

Criminal Revision No.739/2012  
**(Maqbool Khan v. Hasan Khan & Others)**

**01.04.2016**

Shri J.P. Mishra, learned counsel for the petitioner-complainant.

Shri R.P. Gupta, learned Government Advocate for the respondent no.4-State.

None for respondents-accused no. 1 to 3.

1. Heard.

2. The petitioner-complainant has come against the order of the appellate Court whereby the appellate Court has confirmed the order of the trial Judge in having granted probation to the accused persons.

3. I find that this approach of the trial Court is perfectly in accordance with the provisions of Sections 360 and 361 of Criminal Procedure Code and there is no reason to interfere with such approach.

4. As a matter of fact according to the provisions of Sections 360 and 361 of Criminal Procedure Code, it becomes obligatory on the part of the trial Judge or the appellate Judge in giving reasons for not granting the benefit of the probation. Sections 360 and 361 of Criminal Procedure Code are reproduced as under :-

**"360-Order to release on probation of good conduct or after admonition :-**

(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is

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convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, 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 where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of

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1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law.

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment that might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121,124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance

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of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

**361. Special reasons to be recorded in certain cases-** Where in any case the Court could have dealt with-

(a) an accused person under section 360 or under the provisions of the probation of Offenders Act, 1958 (20 of 1958), or

(b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

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5. Therefore, the approach of the learned trial Court and the appellate Court was perfectly in accordance with law and does not call for any interference by this Court.
6. Accordingly, the revision filed on behalf of the petitioner-complainant is hereby dismissed.
7. There shall be no order as to costs.
8. Bail bonds of the respondents/accused persons are hereby discharged.
9. This judgment be circulated to all the trial Courts in the State of Madhya Pradesh.
10. A copy of the order be sent to the Principal Registrar for doing the needful.

**(M.C. Garg)**  
**Judge**

**Meh/-**