

- vi. Subject to the fact-finding enquiry to be conducted by the Financial Commissioner, Revenue, Punjab, it is further directed that the subject land shall be sold only by way of public auction after due publicity in accordance with law.
- vii. The Financial Commissioner, Revenue, Punjab shall submit the fact-finding enquiry-cum-status report whereupon it shall be considered whether or not the matter should be entrusted to the State Vigilance Bureau against the public servants found involved in the illegal transactions.
- viii. The appellants are directed to deposit the cost amount of Rs 25,000/- in High Court Lawyers Welfare Fund within *two months*.

S. Gupta

Before Paramjeet Singh, J.

UDAY SINGH AND ANOTHER—Petitioners

versus

STATE OF HARYANA—Respondent

CRR No. 1278 of 2015

May 19, 2015

Probation of Offenders Act, 1958 – S. 4 – Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 – S. 12 – Code of Criminal Procedure, 1973 – Ss. 313, 360 & 361 – Narcotics Drugs and Psychotropic Substances Act, 1985 – S. 22 – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – S. 19 – Central Excise Act, 1944 – S. 9-E – Prevention of Corruption Act, 1988 – S. 18 – Probation – District and Town planner complained that several persons including petitioners were constructing roads for setting up unauthorized colony and were laying out means of access to National Highway without permission from Director of Department – Trial Court and lower Appellate Court convicted petitioners and others and sentenced them to undergo simple imprisonment for one year – Petitioners sought for release on probation under section 4 of Probation Act and section 360 of Cr. P.C. – Held, that provisions of section 360 of Cr. P.C. and Probation Act give

statutory recognition to objectives of reformation and rehabilitation of convicted person – First time offenders should be prevented from their conversion into obdurate criminal – Offence for which petitioners had been sentenced was technical in nature – Magnitude of offence was not grave in nature – Character of offenders was unblemished – Petitioners were agriculturist, pursuing a peaceful vocation – They had already undergone some part of sentence – They could be given an opportunity to improve themselves and bring up their families by honest labour – Petitioners were to be released on probation.

Held that the criminal justice system in India is slowly advancing with an object to prevent the conversion of first-time offenders into obdurate criminals as a result of their association with hardened criminals if they have to undergo imprisonment in jail. The object is in consonance with the present trend in the field of penology which suggests that effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice/deterrent punishment. Modern criminal jurisprudence recognizes that no one is a born criminal. The majority of the crimes are the product of socio-economic milieu. The provisions of Section 360 of the Code and Probation Act give statutory recognition to objectives of reformation and rehabilitation.

(Para 11)

Further held, that in all crimes a very wide discretion in the matter of sentence vests in the trial and appellate Court. Exercise of discretion is a matter of prudence and not law. It is well-settled law that no one can claim benefit of the Probation Act and provisions of the Code as a matter of right.

(Para 24)

Further held, that reformation and rehabilitation of the offenders are the key-notes of the above referred provisions. Although the problem of punishment is a baffling issue, still while awarding sentence the Court is required to look into as to how the ends of justice would be better served without sending a convicted person in jail. Many a times the legislations which relate to amelioration in punishment are not brought to the notice of overburdened Courts and as such are not taken into consideration, therefore, benefit of the same is not extended to the offenders. It appears to be totally a wrong approach and even if the counsel does not render help, the Court must fulfil its

duty of sentencing implicit in such enactments as the Probation Act or the relevant provisions of the Code.

(Para 25)

Further held, that keeping in view the entire conspectus and the facts of the present case, it is apparent that the offence for which the petitioners have been sentenced is technical in nature. Petitioners are the owners of the agricultural land, however, they have been prohibited from using the same for any other purpose except with prior permission of the competent authority under the Act. There is otherwise no motive to commit crime but it is a violation of the provisions which provides for simple imprisonment not rigorous imprisonment. Magnitude of the offence is not grave in nature and character of the offenders is unblemished and also not such that this benefit cannot be extended to them. State has not brought anything on record to show that petitioners are previous convicts or habitual offenders. Petitioners are agriculturists and they have their own farms and animals to look after. Petitioners being rustic villagers appear to be not aware of the niceties of law and might have been enticed by builders. In the present case, the petitioners/offenders are of middle age group and their antecedents have no blemish. They are agriculturist, pursuing a peaceful vocation. They have wives, children and other members of the family to maintain and are fully dependent on agricultural vocation. These are redeeming factors in their favour. It is apposite to notice that petitioners are undergoing sentence since 19.3.2015, they have undergone some part of sentence. A long period of litigation and the little period of imprisonment suffered will surely serve as a deterrence. They can be given an opportunity to improve themselves and bring up their families by honest labour as agriculturists so that the interests of social obligations may be secured.

