

CASE NO.:

Appeal (crl.) 313 of 2008

PETITIONER:

Ramesh Dass

RESPONDENT:

Raghu Nath and Ors

DATE OF JUDGMENT: 14/02/2008

BENCH:

Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:

J U D G M E N T

CRIMINAL APPEAL NO. 313 OF 2008

(Arising out of SLP (CRL) No. 4646 of 2006)

(With Criminal Appeal No 314 of 2008 @ SLP (Crl.) 5321/2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. These two appeals have their matrix on an order passed by a learned Single Judge of the Punjab and Haryana High Court. By the impugned judgment a Criminal Revision was filed by the informant and Criminal Appeal filed by the State of Haryana seeking enhancement of the sentence were disposed of.

Respondents faced trial for alleged commission of offences punishable under Sections 148 and 326 read with Section 149, Section 325 read with Section 149, Section 324 read with Section 149 and Section 323 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC') and Chief Judicial Magistrate, Karnal convicted and sentenced five of the accused persons in the following manner:

Sections	Imprisonment	Fine
326/149 IPC	Five years RI	Rs.5,000/- each. In default of payment of fine R.I. for one year.
325/149 IPC	Two years R.I.	Rs.500/- each. In default of payment of fine R.I. for six

months

148 I.P.C. Six months R.I.

323/149 IPC Three months R.I.

All the sentences were directed to run concurrently. It was directed that in case the fine amount imposed was realized, an amount of Rs.20,000/- was to be paid as compensation to the informant Pindi Dass who was injured and also a sum of Rs.5,000/- was payable to Ramesh Dass another injured victim.

The accused persons filed an appeal and learned Additional Sessions Judge, Karnal reduced the sentence under Section 326 read with section 149 IPC to three years but upheld all other sentences and the fine imposed by the trial Court. The accused persons filed criminal revision before the High Court for quashing the judgment and order of conviction of the trial Court. As noted above, the State of Haryana filed an appeal for enhancement of the sentence and informant also filed a revision application. The High Court dismissed the Criminal Appeal of the State and Criminal Revision of the injured for enhancement of sentence but modified the judgment of courts below and directed release of the accused persons on probation under Section 360 of the Code of

Criminal Procedure, 1973 (in short the 'Code') and enhanced the amount of fine to Rs.15,000/- each and directed 50% shall be payable to the injured Pindi Dass. It is to be noted that in the meantime Pindi Dass has died.

3. Learned counsel for the informant submitted that the direction given by the High Court cannot be maintained. Firstly, the Probation of Offenders Act, 1958 (in short the 'Probation Act') is applicable to the State of Haryana and therefore, Section 360 is not applicable. In any event, life imprisonment is provided for an offence punishable under Section 326 IPC. So, Section 360 of the Code also has no application.

4. Learned counsel for the accused respondents supported the judgment of the High Court. It further submitted that considering the fact that incident took place long back, this Court should not interfere by exercising jurisdiction under Article 136 of the Constitution, 1950 (in short the 'Constitution'). The State of Haryana-appellant in Criminal Appeal arising out of SLP (Crl.) No.5321 of 2006 supported the stand of the informant who is appellant in Criminal appeal relating to SLP (Crl.)No.4646/2006.

5. Where the provisions of the Probation Act are applicable

the employment of Section 360 of the Code is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, who gave birth to the Probation Act and the Code wanted to obviate. Yet the legislature in its wisdom has obliged the Court under Section 361 of the Code to apply one of the other beneficial provisions; be it Section 360 of the Code or the provisions of the Probation Act. It is only by providing special reasons that their applicability can be withheld by the Court. The comparative elevation of the provisions of the Probation Act are further noticed in sub-section (10) of Section 360 of the Code which makes it clear that nothing in the said Section shall affect the provisions of the Probation Act. Those provisions have a paramountcy of their own in the respective areas where they are applicable.

6. Section 360 of the Code relates only to persons not under 21 years of age convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less, to any person under 21 years of age or any woman convicted of an offence not punishable with sentence of death or imprisonment for life. The scope of Section 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Section 360 of the Code does not provide for any role for Probation Officers in assisting the

Courts in relation to supervision and other matters while Probation Act does make such a provision. While Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the Probation Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain parallel provision. Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 of the Code and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of Section 360 of the Code are wholly inapplicable.

7. Enforcement of Probation Act in some particular area excludes the applicability of the provisions of Sections 360, 361 of the Code in that area.

8. The aforesaid position was highlighted in *Chhanni v. State of U.P.* (2006 (5) SCC 396) and *Daljit Singh and Ors. v. State of Punjab* (2006 (6) SCC 159).

9. Further, Section 360(1) of the Code itself provides that if for any offence life sentence is provided for, section 360 of the Code would have no application.

10. Undisputedly, in *Jagdev Singh v. State of Punjab* (1973 SCC (CrL.) 977) it was held that Section 360 has no application since under Section 326 IPC the said offence carries life imprisonment. In any event, that question is academic.

11. In view of what has been stated above, Section 360 of the Code has no application to the facts of the present case. The High Court seems to have lost sight of the correct position in law.

12. Above being the position, the matter is remitted to the High Court to consider about the non-applicability of Section 360 of the Code both on the ground that the Probation Act has application and Section 326 carries life imprisonment.

13. The appeals are allowed with no order as to costs.