

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE ANAND PATHAK

CRIMINAL REVISION No. 1113 of 2022

Between:-

**MAJBOOT SINGH S/O RAMESHWAR SINGH
GURJAR, AGED ABOUT 40 YEARS,
OCCUPATION: KASTKARI R/O GRAM
HARDAYAL KA PURA MOJA SHIKHARA POLICE
STATION NAGRA DISTRICT MORENA (MADHYA
PRADESH)**

.....APPLICANT

(BY SHRI ASHISH SINGH BHADORIYA- ADVOCATE)

AND

**STATE OF MADHYA PRADESH
THROUGH POLICE STATION PORSA DISTRICT
MORENA (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI B.M. SHRIVASTAVA-PUBLIC PROSECUTOR)

Reserved on	:	01-09-2022
Delivered on	:	07-09-2022

ORDER

1. The present revision petition under Section 397 and 401 of Cr.P.C. is preferred by the petitioner against the judgment of conviction and order of sentence dated 08-03-2022 passed by the Second Additional Sessions Judge, Ambah District Morena in Criminal Appeal No.199/2018 confirming the judgment of conviction passed by learned Judicial Magistrate First Class, Ambah District Morena in Criminal Case No.1064/2008 whereby petitioner has been convicted as under:

S.No.	Offence u/s	Imprisonment	Fine	Default Stipulation
1	25(1-b)(A)	1 year's RI	Rs.500/-	Three months RI

2. Precisely stated facts of the case are that on 08-09-2008 when ASI Rajendra Singh (PW-2) along with other police personnel were checking the vehicles at Ater Tiraha, Mandi Road, at that time, due to said check post, driver of one blue colour platina motorcycle bearing registration No.MP06 M 6648 tried to ran away. He was stopped and on asking, he told his name Majboot Singh and further when he was checked, from his possession one loaded Katta was recovered for which he was not having any licence. Majboot Singh -petitioner was arrested on the spot and

Katta along with one live cartridge and motorcycle bearing registration No.MP06 M 6648 were seized vide seizure memo Ex-P/1 and FIR Ex-P/3 was registered against the petitioner at Crime No.213/2008 for offence under Sections 25/27 of Arms Act. Matter was investigated and challan was filed in the matter under Sections 25/27 of Arms Act.

3. Before the trial Court -Judicial Magistrate First Class, Ambah, district Morena, petitioner abjured his guilt and prayed for trial. Prosecution examined 5 witnesses in support of its case and in defence, accused/petitioner himself has been examined under Section 313 of Cr.P.C. After recording of evidence ocular as well as documentary and hearing the submission of counsel for the parties, the trial Court convicted and sentenced the petitioner as referred above.
4. The judgment of conviction and order of sentence passed by the trial Court has been challenged by the petitioner by preferring criminal appeal. The appellate Court dismissed the said appeal and maintained the conviction of petitioner as recorded by the trial Court, therefore, the petitioner are before this Court.
5. It is submitted by learned counsel for the petitioner that the Courts below erred in convicting the petitioner for the offence referred above.

There is material contradictions and omissions between the statements of prosecution witnesses in relation to place of arrest of petitioner and seizure of weapon and such aspect has not been considered by the trial Court. No independent witness has been examined by the prosecution and the witnesses who were examined by the prosecution belong to the police department, therefore, the testimony of these interested witnesses cannot be taken to be true without corroborative evidence. Thus, prayed for setting aside of the impugned judgment of conviction and order of sentence passed by the trial Court and affirmed by the appellate Court.

6. Learned counsel for the petitioner further submitted that petitioner is the first offender, therefore, the benefit of the Probation of Offenders Act, 1958 (hereinafter referred to as “the Act”) ought to have been given by the Courts below as petitioner wants to mend his ways to become a better citizen in future. Thus, the trial Court erred in not extending the benefit of the Act. Learned counsel for the petitioner drew attention of this Court towards Section 361 of Cr.P.C. and submits that the Court has to record its reasoning for not extending the benefit of the said Act. Thus, in alternate, prayer for extending the benefit of the Act is made on behalf of petitioner.

7. On the other hand, learned counsel for the respondent/State opposed the prayer and prayed for dismissal of petition.
8. Heard learned counsel for the parties and perused the record.
9. It is a case where petitioner is facing heat of incarceration for last 6 months on the ground of conviction under Section 25(1-b)(A) of Arms Act and he has to undergo 1 year's imprisonment with fine of Rs.500/-.
10. According to accusation of prosecution, petitioner was found to be in possession of one 315 bore Katta with one live cartridge during the checking done by the police personnel. In support, prosecution examined five witnesses but none of them was independent witness. Although there is contradiction crept into the statements of witnesses in relation to place of seizure and arrest of the petitioner but all these witnesses categorically deposed that during checking, one 315 bore Katta with live cartridge was recovered from the possession of the petitioner. Akhilesh Dubey (PW-3) who performed chemical examination of seized weapon -Katta stated that the seized weapon was in operational condition.
11. R.S. Parihar (PW-2) who caught the petitioner during police checking stated that when he tried to stop the petitioner, he tried to ran away but any how he along with other police personnel who were at the police

check post caught hold the petitioner and on checking one 315 bore loaded Katta with live cartridge was found in possession of petitioner which was seized. This version of R.S. Parihar (PW-2) has been supported by other police witnesses i.e. Mahesh Prasad Sharma (PW-1) and Bal Kumar (PW-4) who were present at the post. Seizure memo was signed and proved by the Bal Kumar (PW-4) before the trial Court.