(Para 37)

Further held, that the Court was inclined that in this case the petitioners may be given the benefit of the Probation Act. It was also satisfied that the petitioners have fixed place of abode and regular occupation. Therefore, the Court direct that the petitioners be released under section 4(1) of the Probation Act, and instead of maintaining their sentence direct that they be released on their entering into a bond before the trial Court with one surety each, to appear and receive sentence when called upon during the period of one year from the date of release and in the meantime to keep the peace and be of good behaviour. The petitioners shall furnish the bonds and the sureties

before the trial Court within three weeks from today and probation period of one year shall commence from 1.6.2015. It is made clear that they will be released on probation w.e.f. 1.6.2015 on their furnishing bonds as aforesaid subject to the satisfaction of trial Court/Duty Magistrate, if not required in any other case. Petitioners shall also be entitled to the benefit of section 12 of the Probation Act. The impugned judgment of conviction is upheld and order of sentence stands modified in above terms.

(Para 38)

T.P. Singh, Advocate, *for the petitioner.*

Naveen Sheoran, DAG, Haryana.

PARAMJEET SINGH, J.

(1) At the time of preliminary hearing, learned counsel for the petitioners did not press the revision on merit and confined his prayer for grant of probation. As such, notice of motion was issued limited to grant of probation.

(2) In the instant petition, the question of dealing with the petitioners under Section 360 of the Code of Criminal Procedure, 1973 (in short 'the Code') or the Probation of offenders Act, 1958 (in short Probation Act) needs to be examined. The offence, for which conviction has been rendered, is one to which Section 360 of the Code or provision of Probation Act may apply. The material before me is insufficient because the Trial Court and the Appellate court have been perfunctory in discharging its sentencing functions. The purpose of sentencing is not to lock offenders and throw away the key. I must emphasise that sentencing an accused is a sensitive exercise of discretion and not a routine or mechanical process on hunch. The Trial Court and Appellate Court should collect material necessary before awarding a just punishment in the circumstances of the case. The social background and the personal factors of the offender are very relevant although in practice Criminal Courts hardly pay attention to the social milieu or the personal circumstances of the offender. Even if Section 360 of the Code or provisions of the Probation Act are not attracted, it is the duty of the sentencing Court that with a rehabilitating and reformatory approach it should collect such facts as have a bearing on punishment. In the present case virtually there is no assistance, even from the counsel for the petitioners.

(3) In the instant Criminal Revision Petition challenge is to the judgment of conviction and order of sentence dated 23.04.2013 passed

by learned Judicial Magistrate First Class, Ambala whereby petitioners have been convicted and sentenced to undergo simple imprisonment for one year and pay fine of Rs.10,000/- each for the commission of offence punishable under Section 12(1) of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (for short 'the Act') and judgment dated 19.03.2015 passed by learned Additional Sessions Judge, Ambala in appeal, whereby the conviction has been upheld, however, fine has been converted into cost of proceedings.

(4) I need not dilate upon the facts of this case in detail as the same have already been recapitulated in the judgments of the learned Courts below, however, facts relevant for the disposal of instant revision are to the effect that District and Town Planner, Ambala, made a complaint dated 28.06.2006 alleging that several persons (thirteen in total) are constructing roads for setting up an unauthorized colony and had been laying out means of access to National Highway-72 in the controlled area situated in the revenue limits of village Panjokhra without taking prior permission from the Director of the Department. It was also alleged that declaration of the controlled area has been issued vide notification No.CCP (NCR/CA.A/2005/1337) dated 11.08.2005 under Section 4(1)(a) of the Act. On the basis of this complaint, FIR was registered. Investigation was carried out. On culmination of investigation, final report under Section 173 of the Code was submitted against seven persons and others were shown in column No.2 as they were found innocent. Trial Court framed charge under Section 12(1) of the Act vide order dated 20.03.2007 to which the accused pleaded not guilty and claimed trial. To substantiate the charge, prosecution examined as many as five witnesses. Statement of accused under Section 313 of the Code was recorded. All the incriminating circumstances were put to them. They denied the same and pleaded their false implication. Petitioners-accused were afforded opportunity to lead defence but they failed to lead any evidence. The trial Court having analyzed the entire material on record held petitioners and others guilty for commission of offence under Section 12(1) of the Act and sentenced them as above. Aggrieved against the judgment of conviction and order of sentence passed by trial Court, petitioners and others preferred an appeal before the Additional Sessions Judge, Ambala, which has been dismissed qua petitioners. Hence, this revision petition.

