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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-A-38-MA-2017 (O&M)
DATE OF DECISION : 17.07.2023**

Nasri **...Applicant**

Versus

State of Haryana and others **...Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S. K. Panwar, Advocate,
For applicant/appellant.

Mr. R. K. Singla, DAG, Haryana.

ARUN MONGA, J.

Complainant is before this Court seeking leave to appeal *inter alia* against the release of accused/convicts (5 of them) on probation who were convicted vide judgment dated 01.12.2016 passed by learned Additional Sessions Judge, Palwal. They were tried in a complaint case under Sections 148, 323, 316, 452, 506 read with Section 149 but convicted only under Section 323 IPC and were released on probation under Section 4 of the Probation of Offenders Act, 1958, for a period of six months. They were directed to pay compensation of Rs.5,000/- each (total Rs. 25,000/-) to injured-Nasri, the applicant herein.

2. Succinct facts of the present case, as noted by learned trial Court in the impugned judgment, are that on 27.06.2012 at about 6.00 pm, complainant went to her vacant plot for tethering her cattle. Accused Aslam resisted the same due to which an altercation took place. Later on, accused Yusuf, Aarif, Arshad, Ibri, Islam, Sajid, Kallu, Jubeda, Nasi, Sabroon, Sansida and Asraf, having lathies and dandas, entered complainant's house and attacked her. Nasri gave kick blow on her stomach, whereas Jubeda gave leg and fist blows. On hearing noises, mother-in-law of complainant came to rescue her.

Ashraf gave kick blow to her mother-in-law on her stomach. When they raised hue and cry, Hari Singh and Sabir reached the spot and accused persons fled away threatening to kill the complainant. At that time complainant was four months pregnant. She was taken to hospital where after medical examination it was found that her child died in womb. Only DDR was recorded of the incident and that is where it was dropped.

2.1 A private complaint was then filed by applicant Nasri in the Court against 12 persons, including 5 private respondents No. 2 to 6 herein for offences under Sections 148, 323, 452, 316, 506 read with Section 149 IPC. The learned Ilaqa Magistrate recorded the preliminary evidence and committed the case to learned Sessions Court as the offence under Section 316 IPC was triable exclusively by the Court of Session.

3. The learned Additional Sessions Judge, Palwal framed charge against all the 12 accused persons for offences under Sections 148, 323, 452, 316, 506 read with Section 149 IPC. On conclusion of trial, learned Additional Sessions Judge passed the impugned judgment dated 01.12.2016 holding private respondents No. 2 to 6 namely Yusuf, Aarif, Jubeda, Nasri wife of Islam and Shamshida and convicting them for the offence under Section 323 IPC and wholly acquitting the remaining 7 accused. The aforesaid 5 convicts were extended the benefit of probation under Section 4 of the Probation of Offenders Act, 1958 and required to pay the compensation of Rs.5000/- each, total Rs. 25000/- to injured/complainant Nasri.

4. The applicant-appellant's grievance is two fold. Firstly; that the five private respondents have been wrongly acquitted of the charge for offences under Sections 148, 452, 316, 506 read with section 149 IPC, though they should have been convicted for these offences also; secondly; that the convicts have been wrongly given the benefit of release on probation whereas they should have been sentenced to undergo imprisonment and pay fine.

5. I have heard learned counsel for the applicant-appellant as also learned counsel for private respondents and learned State counsel.

6. Learned counsel for the applicant-appellant argued that there was sufficient and reliable evidence on record proving the commission of offence under Sections 148, 452, 316, 506 read with section 149 IPC by the private respondents. It was also contended that the learned trial Court erred in law by giving benefit of probation to the convicts, which will encourage them to repeat such offences and result in criminalization of the society. Learned State counsel also supported these submissions.

7. Learned counsel for the private respondents supported the impugned judgment and the order passed by learned trial Court for release of the convicts on probation.

