in C.R. No.

511/2014, lodged under sections 406/34 IPC and directed to pay further fine of Rs. 8000/ each under section 406 IPC. It is also to be noted here that vide judgment and order dated 04.03.2021, passed by the learned Judicial Magistrate 1st Class, Darrang, Mangaldai, had convicted the respondents under section 406/34 IPC and released them on probation as per section 4 of the Probation of Offenders Act and also directed them to pay a sum of Rs. 5000/, each, to the victim as compensation and binding them with personal bond for two years with one surety each to keep peace and be of good behavior else come before the court to undergo sentence, under section 5 of the said Act.

3. The factual background, leading to filing of both the petition are same and the same adumbrated herein below: -

"The petitioner had filed one case being C.R. Case No. 511/2014 on 20.07.2014 under section 406/34 IPC before the court of learned Judicial Magistrate, Darrang Mangaldoi stating that she got married with one Rajib Das on 21.04.2014 and per Hindu rites and rituals. In the said marriage her parents have given many articles and she had taken the same to the matrimonial home after the marriage. But, the respondents have subjected her to both physical and mental cruelty on account of her failing to bring coloured T.V., Motor Cycle as dowry. Thereafter the respondents have grabbed her ornaments of gold and also took possession of her almirah and driven her out of the matrimonial home and warned her of dire consequence if she return to the matrimonial home again. Though she had tried to get back her articles, the same failed to yield any result for which she had lodged the aforesaid C.R. case.

Thereafter, hearing the parties and taking necessary evidence the learned court below had found that the charge under section 406/34 IPC established beyond all reasonable doubt and thereafter convicted the respondents under the said sections of law. But, instead of sentencing them the learned court below had released them on probation, as per section 4 of the Probation of Offenders Act and also directed them to pay a sum of Rs. 5000/, each, to the victim as compensation and binding them with personal bond for two years with one surety each to keep peace and be of good behavior else come before the court to undergo sentence, under section 5 of the said Act.

Thereafter, the petitioner had challenged the said judgment and order so passed by the learned Magistrate before the learned Sessions Judge, Darrang on the ground that she has not been compensated adequately and no litigation cost was paid and that the learned Magistrate did not called for a report from the Probation Officer as no evidence was led by respondent regarding their antecedents, before their release on probation.

But, the learned Sessions Judge, Darrang has in the impugned judgment and order has directed the respondents to pay additional fine of Rs.8,000/ each to the victim without considering the fact that the learned Magistrate had kept the sentence reserved inspite of the fact that they were found guilty and there was

adequate ground for sentencing them.”

4. Being highly aggrieved, the petitioner in Criminal Petition No. 532/2022 has approached this Court for quashing and setting aside the impugned judgment and order, dated 26.09.2022, passed by the learned Sessions Judge, Darrang in Criminal Appeal No. 07/2021, on the following grounds:-

(i) That, the learned trial court and also the appellate court had failed to consider the provisions of section 4(2) of the Probation of Offenders Act and to call for a report from the Probation Officer in respect of character and antecedent of the respondent before releasing them on probation;

(ii) That, in the given facts and circumstances on the record, the learned courts below ought to have been sentenced the respondents instead of releasing them on probation as before the marriage of the petitioner with her deceased husband the respondent had the requisite intention to commit the offence;

(iii) That, the learned Sessions Judge, Darrang has failed to consider that the learned Magistrate had kept the sentence reserved inspite of the fact that they were found guilty and there was adequate ground for sentencing them;

(iv) That, the learned courts below had failed to consider the fact that the petitioner had no source of income of her own and she had fight a legal battle for about seven years and she had paid a sum of Rs.2,50,000/ to her Advocate being the fees;

(v) That, the learned courts below also failed to consider that the respondents have misappropriated her ornaments of gold of worth Rs. 3,50,000/ and given the value of other stridhans along with ornaments of gold and Advocate's fee, the compensation amount, so awarded are grossly inadequate and both the courts below had failed to look into this aspects;

