

Daulat Ram

Vs

The State of Haryana

Criminal Appeal No. 68 of 1972

(J. M. Shelat, H. R. Khanna, K. S. Hedge, I. D. Ray JJ)

11.08,1972

JUDGMENT

DUA, J. -

1. This is an appeal by special leave under Article 136 of the Constitution. But the special leave granted by this Court was limited to the question of the applicability of the Probation of Offenders Act, 20 of 1953 (hereinafter called the Act).
2. According to the prosecution case, on December 20, 1968, at about 4 p.m. Smt. Sardaro, along with her mother-in-law Smt. Sarbati had gone to their gitwar for taking fuel. Smt. Surti, wife of Net Ram and mother of the appellant Daulat Ram, came out of her residential house and went to her gitwar through Smt. Sardaro's gitwar. Smt. Sardaro prohibited Surti to pass through the former's gitwar. Surti abused Sardaro, thereupon Net Ram and his son Daulat Ram, appellant, armed with lathis rushed to their gitwar hurling abuses and raising lalkaras "marlo marlo". Surti caught hold of Sardaro. Net Ram gave a lathi blow on her head which hit her cheek below her left eye. Net Ram and Daulat Ram are then alleged to have caused further injuries to Sardaro. Net Ram and Daulat Ram were both convicted under Sections 325/34 and 323/34, I.P.C. and sentenced to rigorous imprisonment for two years and three months respectively. They were also directed to pay a fine of Rs. 250/- each under the first count. On appeal to the Punjab and Haryana High Court it was found that Net Ram had eight injuries on his person and Daulat Ram four. The conviction of both of them was upheld but the sentences of imprisonment under Sections 325/34 were reduced. The amount of fine was also reduced to Rs. 100 each.
3. This Court declined to grant special leave to Net Ram but to Daulat Ram, as already observed, special leave was granted limited only to the extent of the applicability of the Act.
4. Now it is submitted that Daulat Ram was born on March 2, 1949. He was convicted by the learned Additional Sessions Judge, Gurgaon on February 20, 1970. The date of the occurrence was December 20, 1968. It is clear that on the date of his conviction the appellant was less than 21 years old. Section 3 of the Act deals with persons found guilty of offences punishable under Sections 379 to 381, 404 and 420, I.P.C. or punishable with imprisonment for not more than two years and when no previous conviction is proved. Section 4 of the Act provides :

"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."

Section 6 of the Act with which we are directly concerned lays down :

"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 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."

5. It is obvious that Section 6 places restrictions on the court's power to sentence a person under 21 years of age for the commission of offences mentioned therein unless the court is satisfied that it is not desirable to deal with the offender under Sections 3 and 4 of the Act. The Court is also required to record reasons for passing sentence of imprisonment on such offender. Section 11 of the Act empowers the courts of appeal and revision also to make order under the Act. In *Ramji Misser v. The State of Bihar* (1962 Supp 2 SCR 745 : AIR 1963 SC 1088 : (1963) 2 Cri LJ 173.), this Court laid down -

(1) the age referred to in Section 6(1) of the Act is that when the court is dealing with the offender, that being the point of time when the court has to choose between the two alternatives, whether to sentence the offender to imprisonment or to apply to him the provisions of Section 6(1) of the Act;

(2) the courts mentioned in Section 11 are empowered to exercise the jurisdiction conferred on courts not only under Sections 3 and 4 and the consequential provisions but also under Section 6;

(3) the power conferred on appellate or other courts by Section 11(1) of the Act is of the same nature and character and subject to the same criteria and limitations as that conferred on the courts under Sections 3 and 4;

(4) the provisions of Section 6(1) restrict the absolute and unfettered discretion implied by the word "may" in Section 11(1) and the entirety of Section 6(1) applies to guide or condition the jurisdiction of the High Court under Section 11(1); and

(5) the crucial date for reckoning the age where an appellate court modifies the judgment of the trial when Section 6 becomes applicable to a person only on the decision of an appellate or a revisional court, is that upon which the trial court had to deal with the offender.

