

[2022] 3 S.C.R. 1

SOM DUTT & ORS.

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v.

THE STATE OF HIMACHAL PRADESH

(Criminal Appeal No. 549 of 2022)

APRIL 04, 2022

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[SANJIV KHANNA AND BELA M. TRIVEDI, JJ.]

Probation – Release on probation – Appellants convicted by three courts below u/s.379 r/w s.34 IPC and sentenced to 3 months SI – Revision filed before High Court – Dismissed – Challenge to – Held: No interference warranted with concurrent findings of facts recorded by the courts below – However, appellants granted benefit of release on probation of good conduct u/s.361 CrPC r/w ss.3 and 4 of the Probation of Offenders Act having regard to the sentence imposed by courts below, and as the appellants had no criminal antecedents, and the Respondent (State) filed no objection to this – Probation of Offenders Act, 1958 – ss.3 and 4 – Code of Criminal Procedure, 1973 – ss. 360 and 361 – IPC – s.379 r/w s.34.

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Partly allowing the appeals, the Court

HELD: Section 3 and 4 of the Probation of Offenders Act empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 and 361 of the Cr.P.C also empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Hence, having regard to sentence imposed by the courts below on the appellants for the offence under Section 379 read with Section 34 of IPC, and having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct, on each of the appellants furnishing a personal bond of Rs. 25,000/- with surety of the like amount, and on further furnishing an undertaking to keep the peace and good behaviour for a period of three years, to the satisfaction of the concerned trial court. [Para 6][3-F-H; 4-A-B]

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- A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.549 of 2022.

From the Judgment and Order dated 06.08.2021 of the High Court of Himachal Pradesh at Shimla in Criminal Revision No.149 of 2012.

- B Arvind Gupta, Amit Singh Chandel, Dr. Kamal Yash Sahwal, Mohit Bidhuri, Ashish Kumar Sinha, Jaynath Sah, Advs. for the Appellants.

Manish Kumar, Vijay Kumar, Ms. Riya Soni, V. K. Shukla, Jayanta Bhattacharyya, Ankit Verma, Ms. Archana Kumari, Ms. Shivangi Singh, Rahul Gupta, Shashank Sharma, Ms. Beena, Ms. Saket Gautam, Satish Kumar, Advs. for the Respondent.

- C The Judgment of the Court was delivered by

BELA M. TRIVEDI, J.

1. Special leave is granted.

- D 2. The appellants (original accused) have assailed the order dated 06.08.2021 passed by the High Court of Himachal Pradesh, Shimla in the Criminal Revision Petition No. 149 of 2012 filed by the appellants, dismissing the same.

- E 3. The appellants – accused were convicted by the Judicial Magistrate First Class, Karsog, District Mandi Himachal Pradesh for the offence under Section 379 read with Section 34 of IPC in the Criminal Case No. 381 of 2009, and were directed to undergo simple imprisonment for a period of three months and pay fine of Rs. 3000/- in default thereof, to undergo further simple imprisonment for one month, vide the judgment and order dated 20.01.2012. The said judgment was affirmed by the

- F Additional District and Sessions Judge, Mandi, camp at Karsog vide judgment and order dated 08.06.2012 passed in Criminal Appeal No. 11 of 2012. Being aggrieved by the said order passed by the appellate Court, the appellants had preferred the Revision Petition being No. 149 of 2012, which came to be dismissed by the High Court of Himachal Pradesh vide the impugned order dated 06.08.2021

- G 4. As per the case of prosecution, on 18.09.2008, a Police party was patrolling at the place Dungru Nallah, when one red colour Indigo car came from Phegal road without having any number plate. The car was stopped by the Police party. It was driven by Manoj Kumar alias Manoj Kaushal (Accused no. 5 now deceased), and Bula Ram (Accused

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no.4) was sitting in the car. On being asked they told the Police party that they were going to Sundernagar for remoulding the tyres of the tractor which was being brought behind the car. A tractor trolley also reached on the spot, which was being driven by Daleep Kumar (Accused no. 2); and Som Dutt (Accused no. 1) and Ranjan Kumar (Accused no. 3) were sitting on the tractor. The Accused no. 1 Som Dutt told the Police that the tractor belonged to him and the documents of the tractor were with Accused no. 4 Bula Ram. However, on checking the tractor and trolley documents, it was found that the registration numbers were different. Hence an FIR was registered against all the five accused for the offence under Section 379 read with Section 34 of IPC. After the investigation was over, the case was tried against all the accused for the offence under Section 379 read with Section 34 of IPC and were convicted and sentenced as stated earlier.

5. Though the learned Advocate appearing for the appellants had sought to challenge the impugned order passed by the High Court maintaining the conviction and the sentence imposed on the appellants, we were not inclined to interfere with the concurrent findings of facts recorded by the three courts below holding the appellants guilty of the offence under Section 379 of Section 34. The learned Advocate for the appellants, however had submitted that the courts below should have considered the case of the appellants for granting them the benefit of releasing them on probation under Section 361 of the Cr.P.C read with Sections 3 and 4 of the Probation of Offenders Act, 1958. We therefore considering the said submission had issued the notice to the respondent-State. Learned Advocate Mr. Satish Kumar for the respondent-State though has filed the reply, has not much resisted to the submission of the learned Advocate for releasing the appellants on probation.

6. Section 3 and 4 of the Probation of Offenders Act empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 and 361 of the Cr.P.C also empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Hence, having regard to sentence imposed by the courts below on the appellants for the offence under Section 379 read with Section 34 of IPC, and having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter,

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- A while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct, on each of the appellants furnishing a personal bond of Rs. 25,000/- with surety of the like amount, and on further furnishing an undertaking to keep the peace and good behaviour for a period of three years, to the satisfaction of the concerned trial court. It is further directed
- B that if the appellants failed to comply with the said directions or commit breach of the undertaking given by them, they shall be called upon to undergo the sentence imposed by the trial court.

7. Subject to the aforesaid directions, the Appeal stands allowed.

Bibhuti Bhushan Bose

Appeals partly allowed.