(vi) That, the learned appellate court also failed to consider some vital points raised in appeal;

5. The respondents had not filed any affidavit in opposition/objection here in this petition.

6. In Criminal Revision Petition No. 610/2022, under Sections 397/401 of the Code of Criminal Procedure, the petitioner, namely, Shri Kushal Das, Smti. Lakhi Prabha Das; Shri Shukla Das and Smti. Bornali Das, has challenged the correctness or otherwise of the judgment and order dated 26.09.2022, passed by the learned Sessions Judge, Darrang, Mangaldai, in Criminal Appeal No. 07/2021, preferred under sections 11/11(2) of the Probation of the Offenders Act. It is to be mentioned here that vide impugned judgment and order dated 26.09.2022, learned Sessions Judge, Darrang had interfered with judgment and order dated 04.03.2021, passed by the learned Judicial Magistrate 1st Class, Darrang, Mangaldai in C.R. No. 511/2014, lodged under sections 406/34 IPC and directed to pay further fine of Rs. 8000/ each under section 406 IPC. It is also to be noted

here that vide judgment and order dated 04.03.2021, passed by the learned Judicial Magistrate 1st Class, Darrang, Mangaldai, had convicted the respondents under section 406/34 IPC and released them on probation as per section 4 of the Probation of Offenders Act and also directed them to pay a sum of Rs.5000/-, each, to the victim as compensation and binding them with personal bond for two years with one surety each to keep peace and be of good behavior else come before the court to undergo sentence, under section 5 of the said Act.

7. Being highly aggrieved, the petitioners have approached this Court for quashing and setting aside the impugned judgment and order, dated 26.09.2022, passed by the learned Sessions Judge, Darrang in Criminal Appeal No. 07/2021, on the following grounds:-

(i) That, the learned trial court and also the appellate court had failed to consider the fact that no cause of action accrued against the present petitioners;

(ii) That, the learned courts below have failed to consider that the gifted properties were never entrusted upon the petitioners;

(iii) That, the learned courts below have failed to consider that the respondent No.2 had failed to establish the charge against the petitioners beyond all reasonable doubt warranting their conviction under section 406/34 IPC;

(iv) That, the learned courts below have failed to consider that there was material contradictions in the versions of witnesses and that the respondent had failed to produce any documentary evidence, in respect of articles she had allegedly brought to the matrimonial home;

(v) That, the learned Sessions Judge, Darrang has ought not to have interfered with the compensation awarded by the learned trial court and awarded compensation of Rs. 8,000/ without assigning any reason;

(vi) That, the learned courts below had failed to consider the fact that the respondent No.2 had filed the complaint with mala fide intention and without cogent material convicted the petitioners under section 406/34 IPC;

(vii) That, the learned Sessions Judge also failed to consider that the petitioners have already paid compensation amount of Rs.5,000/ each to the respondent and that there was no prayer for enhancement of compensation in the memo of appeal filed by the respondent No.2 and that the learned Sessions Judge had acted beyond jurisdiction;

(viii) That, the learned appellate court also failed to consider that the respondent No.2 had also filed one case against the petitioners and her husband and the same was returned in final report after investigation by police;

8. The respondents had not filed any affidavit in opposition/objection here in this petition.

9. Mr. Deka, the learned counsel for the petitioner, in Criminal Revision petition

No. 532/2022 and learned counsel for the respondent in Criminal Revision petition No. 610/2022, besides reiterating the points mentioned here in above, mainly concentrated his arguments on the point of releasing the respondents on probation without following the mandate of section 4(2) of the Probation of the Offenders Act. Mr. Deka submits that as per said section calling a report from the Probation Officer is mandatory but both the court below had failed to consider this aspect. Further, Mr. Deka submits that there were adequate materials for sentencing the respondents and this aspect eschewed consideration of the learned courts below and the compensation amounts also grossly inadequate. Mr. Deka further submits that the impugned judgments and orders suffers from manifest illegalities and if allowed to stand it will perpetuate injustice to the petitioner, and therefore, it is contended to allow this petition.