6. In *Rattan Lal v. The State of Punjab* (AIR 1955 SC 444.), this Court observed that Section 11(1) of the Act is the provision that directly applies to the case whereunder an order may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision. That sub-section ex-facie does not circumscribe the jurisdiction of an appellate court to make an order under the Act only in a case where the trial court could have made that order. The phraseology used therein is wide enough to enable the appellate court of the High Court, when the case comes before it, to make such an order it having been made purposely comprehensive for implementing a social reform. That was a case like the one before us from Gurgaon district. This Court, after setting aside the order of the High Court, remanded the case back to the Sessions Court for making an order under Section 6 of the Act. In *Isher Das v. The State of Punjab* (AIR 1972 SC 1295 : 1972 Cri LJ 874 : 1972 SCD 262.), the accused who was tried under the Prevention of Food Adulteration Act was given by the trial magistrate the benefit of the Act and was directed to furnish bond under Section 4 thereof. The High Court, however, on its own motion altered the sentence passed by the trial magistrate and

instead imposed a sentence of simple imprisonment of period of six months and a fine of Rs. 1,000/- . This Court on appeal set aside the order of the High Court and restored that of the trial magistrate observing that the High Court had failed to consider the provisions of the Act particularly the mandatory nature of Section 6. The accused in the reported case was less than 20 years of age. In *Satyabhan Kishore v. The State of Bihar* (AIR 1972 SC 1555 : (1972) 3 SCC 350 : 1972 SCC (Cri) 540.), it was observed that Section 6 of the Act lays down an injunction not to impose a sentence of imprisonment upon a person under 21 years of age found guilty of an offence punishable with imprisonment but not with imprisonment for life, unless for reasons to be recorded by it, the court consider it undesirable to proceed with him under Section 3 or Section 4. It was added that whenever Section 6 is applicable the Supreme Court can either apply it on its own or direct the High Court to do so.

7. In *Abdul Qayum v. The State of Bihar* ((1972) 1 SCC 103.), this Court observed that the provisions of the Act have to be viewed in the light of the laudable reformatory object which the Legislature was seeking to achieve by enacting it. In that case, after allowing the appeal, this Court directed the offender to be released under Section 4 of the Act on his entering into a bond with his father as a surety to appear and receive sentence by the trial court whenever called upon to do so within a period of one year and during that time to keep the peace and be of good behaviour. The trial court was directed to take bond from the appellant and a surety bond from the appellant's father. In *Ram Singh v. State of Haryana* (Cri. A. No. 223 of 1967, decided on March 26, 1970 : (1971) 3 SCC 914 : 1972 SCC (Cri) 162.), this Court did not consider it proper to entertain under Article 136 of the Constitution the plea for invoking the Act in the absence of report from the Probation Officer and other relevant material regarding the character, etc., of the offender.

8. Now the object of Section 6 of the Act, broadly speaking, is to see that young offenders are not sent to jail for the commission of less serious offences mentioned therein because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals who may happen to be the inmates of the jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly do them more harm than good, and for that reason it would perhaps also be to an extent prejudicial to the larger interests of the society as a whole. It is for this reason that the mandatory injunction against imposition of sentence of imprisonment has been embodied in Section 6. This mandate is inspired by the desire to keep the young delinquent away from the possibility of association or close contact with hardened criminals and their evil influence. This section, therefore, deserves to be liberally construed so that its operation may be effective and beneficial to the young offenders who are prone more easily to be led astray by the influence of bad company.

9. In the case in hand, keeping in view the nature and the attending circumstances of the offence and the age of the appellant Daulat Ram, we consider it proper to give him the benefit of the Act. On behalf of the respondents it was not controverted that this Court can make an order under the Act on the existing material on the record without remitting the case to the trial court and without seeking any further information. Accordingly, affirming his conviction, we set aside the sentence of imprisonment and direct that he be released on entering into a bond with one surety in the sum of Rs. 500/- each, to appear in the court of the trial magistrate and receive the sentence affirmed by the High Court, whenever called upon to do so by the trial magistrate within a period of one year and during that period to keep the peace and be of good behaviour. The trial magistrate is directed to take the necessary bond from the appellant and the necessary surety bond from a surety to his (the trial magistrate's) satisfaction. The appellant's bail bond will ensure till the time these directions are carried out, after which it will be deemed to be cancelled.

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