Lakhvir Singh Etc. vs The State Of Punjab on 19 January, 2021

Equivalent citations: AIR 2021 SUPREME COURT 555, AIRONLINE 2021 SC 15

Author: Sanjay Kishan Kaul

Bench: Sanjay Kishan Kaul, Dinesh Maheshwari, Hrishikesh Roy

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs.47-48 OF 2021
[Arising out of SLP(Crl) Nos.6283-6284/

LAKHVIR SINGH ETC. …

VERSUS

THE STATE OF PUNJAB & ANR. ….

JUDGMENT

SANJAY KISHAN KAUL, J.

1. The appellants were youngsters aged 20 and 19 years when they fell foul of the law. On 14.02.2003, at around 7.30 p.m., the appellants alongwith co-accused Gurpreet Singh1 approached the complainant – PW1 to hire a taxi to go to a village. Enroute, when at their behest the car was stopped, Gurpreet Singh caught hold of the complainant and the appellant He faced trial before a Juvenile Court.

Jagdeep Singh took a dagger and inflicted 6-7 injuries on PW1's forehead. Appellant Lakhvir Singh inflicted 2-3 injuries on his abdomen and 1 injury on his neck using a knife. The complainant was thrown out of his taxi and the three people fled with the taxi. In pursuance to the reporting of the crime by complainant, an FIR was registered on 15.02.2003 under Section 382 and Section 307 read with Section 34 IPC. Knife and dagger were recovered alongwith the taxi and the trial Court framed charges under Section 397 IPC. Post trial, the appellants were convicted by the trial Court vide

judgment dated 8.1.2005 and sentenced to undergo Rigorous Imprisonment of 7 years each.

2. The appeal preferred by the appellants has been dismissed by the impugned judgment dated 24.10.2019.

3. The appellants approached this Court by a special leave petition. Annexed thereto, the compromise deed arrived at between the complainant Amrik Singh and the appellants before us, in terms whereof the complainant has stated that he did not want to pursue any action against the appellants and has no objection to their release on bail or acquittal. The appellants have already served about 50% of their sentence while in custody.

4. On 3.12.2020, this Court while recording the aforesaid plea, issued notice on the SLP and on the prayer for interim relief of bail while simultaneously impleading the complainant as the 2nd respondent. On 18.12.2020, counsel for the State and respondent no. 2 entered appearance and counsel for respondent no.2 confirmed that the dispute had been amicably resolved. However, counsel for respondent no.1 submitted that the minimum sentence provided by the statute under Section 397 is 7 years and the same cannot be reduced below that period. On this submission, learned counsel for the appellants sought benefit under the Probation of Offenders Act, 1958, hereinafter referred to as 'the Act'. It is on the limited conspectus of the aforesaid aspect that on 11.01.2021, we granted leave and reserved the judgment upon conclusion of arguments and the parties having filed their respective synopsis.

The legal position

5. The plea of the learned counsel for the State respondent no.1 is based on the judgment of this Court in the case of State of Madhya Pradesh v. Vikram Das2 opining that the courts cannot impose less than the minimum sentence prescribed by the statute. He thus seeks continuing detention of the appellants to serve out the remaining sentence. On the other hand, learned counsel for the appellants has sought the benefit under the said Act in view of the age of the appellants when the offence was committed.

6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved. Section 6 of the said Act, as per its own title, provides for restrictions on imprisonment of offenders under twenty-one years of age. The said provision reads as under:

> "6. Restrictions on imprisonment of offenders under twenty-one years of age.—(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to (2019) 4 SCC 125.

the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1), the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender."

7. A view was taken by a 4-judge bench of this Court in Ramji Missar vs. State of Bihar,3 while seeking to apply the said provision to offenders who were under the age of 21 years on the date of sentencing and not on the date of commission of offence. In Masarullah v. State of Tamil Nadu4 there are observations to the effect that "in case of an offender under the age of twenty one years on the date of commission of the offence, the Court is expected ordinarily to give benefit of the provisions of the Act and there is an embargo on the power of the Court to award sentence unless the Court considers otherwise, 'having regard to the circumstances of the case including nature of the offence and the character of the offender', and AIR 1963 SC 1088.

(1982) 3 SCC 458 reasons for awarding sentence have to be recorded. Considerations relevant to the adjudication of this aspect are, circumstances of the case, nature- of the offence and character of the offender. It is, therefore, necessary to keep in view the afore-mentioned three aspects while deciding whether the appellant should be granted the benefit of the provisions of the Act." But in the subsequent judgment in Sudesh Kumar v. State of Uttarakhand5 the judgment of the four Judge Bench in Ramji Missar (supra) was noted as possibly having escaped attention. Thus, the legal position was clarified as the one being reflected in Ramji Missar (supra). The rationale is that the underlying purpose of the provision being reformative – Section 6 being a special provision enacted to prevent the confinement of young persons under 21 years of age in jail, to protect them from the pernicious influence of hardened criminals.6 In the facts of the present case, the appellants are stated to be below 21 years of age as on the date of offence. The sentencing order was passed by the trial Court noting that the appellants committed an offence of serious nature against a poor person and were thus disentitled from the benefits under the said Act or under Section 360 Cr.P.C.