10. On the other hand, Mr. A. Paul, learned counsel for the respondents in Criminal Revision petition No.532/2022 and learned counsel for the petitioners in Criminal Revision petition No. 610/2022, submits that the learned appellate Court ought not to have interfered with the judgment and order of the learned trial court and without assigning any reason it ought not to have imposed additional fine of Rs.8,000/- each upon the respondents without there being any prayer for enhancement of compensation in the memo of appeal filed by the respondent No.2 and that the learned Sessions Judge had acted beyond jurisdiction and therefore, it is contended to set aside the same.

11. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the record of the learned courts below, and the case laws referred by Mr. N. Deka.

12. Before delving a discussion to the issues so raised in this petition it would be appropriate to understand the relevant provision and proposition of law presently holding the field.

13. Section 4 of the Probation of the Offenders Act deals with the power of the court to release certain offenders on probation of good conduct. It read 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 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 of 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 deems 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 repetition 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.

14. Thus, a cursory perusal of the sub-section 2 reveals that 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. The word 'shall', so used in the section, makes it abundantly clear and also compulsory to consider the report of the Probation Officer, if available. Now, what left to be seen is whether calling of such report is mandatory for the court.

15. Before directing a discussion in to the factual aspect of the case, this court deemed it appropriate to discuss the precedents presently holding the field. While dealing with this issue, Hon'ble Supreme Court in the State of M.P. v. Man Singh, reported in (2019) 10 SCC 161, has held as under:-

"9. Another error is that the order quoted hereinabove has been passed in violation of the provisions of Section 4 of the Act which mandates that before releasing any offender on probation of good conduct, the court must obtain a report from the Probation Officer and can then order his release on his entering bonds with or without sureties, to appear and receive sentence when called upon

during such period, not exceeding three years, or as the court may direct, and in the meantime to keep peace and good behaviour. The proviso to sub-section (1) of Section 4 clearly provides that court cannot order release of such an offender unless it is satisfied that the offender or his surety has a fixed place of abode or regular occupation in the place over which the court can exercise jurisdiction. Sub-section (2) lays down that before making any order under sub-section (1), the court shall take into consideration the report of the Probation Officer. This Court in a number of judgments has held that before passing an order of probation, it is essential to obtain the report of the Probation Officer concerned. Reference in this behalf may be made to *MCD v. State (NCT of Delhi)* reported in (2005) 4 SCC 605."

16. Again in the case of *MCD v. State of Delhi*, reported in (2005) 4 SCC 605; Hon'ble Supreme Court has held that:-

"22. We have already reproduced Section 4 of the POB Act. It applied to all kinds of offenders whether under or above 21 years of age. This section is intended to attempt possible reformation of an offender instead of inflicting on him the normal punishment of his crime. The only limitation imposed by Section 6 is that in the first instance an offender, under twenty-one years of age, will not be sentenced to imprisonment. While extending benefit of this case, the discretion of the court has to be exercised having regard to the circumstances in which the crime was committed, the age, character and antecedents of the offender. Such exercise of discretion needs a sense of responsibility. The offender can only be released on probation of good conduct under this section when the court forms an opinion, having considered the circumstances of the case, the nature of the offence and the character of the offender, that in a particular case, the offender should be released on probation of good conduct. The section itself is clear that before applying the section, the Magistrate should carefully take into consideration the attendant circumstances. The second respondent is a previous convict as per the records placed before us. Such a previous convict cannot be released in view of Section 4 of the POB Act. The Court is bound to call for a report as per Section 4 of the POB Act but the High Court has failed to do so although the Court is not bound by the report of the probation officer but it must call for such a report before the case comes to its conclusion. The word "shall" in sub-section (2) of Section 4 is mandatory and the consideration of the report of the probation officer is a condition precedent to the release of the accused as reported in the case of *State v. Nagesh G. Shet Govenkar* [AIR 1970 Goa 49 : 1970 Cri LJ 465] and a release without such a report would, therefore, be illegal."