8. Impugned judgment dated 01.12.2016 is, *inter alia*, premised on the following reasoning:

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11. *The injuries proved by this witness cannot at all be related to the accused in a way to establish all these accused had simultaneously beaten these two women they would escape with such injuries. Rather such injuries are more likely when there is scuffle between three-four persons only.*

12. *In this context the two DDRS become relevant. In DDR Ex.PW7/A which was reported at 9.10 pm on the date of occurrence itself. There is mention of Yusuf and Aarif sons of Majid, Shamshida, Nasri and Jubeda. However, in another copy of the same DDR Ex.CW8/A which was also tendered not only in preliminary evidence but also in trial there is mention of Yusuf, Aarif, Arshad, Ibri, Sajid, Kallu, Jubeda and Nasri, Sabrun and Shamshida while name Ashraf son of Sultan was not mentioned. In this DDR Ex.CW8/A names of Arshad, Ibri, Sajid, Kallu and Sabrun have been added and there is no explanation as to how in Ex.PW7/A the copy of DDR tendered in trial. There are names of five accused only while name of eleven in copy of DDR tendered in preliminary evidence.*

13. *Thus, there is great possibility of interpolation of names and attributing injuries to all the family members of the family of Islam. However, the cross examination and the suggestions put up to the complainant and her mother-in-law indicate that there was infact occurrence. In these circumstances, the court is inclined to consider the names*

of accused mentioned in the DDR Ex.PW8/A to be actually involved in the incident. The injuries may have been caused in such a way that who caused which injury may not have been actually observed as quite likely only hands and legs were used for assault.

14. *The next thing to be considered is if by causing injuries these accused persons Yusuf, Arif, Jubeda, Nasri and Shamshida had caused abortion of the pregnancy of complainant Nasri. In this regard it can be observed that no visible injury was found on the person of Nasri as clarified by PW2 Dr. Pankaj Raj Singh in his cross examination. An important piece of medical evidence is Ex.PW8/B. The initial examination of Nasri done on 28.6.2012 by PW8 Dr. Rajni Chauhan, Medical Officer B.K. Hospital, Faridabad. This shows that the gravida history of Nasri was she had two live issues and nine babies had died after delivery. In a case where there is no visible and physical injury on the person of a pregnant woman such a history of her gravida is very material as it indicates that the uterus of the pregnant woman was very fragile. The statement of PW1 Dr. Sanjeev Bhagat who has conducted ultrasound examination on 30.6.2012 mentions that it was a case of incomplete abortion and PW8 Dr. Rajni Chauhan also explains that on ultrasound examination it had revealed that she had retained product of conception. This initial examination of patient report Ex.PW8/B mentions one and half month amener, PW8 also makes a relevant statement and cross examination that on physical appearance no one could have known about the pregnancy. This statement is material understand if there could have been a voluntary and intentional act o the part of accused in causing abortion and based on this medical opinion accused can not be attributed knowledge of pregnancy so as to then be attributed knowledge or intention to cause miscarriage.*

15. *As with regard to offence of rioting for the purpose of section 148 IPC, house trespass for the purpose of section 452/149 IPC and criminal intimidation for the purpose of 506/149 IPC it can be observed that place of occurrence is admittedly proved to be common place. No site plan of place of occurrence is proved neither any evidence is on record to conclude conclusively as to where exactly the incidence occurred because whatever evidence has come indicates dispute over vacant plot which parties claims to be common. The manner in which the incident occurred does not indicate that any common object persisted in the gathering of the accused. They were members of family and their presence on the spot was natural. They did not assemble there purposely for any of the acts for the purpose of section 141 IPC and each one of them was individually in his or her wisdom asserting right to protect that plot and threats were bare.*

16. *Consequently, prosecution fails to establish beyond reasonable grounds the charges for offences under sections*

148, 452/149, 316/149 and 506/149 IPC against any of the accused but succeeds to establish accused Yusuf, Aarif, Jubeda, Nasri wife of Islam and Shamshida voluntarily causing simple injuries to Nasri and Misrupi and accordingly they are held guilty for offence under Section 323 IPC. Let them be heard on question of sentence.”