(2008) 3 SCC 111 Ishar Das v. State of Punjab, (1973) 2 SCC 65, pr.7

8. In Satyabhan Kishore v. State of Bihar,7 this Court had noted the distinction between Section 6, which is in the nature of an injunction for courts to follow as distinct from Section 3 or 4 of the Act; which are discretionary in nature. The relevant provisions read as under:

> "3. Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

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 (1972) 3 SCC 350.

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.
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> (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.
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> (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.
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> (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." In the case of the appellants, Section 3 would have no application taking into consideration nature of offence. However, Section 4 could come to the aid of the appellants as the offence committed, of which they have been found guilty, is not punishable with death or imprisonment for life.

However, the trial court opined against the appellants. We may also note that the "notwithstanding" contained in Section 4 permits, despite anything contained in any other law for the time being in force, the court to release a person on bond, with or without sureties, for a period of 3 years instead of sentencing him in order to ensure that he keeps peace and good behaviour. In this regard, under sub-section (2), before making any order under sub- section (1), the court is required to take into consideration the report, if any, of the probation officer concerned in relation to the case.

9. We may note that the aforesaid is distinct from Section 6 as it is discretionary in nature while Section 6 provides that a court "must not" sentence a person under the age of 21 years to imprisonment unless sufficient reasons for the same are recorded, based on due consideration of the probation officer's report. The relevant aspects while giving benefit under Section 6 of the Act are: the nature of offence, the character of the offender, and the surrounding circumstances as recorded in the probation officer's report.8

10. We may notice that since we are concerned with the appellants who were under 21 years of age on the date of the offence and not on the date of conviction, Section 6 would not come to their aid. In a subsequent judgment of this Court9, it was noted that in Masarullah (supra), this Court had calculated the age of the convict as on the date of commission of the offence incorrectly and there has been no discussion of the potential tension Masarullah vs. State of Tamil Nadu, 1982 3 SCC 458, pr.6. Sudesh Kumar vs. State of Uttarakhand, (2008) 3 SCC 111. between grant of probation under the Act and the mandatory minimum sentence of 7 years under Section 397 of the IPC.

11. The legal position insofar as invocation of Section 4 is concerned has been analysed in Ishar Das vs. State of Punjab10 elucidating that non- obstante clause in Section 4 of the Act reflected the legislative intent that provisions of the Act have effect notwithstanding any other law in force at that time. The observation in Ramji Missar (supra) was cited with approval to the effect that in case of any ambiguity, the beneficial provisions of the Act should receive wide interpretation and should not be read in a restricted sense.

12. The aforesaid aspect is confirmed by the wording of the said Act which reads as under:

> "18. Saving of operation of certain enactments. — Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (2 of 1947), or of any law in force in any State relating to juvenile offenders or Borstal Schools." (1973) 2 SCC 65.

13. Even though, Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the PC Act') prescribes a minimum sentence of imprisonment for not less than 1 year, an exception was carved out keeping in mind the application of the Act. In Ishar Das (supra), this Court noted that if the object of the legislature was that the Act does not apply to all cases where a minimum sentence of imprisonment is prescribed, there was no reason to specifically provide an exception for Section 5(2) of the PC Act. The fact that Section 18 of the Act does not include any other such offences where a mandatory minimum sentence has been prescribed suggests that the Act may be invoked in such other offences. A more nuanced interpretation on this aspect was given in CCE vs. Bahubali11. It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non-obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act.12 It is in this context, it was observed in State of Madhya Pradesh vs. Vikram Das (Supra) that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. We (1979) 2 SCC 279.

State vs. Ratan Lal Arora, (2004) 4 SCC 590.

are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 of IPC, the offence in the present case. In fact, the observation made in Joginder Singh vs. State of Punjab13 are in the same context. The factual position

14. The facts of the present case are that the appellants have not served out the minimum sentence of 7 years though they have served about half the sentences. They were aged under 19 & 21 years of age as on the date of offence but not on the date of sentence. The redeeming feature in their case is that the person who suffered, appears to have forgiven them, possibly with the passage of time. There is no adverse report against them about their conduct in jail otherwise the same would have been brought to our notice by learned counsel for the State. Faced with the aforesaid legal position, this is a fit case that the benefit of probation can be extended to the appellants under the said act in view of the provisions of Section 4 of the said Act on completion of half the sentence.

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15. We, thus, release the appellants on probation of good conduct under Section 4 of the said Act on their completion of half the sentence and on their entering into a bond with two sureties each to ensure that they maintain peace and good behaviour for the remaining part of their sentence, failing which they can be called upon to serve that part of the sentence.

16. The appeals are disposed of in the aforesaid terms leaving the parties to bear their own costs.

……..……J. [SANJAY KISHAN KAUL] ……..……J. [HRISHIKESH ROY] NEW DELHI.

JANUARY 19, 2021.