17. The legal proposition, which can be crystallized from the above discussion, is that not only consideration of the report of the Probation Officer, but also calling of such report is mandatory. The Court is bound to call for a report as per Section 4(2) of the Probation of the Offenders Act and to consider the same before release of the accused and a release without such report is illegal.

18. In the case in hand, admittedly, the learned Magistrate has not called for

such report of the Probation Officer, not to speak of consideration of the same, before the release order came to be passed. This aspect also eschewed consideration of the learned Sessions Judge, in the appeal preferred by the petitioner, though the same has been canvassed before him by the petitioner. Thus, it appears that the judgment and order of the learned Magistrate suffers from impropriety in releasing the accused on probation without calling a report of the Probation Officer and without consideration of the same. And the judgment and order of the learned Sessions Judge also suffered from impropriety as it has failed to consider this aspect despite being canvassed by the petitioner before it.

19. It also appears that section 5 of the Probation of Offenders Act mandates that while directing the accused to pay compensation the court has to quantify reasonable amount, considering the loss or injury caused to any person by the commission of the offence and also such costs of the proceedings as the court thinks reasonable. Section 5 reads as under:-

5. Power of court to require released offenders to pay compensation and costs.-

(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—  
(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and (b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

20. But, having gone through the impugned judgments and orders of the learned courts below, this court is unable to derive its satisfaction that the same aspect was taken care of before determining the quantum of compensation, let alone awarding any cost of litigation. It is the pleaded case of the petitioner that she has no source of income and she had to fight legal battle for long seven years. Unfortunately, this aspect also eschewed consideration of both the learned court below. Mr. Deka, the learned counsel for the petitioner in petition No.532/2022 and for the respondent in petition No. 610/2022, has rightly pointed this out during argument.

21. In view of above discussion and finding, I find sufficient merit in these two petitions and accordingly, the same stands allowed. The impugned judgment and order dated 04.03.2021, passed by the learned Judicial Magistrate 1st Class, Darrang, Mangaldai in C.R. Case No. 511/2021, so far it relates to releasing of the accused persons on probation, and the payment of compensation, stands set aside. However, in the given facts and circumstances on the record, it is provided that the conviction of the appellants under section 406/34 IPC shall remain

untouched.

22. And since the learned Sessions Judge, Darrang, Mangaldai in the impugned judgment and order dated 26.09.2022, in Criminal Appeal No. 07/2021, overlooked this above aspect, the same also failed to withstand legal scrutiny and on such count it is liable to be set aside. Moreover, the learned Sessions Judge has failed to consider another aspect of the matter that there was no prayer for enhancement of punishment in the appeal petition. And on such count enhancing the fine amount by another Rs.8,000/- upon each of the respondent in the Appeal No. 07/2021, suffers from gross impropriety and if allowed to stand the same will cause gross injustice to the respondents. And accordingly, the same stands set aside and quashed.

23. The matter is remanded back to the court of learned Judicial Magistrate 1st Class, Darrang, Mangaldai to call for a report from the Probation Officer, Darrang, Mangaldai in respect of character and antecedent of the respondents, and thereafter, considering the same, shall pass necessary order in accordance with law.

24. In terms of above, these two Criminal Revision Petitions are disposed of. The parties are directed to appear before the learned court below on 08.04.2024. It is further provided that the learned court below shall make an endeavor to complete the above exercise within a period of eight weeks from 08.04.2024. The Registry shall send down the record of the learned courts below forthwith. Stay, if any, granted earlier, stands vacated. The parties have to bear their own costs.