9. Perusal of the aforesaid would show that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective. Trial court's findings are based on a correct evaluation of the evidence and do not suffer from any flaws or illegality, is just and valid based on the available evidence. No further interference in the findings of guilt under section 323 or acquittal under other sections is made out.

10. Adverting to the release on probation, the learned court below gave following reasoning :-

“17. Heard on question of sentence. Plea of convicts has heard wherein they claimed that they are having children and families to look after. So they should be given benefit of probation.

18. On the other hand learned Public Prosecutor for the State assisted by counsel for complainant contended that no leniency be shown.

19. After considering the age and antecedents of the accused, further considering the background of incident and the injury caused by them and certainly they must have suffered financially by facing this trial which is sufficient punishment to these poor people they deserve benefit of probation as they are not proved to be previous convicts and no other incident had occurred after the alleged incident of 27.6.2012. Accordingly, the accused Yusuf, Aarif, Jubeda, Nasri wife of Islam and Shamshida are extended benefit of probation under section 4 of the Probation offender Act 1958 subject to furnishing personal bond and surety bond to maintain peace and good behaviour for a period of six months and for an amount of Rs.15000/- each. They shall also each pay the compensation of Rs.5000/- total Rs.25000/- under section 5 of the said Act to injured Nasri. Bail bonds stand discharged. Copy of judgment be given free of cost to the convicts. File be consigned to record room, after due compliance.”

11. There is no gain saying that the relevant statutory provisions and the principles underlying and pertaining to release of offenders on probation, instead of straightaway sentencing them, need to be kept in mind by the Courts while passing sentencing orders.

11.1 Probation of Offenders Act, 1958 (for short “Act”) was enacted in order to save offenders in appropriate cases from being habitual offenders by providing them with a chance to reform rather than dumping into jails. For ready reference, Section 4 of Act is reproduced herein below:

Section 4 in The Probation of Offenders Act, 1958

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.

11.2. Objectives and principles of criminal law as envisioned in the provision *ibid*, apart from deterrence against committing crime against society, are *inter-alia* focused on the reformation of offenders, which inheres the concept of probation. Modern criminal justice system often aims to balance punishment with rehabilitation, emphasizing the potential for positive change in individuals who have committed crime. The goal of criminal law extends beyond mere punishment. While punishment serves to deter and hold individuals accountable for their actions, there is a growing recognition of the importance of addressing the underlying factors that contribute to criminal behaviour. This perspective emphasizes the potentials of offenders to reform and reintegrate into society as law-abiding citizens. Probation is one of the mechanisms used to achieve this reformation objective. In certain cases, certain offenders may be asked to remain under community supervision rather than being incarcerated. During such probation period, the offender can be put to follow certain conditions, such as regular reporting to a probation officer, participating in counselling or treatment programs and maintaining employment or education. The aim is to provide support, guidance and opportunities for the offender and to address the root causes of their criminal behaviour and develop positive life skills. Close monitoring and guidance provided during probation can help the offender make positive changes in their life and reduce the likelihood of reoffending.

11.3 Overall, the concept of focusing on reformation and using alternatives to imprisonment, such as release on probation, reflects a more holistic approach of criminal justice that takes into account the potential for positive change and the overall betterment of both the individual and society.

11.4 Probation can thus also be termed as an alternative form of punishment envisaged within the criminal justice system. In my opinion, following principles or what can be termed as potential benefits of release on probation ought to be kept in mind by the learned sentencing Courts below for

exercise of judicial discretion to grant probation, provided a deserving case is made out.