12. In support of his defence, petitioner did not examine any witness and further he did not try to project the case as if due to previous animosity with police personnel, he has been falsely implicated in the present case and on the other hand, prosecution tried to prove his case by examining its witnesses before the trial Court. Therefore, no doubt over the prosecution story can be raised although prosecution did not assign any reason for not examining the Investigating Officer -Ramhet before the trial Court. Thus, both the Courts below did not commit any error in convicting the petitioner. Prosecution succeeded in proving its case beyond reasonable doubt. The Courts below duly vetted the rival submissions and thereafter passed the impugned judgment and conviction against the petitioner. The Hon'ble Apex Court in the case of

K. Prakashan Vs. P.K.Surenderan (2008) 1 SCC 258 and T. Subramanian Vs. State of Tamil Nadu (2006) 1 SCC 401 held that if two views are possible and one view is taken by the trial Court after due appreciation of evidence then unless sheer perversity or illegality crept in to the judgment of trial Court, the scope of interference is limited.

- 13.** Section 360 of Cr.P.C. provides power and mechanism to release on probation of good conduct after admonition and therefore, it is in addition to the provisions of the Act, therefore, legislative intent is very clear. In case of punishment as prescribed in the Act and Cr.P.C. and further the age, character and antecedents of the offender and to the circumstances in which offence was committed are satisfied then the Court may release person on probation of good conduct.
- 14.** Section 361 of Cr.P.C. in fact puts onus over the Court that in any case the Court could not have dealt with the accused under Section 360 of Cr.P.C. or under the provisions of Act or under the Children Act, 1960 (for youthful offender) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, then Court has to record special reason in its judgment for not having done so. Therefore, it is another way for encouraging the provisions of the Act

and/or Section 360 of Cr.P.C.

15. In sum and substance as Reformative and Reparative mode of Criminal Penology, concept of release on probation of good conduct or after admonition is devised which is reflected through the provisions of the Act also and therefore, the Act and Sections 360 and 361 of Cr.P.C. are complementary to each other and furthers the cause of justice cumulatively or independently.
16. Similarly, in the case of **Mohd. Hashim Vs. State of Uttar Pradesh and Others, (2017) 2 SCC 198**, the Apex Court has tracked down different pronouncements made in this regard under the purview of Probation of Offenders Act and given guidance for taking decision in the given fact situation. The Hon'ble Apex Court in the case of **Rajendra Pralhadrao Wasnik Vs. State of Maharashtra AIR 2019 SC 1** has reiterated the law while relying upon the earlier judgment of the Hon'ble Apex Court in the case of **Birju Vs. State of Madhya Pradesh (2014) 3 SCC 421** and espoused the cause of Offenders Act as Reformatory Tool in Criminal Penology.
17. In instant peculiar facts and circumstances of the case, provisions as contained in Sections 360 and 361 of Cr.P.C. are more accurately

applicable wherein Section 360 of Cr.P.C. enlarges the scope of release on probation of good conduct or after admonition vis a vis provision of the Act. Sections 360 and 361 of Cr.P.C. are reproduced for ready reference:

“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 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 a 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 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 or 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 than 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 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.”

18. Petitioner already suffered 6 months' incarceration till date and during trial he was also in confinement, therefore, he suffered more than 6 months incarceration thus, sufficient punishment suffered by the petitioner. Therefore, in the given fact and circumstances of the case, it is imperatives that petitioner be given the benefit of Sections 360/361 of Cr.P.C. and accordingly while upholding the judgment of conviction dated 08-03-2022 passed by the Second Additional Sessions Judge, Ambah District Morena in Criminal Appeal No.199/2018 as well as judgment of conviction dated 21-08-2018 passed by Judicial Magistrate First Class, Ambah District Morena in Criminal Case No.1064/2008, sentence passed by both the Courts below is modified. Petitioner is directed to be released on his furnishing a bond of **Rs.50,000/- (Rs. Fifty Thousand Only)** with a surety of like amount to the satisfaction of the trial Court for his good conduct for next 2 years in a way that he shall

not indulge in commission of any criminal activity in future which may endanger social peace and public tranquility.

Just to verify about the good conduct of petitioner first week of every three months (from October 2022 onwards) applicant shall submit a written undertaking that he is not involved in any criminal activity before the trial Court. Since trial Courts are burdened with much matters, therefore, trial Court may refer the matter to the District Legal Services Authority (DLSA) for marking his trimester presence and submission of report and DLSA may appoint any paralegal volunteer to verify the facts as narrated by the petitioner from time to time. In case of any non compliance of the conditions as directed above, concerned trial Court shall be at liberty to proceed in accordance with law against the petitioner.

- 19.** *Resultantly*, revision petition filed by the petitioner is disposed of. Judgment of conviction passed by both the Courts below is upheld and order of sentence passed by both the Courts below is hereby modified. Petitioner is set free henceforth on due admonition on furnishing the bond as directed above.
- 20.** Copy of the judgment be sent to the trial Court for information and

necessary compliance.

21. Revision petition stands disposed of with the aforesaid directions.

(Anand Pathak)
Judge

Anil*