(5) I have heard learned counsel for the petitioners as well as the learned counsel for the State and perused the record.

(6) Learned counsel for the petitioners vehemently contended that offence is technical in nature. Petitioners being owners of the land have a right to use the same, however, in view of some violation of notification whereby their land has been brought under the controlled area, they were prosecuted and sentenced by the Courts below. Learned counsel for the petitioners further submitted that there are sufficient reasons to challenge the judgment of conviction and order of sentence on merit yet he is restricting the challenge to non-consideration of applicability of provisions contained in Section 4 of the Probation Act and Section 360 of the Code. Learned counsel further contended that within the territorial jurisdiction of the State of Haryana, probation Act is applicable. Petitioners are rustic villagers and doing agriculture vocation and looking after their farm and animals. They have to look after their families too.

(7) Per contra, learned counsel for the State submitted that keeping in view the gravity of offence, it is not necessary for this Court to consider the benevolent provisions contained in the Probation Act or under Section 360 of the Code. The State counsel did not dispute that the Probation Act is applicable in the State of Haryana. This court has limited jurisdiction to re-appreciate the evidence, when concurrent findings have been recorded by both the courts below. This court can interfere only when there is error of law and judgment and order of sentence suffer from perversity.

(8) I have considered the contentions raised by learned counsel for the parties.

(9) In the light of the arguments raised by learned counsel for the parties, following questions arise for consideration: -

- “(i) Whether Courts below are bound to examine the applicability of the provisions of the Code or provisions of the Probation Act before sentencing?
- (ii) What is the scope of interference of High Court in criminal revision, should the High Court act under Section 11 of the Probation Act and pass order under Sections 3, 4 or 6 thereof and what are the limitation of courts in granting probation?”

(10) Before I examine the questions for determination, it would be appropriate to reproduce the relevant Sections i.e. Sections 3, 4, 5, 6, 11, 18 and 19 of the Probation Act and Sections 360 and 361 of the Code, which read as under: -

“3. Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition. Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

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.

5. Power of court to require released offenders to pay compensation and costs.— (1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

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.

11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.—

(1) Notwithstanding anything contained in the Code or any other law, an order under this Act, 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.

(2) Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under section 3 or section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law: Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.

18. Saving of operation of certain enactments.— Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (2 of 1947), or of any law in force in any State relating to juvenile offenders or Borstal Schools.

19. Section 562 of the Code not to apply in certain areas. - Subject to the provisions of Section 18 Section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force.”

Sections 360 and 361 Cr.P.C. read 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 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.”

Re. Question No.1: -

(11) The criminal justice system in India is slowly advancing with an object to prevent the conversion of first-time offenders into obdurate criminals as a result of their association with hardened criminals if they have to undergo imprisonment in jail. The object is in consonance with the present trend in the field of penology which suggests that effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice/deterrent punishment. Modern criminal jurisprudence recognizes that no one is a born criminal. The majority of the crimes are the product of socio-economic milieu. The provisions of Section 360 of the Code and Probation Act give statutory recognition to objectives of reformation and rehabilitation.

(12) The Statement of Objects and Reasons for the Bill No.79 of 1957, which was passed into the Probation of Offenders Act, 1958 states as under: -

“(1) The question of release of offenders on probation of good conduct instead of sentencing them to imprisonment has been under consideration for some time. In 1931, the

Government of India prepared a draft of Probation of Offenders Bill and circulated it to the then Local Governments for their views. However, owing to pre-occupation with other more important matters, the Bill could not be proceeded with. Later in 1934, the Government of India informed Provincial Governments that there was no prospect of Central legislation being undertaken at the time and there would be no objection to the Provinces undertaking such legislation themselves. A few Provinces accordingly enacted their own probation laws.