- a) **Nature of the Offense** : The severity and type of offense committed by the individual are important considerations. Less serious offenses, such as non-violent crimes or violent but arising out of self defense or first-time offenses, might make an individual more eligible for probation.
- b) **Individualized Justice** : Before grant of the benefit of release on probation, one has to take into consideration the individual circumstances of the offender viz., the nature of the crime vis-a-vis the potential for positive change. It allows for tailored sentencing that considers the unique needs and characteristics of the offender, promoting a more just and proportionate response to the offense.
- c) **Criminal History**: A convict's prior criminal history must be assessed to determine if they have a pattern of repeat offenses. A history of violent or serious crimes might make an individual less likely to be granted probation.
- d) **Rehabilitation Potential**: The offender's willingness and potential to rehabilitate play a significant role. If there's evidence that the individual is committed to changing their behavior, participating in counseling, and addressing the underlying causes of their criminal activity, they ought to be considered for probation.
- e) **Compliance with Probation Terms**: Convicts on probation are required to follow specific conditions, such as regular reporting to a probation officer, avoiding criminal activity, and attending counseling or rehabilitation programs. A person's willingness and ability to comply with these terms would influence their eligibility for probation.
- f) **Preventing Recidivism** :- Probation, as an alternative to incarceration, can indeed help prevent first-time offenders from becoming habitual or "hardened" criminals. By providing rehabilitation and support services, probation aims to address the underlying factors that contribute to criminal behaviour, giving offenders a chance to change their ways.
- g) **Community Ties** : An assessment of offender's ties to the community, such as family, employment, and stable housing ought to be carried out. Strong community ties can indicate a support system that can help prevent further criminal activity.
- h) **Risk to Public Safety**: The safety of the community is a crucial factor. Assessments are made to determine whether releasing an individual on

probation poses a low risk of committing new offenses or harming others.

- i) **Reducing Overcrowding** :- Probation can help alleviate the overcrowding of jails and prisons. Non-violent offenders who are eligible for probation can be kept under community supervision, freeing up space in correctional facilities for more serious offenders.
- j) **Promoting productivity** :- By allowing offenders to remain in the community and engage in productive activities such as work, education, or community service, probation can contribute to making them productive members of society. This, in turn, can lead to them contributing as taxpayers instead of being a burden on the State.
- k) **Second chance and Reformation** :- Probation offers a second chance to offenders by allowing them to avoid imprisonment and providing an opportunity for reformation. Through counselling, treatment, and supervision, offenders can address the root causes of their criminal behaviour and work towards positive change.
- l) **Reintegration into Society** : Probation allows offenders to maintain ties with their families, jobs and communities, which can enhance their chances of successful reintegration after their sentence. This reduces the likelihood of recidivism and helps break the cycle of criminal behaviour.
- m) **Compensation to the aggrieved** : Court can even ask the offender to pay compensation (by way of penalty) to the aggrieved person as means of retribution or penance as a pre condition of release on probation.
- n) **Probation Officer Assessment**: Probation officer may be asked by a court to conduct an assessment of the offender to gather information about their background, behavior, and potential for rehabilitation. Such an assessment would help take an informed decision regarding probation.
- o) **Judicial Discretion**: In the end, depending on facts and circumstances of the case, it is the discretion of court to determine whether to grant probation. It shall consider all relevant factors and balance the interests of rehabilitation, public safety, and justice in the decision-making process. The goal of probation is to offer an alternative to incarceration that addresses the individual needs of the offender while maintaining public safety.

12. Keeping the aforesaid in mind, I am thus of the view that the release of the convicts on probation, as in the present case, can indeed serve the dual

purpose of deterrence and reformation. By allowing release on probation, the aim herein is to deter their future criminal conduct, while also providing an opportunity for reform and rehabilitation.

13. In the premise, instant application seeking leave to appeal is hereby dismissed. Pending application(s), if any, shall also stand disposed of.

14. Before parting with the case, it is considered appropriate to direct that a copy of this order be circulated by the Registry to all the Courts in States of Punjab, Haryana and Chandigarh, so that the principles enunciated in para 11 and its sub paras above and the relevant provisions of the Probation of Offenders Act, 1958 be brought to knowledge of all the learned Judges in the district judiciary, to enable them to be keep the same in mind while passing sentencing orders in criminal cases.

JULY 17, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes