

Ramnaresh Pandey

Vs

The State of Madhya Pradesh

Criminal Appeal No. 183 of 1973

(V. R. Krishna Iyer, R. S. Sarkaria, H. R. Khanna JJ)

28.09.1973

JUDGMENT

KHANNA, J. –

1. This is an appeal by special leave by Ramnaresh Pandey against the judgment of Madhya Pradesh High Court.
2. The appellant was prosecuted under Section 506 Indian Penal Code on the allegation that he had on May 11, 1970 committed an offence of criminal intimidation by intimidating Lady Dr. Majumdar. The trial Magistrate convicted the appellant under Part II of Section 506 Indian Penal Code and directed that he be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958 on the execution of a personal bond in the sum of Rs. 700 and with one surety in the like amount for a period of one year. On appeal the additional Sessions Judge Jagdalpur altered the conviction of the appellant to that under Part I of Section 506 Indian Penal Code. The learned Additional Sessions Judges set aside the order of the trial Court releasing the appellant on probation of good conduct and awarded a sentence of payment of fine of Rs. 50. In default of payment of fine, the appellant was directed to undergo simple imprisonment for a period of seven days. Revision filed by the appellant against the judgment of the Additional Sessions Judge was dismissed by the Madhya Pradesh High Court. The appellant thereafter came up in appeal to this Court by special leave.
3. Learned counsel for the appellant has contended before us, as was submitted on behalf of the appellant in the High Court, that the Additional Sessions Judge should not have set aside the order directing the release of the appellant on probation of good conduct and imposed instead of that a sentence of fine and of imprisonment in default. In support of the above contention, it is urged in the first instance that by imposing the sentence of payment of fine and of imprisonment in default of payment of fine, instead of the order under Section 4 of the Probation of Offenders Act, the Additional Sessions Judge enhanced the sentence imposed upon the appellant. Such enhancement of the sentence by the Additional Sessions Judge, according to the learned counsel, is not legally permissible. To show that sentence of fine and of imprisonment in default constitutes enhancement and is a more severe sentence compared to the order for release on probation of good conduct, our attention has been invited to Section 12 of the Probation of Officers Act, according to which "notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law : Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence". In the alternative, the contention advanced on behalf of the appellant is that, in the absence of any

cogent reasons, the Additional Sessions Judge should not have deprived the appellant of the benefit of the order under Section 4 of the Probation of Offenders Act. There is, in our opinion, considerable force in the second contention advanced on behalf of the appellant. It is consequently not necessary to express an opinion on the point as to whether it was legally permissible for the learned Additional Sessions Judge to pass an order in appeal that the appellant should pay a fine of Rs. 50 or in default suffer imprisonment, instead of the order made by the trial magistrate directing that the appellant be released on probation of good conduct. As mentioned earlier, the trial Magistrate had convicted the appellant under Part II of Section 506. The Additional Sessions Judge on appeal altered the conviction to that under Part I of that section. Section 506 reads as under :

"Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by force, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description, for a term which may extend to seven years, or with fine or with both."

Bare perusal of Section 506 makes it clear that Part II of the section deals with a graver form of the offence of criminal intimidation which is punishable with imprisonment of either description for a term which may extend to seven years, or with fine or with both. The punishment prescribed for the offence under Part I of Section 506 is imprisonment of either description for a term which may extend to two years, or with fine, or with both. As the trial Magistrate released the appellant on probation of good conduct under Section 4 of the Probation of Offenders Act even though the appellant had been found to be guilty of the graver offence under Part II of Section 506 Indian Penal Code, the Additional Sessions Judge should not have in our opinion, deprived the appellant of that benefit without some cogent grounds. Indeed, there was all the more reason for not depriving the appellant of the benefit of the order made under Section 4 of the Probation of Offenders Act because the Additional Sessions Judge had partly allowed the appeal of the appellant and found him to be guilty of a lighter offence. The Probation of Offenders Act, as observed by this Court in the case of *Jugal Kishore Prasad v. State of Bihar*, ((1972) 2 SCC 633 : 1973 SCC (Cri) 48) was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective.

4. Neither the learned Additional Sessions Judge nor the High Court gave any reason why the appellant should be deprived of the benefit of an order under Section 4 of the Probation of Offenders Act under which provision the appellant had been released by the trial Court. In the

absence of any cogent reason the appellant, in our opinion, should not have been deprived of that benefit. We accordingly accept the appeal, set aside the judgment of the High Court and direct that the appellant should be released on probation of good conduct under Section 4 of the Probation of Offenders Act as directed by the trial Court.

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