(2) In several States, however, there are no separate probation laws at all. Even in States where there are probation laws, they are not uniform nor are they adequate to meet the present requirements. In the meantime, there has been an increasing emphasis on the reformation and rehabilitation of the offender as a useful and self-reliant member of society without subjecting him to the deleterious effects of jail life. In view of the widespread interest in the probation system in the country, this question has been re-examined and it is proposed to have a Central law on the subject which should be uniformly applicable to all the States.

(3) It is proposed to empower Courts to release an offender after admonition in respect of certain specified offences. It is also proposed to empower Courts to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life. In respect of offenders under 21 years of age, special provision has been made putting restrictions on their imprisonment. During the period of probation, offenders will remain under the supervision of Probation Officers in order that they may be reformed and become useful members of society. The Bill seeks to achieve these objects.”

(13) Similar are the provisions of the Code. Section 360(10) of the Code specifically states that nothing in this Section shall affect the provisions of Probation of Offenders Act, 1958 or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

(14) In the light of the objects and reasons extracted above, it would be appropriate to examine the meaning of “probation” and “scheme” of Probation Act and Section 360 of the Code.

Meaning of probation and how this concept becomes important: -

(15) The word “probation” is derived from the Latin word “probare”, which means to test or to prove. Etymologically, probation means “I prove my worth”. It is a treatment device and an alternative to custodial measure that is required to be used by the trial Court and appellate Court generally. When a person is held guilty instead of sending him to jail, he can be afforded a chance to reform. As a treatment measure an accused/convict should be given a chance of reformation, which he may lose in case, he is incarcerated in prison and associates with hardened criminals. Modern penological approach in new form of sentencing is with a purpose to balance the needs of the society in the best interest of the accused-convict such as release on admonition, probation of good conduct, compensation and costs by taking into consideration the age of offenders under 21 years or above 21 years and report of probation officer. Study shows that imprisonment decreases the convict’s capacity to readjust in the normal society after the release and association with professional delinquents often leads to undesirable results.

Scheme of the Code :-

(16) In India in 1931 Government of India prepared a draft of Offenders Bill but it lapsed thereafter in 1934, as mentioned in the statement of objects and reasons even some of the provinces enacted their own legislations. Ultimately, after independence in 1958 the Probation Act came into existence. Even under the old Code of Criminal Procedure of 1898, Section 562 was existing with respect to probation. Thereafter in the new Code, as amended in 1974, Section 360 also deals with the probation of good conduct. Section 361 makes it mandatory for the Courts to assign reasons for not awarding benefit of benevolent provisions of probation. If we compare the schemes of Probation Act and Section 360 of the Code, it would be clear that the Probation Act provides for appointment of Probation Officers who will give pre-sentence report to the Court and also supervise the accused-convict during the period of probation. Section 18 of the Probation Act specifically provides that where the provisions of Probation Act apply, provisions of Section 360 of the Code (Section 562 in the old Code) are excluded.

(17) In the case of *Ishar Das versus State of Punjab*¹ Hon'ble Supreme Court has observed that the object of Criminal Law is more to reform the offender than to punish him. Instead of keeping an accused with hardened criminals in a prison, Court can order personal freedom on promise of good behavior and can also order a supervision during probation. The probation is a conditional release of an offender on the promise of good behavior.

Scheme of the Probation Act: -

(18) The Probation Act is divided into six categories i.e. (i) Section 1 deals with short title, extent and commencement of the Probation Act whereas Section 2 deals with definitions; (ii) Sections 3 to 12 of the Probation Act are very important as these provisions deal with 'Role of Court' for the application of provisions of the Probation Act; (iii) Section 13 to 16 deal with 'Role of Probation Officer'; (iv) Section 17 deals with power of Government to make rules; (v) Section 18 deals with saving of operation of certain enactments; and (vi) Section 19 deals with application of the Probation Act to certain States.

(19) Hon'ble Supreme Court in *Rattan Lal versus State of Punjab*² noticed that Probation Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. The underlying object of the provisions of the Probation Act obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals.

(20) Hon'ble Supreme Court in *Musadhan versus State of Maharastra*³ has observed that the Probation Act is a social legislation which is meant to reform juvenile offenders so as to prevent them from becoming hardened criminals by providing an educative and reformative treatment to them by the Government.

(21) Sections 3 to 12 of the Probation Act envisage the procedure for release of the offender either on admonition or on probation of good conduct. The five aspects as mentioned in the Probation Act are: 1. Admonition (Section 3); 2. Probation of Good Conduct (Section 4); 3. Compensation and Costs (Section 5); 4. Offenders under 21 years of age {(Section 6(1)}; 5. Report of Probation Officer {(Section 6(2))}.

¹ AIR 1972 SC 1295

² 1965 Cri.L.J. 360

³ AIR 1976 SC 2566

(22) Even a cursory look into the scheme of Probation Act clearly indicates specific role assigned to the Courts. The trial Court as well as appellate Court are required to specifically examine the applicability of the provisions of the Probation Act. Section 6(2) of the Probation Act envisages that the offenders who are under 21 years of age are not to be sent to prison if the offence is not so serious as to warrant imprisonment for life or death. Age of offender has to be reckoned on the date of commission of the offence. So has been held by the Hon'ble Supreme Court in *Yaduraj Singh and Ors. versus State Of U.P.*⁴ In all cases where accused is below 21 years of age, the Court shall call for the report of Probation Officer. If the Court opines that it would not be desirable to give the benefit of probation to the offender in the circumstances of the case, the Court can pass sentence of imprisonment by recording reasons for doing so. The Court has an obligation to see whether Section 3 or 4 of the Probation Act applies or not. For this purpose, the Court must call for the report of Probation Officer. Therefore, report of Probation Officer is mandatory when the offender is under 21 years of age. Further, the trial Court and appellate Court should also consider the facts and circumstances of the case including the nature of the offence and the character, physical and mental condition of the offender, socio-economic environment from which the offender comes.

(23) Mahatma Gandhi said; “hate the sin not the sinner” and “truth never damages a cause that is just”.

(24) In all crimes a very wide discretion in the matter of sentence vests in the trial and appellate Court. Exercise of discretion is a matter of prudence and not law. It is well-settled law that no one can claim benefit of the Probation Act and provisions of the Code as a matter of right. So has been held in *Commandant 20 BN ITB Police versus Sanjay Binjoa*⁵ Even in the Probation Act it is specifically mentioned as to in which offence it is applicable and which offences are excluded from its purview.

(25) Before awarding the appropriate sentence, Court should take atleast into consideration the motive of the offence, the magnitude of the offence, the age, character and socio-economic background of the offender. As discussed above, Probation Act and the provisions of the Code, which deal with the probation, shift the emphasis from deterrence

⁴ AIR 1977 SC 698

⁵ AIR 2001 SC 2058

to reformation and from the offence to the offender in accordance with the modern approach towards punishment. Reformation and rehabilitation of the offenders are the key-notes of the above referred provisions. Although the problem of punishment is a baffling issue, still while awarding sentence the Court is required to look into as to how the ends of justice would be better served without sending a convicted person in jail. Many a times the legislations which relate to amelioration in punishment are not brought to the notice of over-burdened Courts and as such are not taken into consideration, therefore, benefit of the same is not extended to the offenders. It appears to be totally a wrong approach and even if the counsel does not render help, the Court must fulfil its duty of sentencing implicit in such enactments as the Probation Act or the relevant provisions of the Code. In this context, the Hon'ble Supreme Court in *Ved Prakash versus State of Haryana*⁶ has observed as under:-

“.....Even if Section 360, Criminal Procedure Code is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant. The absence of such materials in the present case has left us with little assistance even from the counsel. Indeed, members of the bar also do not pay sufficient attention to these legislative provisions which relate to dealing with an offender in such manner that he becomes a non-offender. We emphasise this because the legislations which relate to amelioration in punishment have been regarded as 'Minor Acts' and, therefore, of little consequence. This is a totally wrong approach and even if the Bar does not help, the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of Offenders Act.....”

(26) In view of above, the Courts below are duty-bound to examine the applicability of the provisions of the Code or the Probation Act before sentencing.

(27) Even otherwise the probation would be of great benefit for States of Punjab and Haryana where the jails are often overcrowded. It is otherwise also necessary in the context of existing social conditions to reclaim offenders back to ordinary society. It is not the object of the Probation Act that all offenders should be released on probation but if

⁶ AIR 1981 (SC) 643

Court finds that an offender does not deserve to be released on bail the Court would do so by recording special reasons in the judgment.

(28) For the reasons recorded above, question No. (i) is answered in affirmative.

Re: Question (ii):

(29) This court has a very limited jurisdiction while interfering with the concurrent finding of the Courts below. This Court cannot re-appreciate the evidence unless there is perversity.

(30) In *Dulli Chand* versus *Delhi Administration*⁷ the scope of invoking jurisdiction of the High Court in criminal revision was examined and it was held that the High Court should not re-appreciate the evidence in absence of perversity of finding.

(31) In *State of Orissa* versus *Nakula Sahu & others*⁸ it was held that the High Court should not have interfered with the concurrent findings recorded by the trial court and affirmed by the appellate court in exercise of revisional jurisdiction when there was no error of fact or law in conclusion arrived at by the trial court or the appellate court.

(32) In *State of Kerala* versus *Puttamana Illath Jathavedan Namboodiri*⁹ it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor it be treated even as a second appellate jurisdiction.

(33) In the case of *Venkatesan* versus *Rani*¹⁰ after considering catena of judgement in Para 7 the Hon'ble Supreme Court held as under:

“7. The above consideration would go to show that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while

⁷ AIR 1975 SC 1960

⁸ AIR 1979 SC 663

⁹ (1999) 2 SCC 452

¹⁰ AIR 2013 SC 3320

examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction.”

(34) There is no dispute with regard to the proposition of law laid by the Apex court in plethora of judgments. In the present case the courts below have failed to consider the applicability of provisions of the Probation Act which is applicable in the State of Haryana, non-consideration of statutory provisions has resulted in gross miscarriage of justice, atleast qua consideration of aforesaid provisions of the Code and the Probation Act before sentencing. There exists manifest illegality in the judgement of courts below in this respect. In view of Section 11(1) of the Probation Act, this Court is competent to pass appropriate order considering the circumstances of the case.

Limitation of the Courts regarding application of relevant provisions of Code and Probation Act: -

(35) Some of the enactments specifically bar the applicability of Section 360 of Code and provisions of Probation Act such as Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Section 19 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 9-E of the Central Excise Act, 1944, Section 18 of the Prevention of Corruption Act, 1988 etc. This is not an exhaustive list. However, it would not be relevant to go into further details, it would be looked into in the case involving the relevant offences. If there is a specific bar in a particular enactment, these provisions will not apply. In view of Section 19 of the Probation Act where the provisions of Probation Act apply, the relevant provisions of the Code will not apply.

(36) Hence, question No.(ii) is answered accordingly.

Conclusion: -

(37) Keeping in view the entire conspectus and the facts of the present case, it is apparent that the offence for which the petitioners have been sentenced is technical in nature. Petitioners are the owners of the agricultural land, however, they have been prohibited from using the same for any other purpose except with prior permission of the

competent authority under the Act. There is otherwise no motive to commit crime but it is a violation of the provisions which provides for simple imprisonment not rigorous imprisonment. Magnitude of the offence is not grave in nature and character of the offenders is unblemished and also not such that this benefit cannot be extended to them. State has not brought anything on record to show that petitioners are previous convicts or habitual offenders. Petitioners are agriculturists and they have their own farms and animals to look after. Petitioners being rustic villagers appear to be not aware of the niceties of law and might have been enticed by builders. In the present case, the petitioners/offenders are of middle age group and their antecedents have no blemish. They are agriculturist, pursuing a peaceful vocation. They have wives, children and other members of the family to maintain and are fully dependent on agricultural vocation. These are redeeming factors in their favour. It is apposite to notice that petitioners are undergoing sentence since 19.03.2015, they have undergone some part of sentence. A long period of litigation and the little period of imprisonment suffered will surely serve as a deterrence. They can be given an opportunity to improve themselves and bring up their families by honest labour as agriculturists so that the interests of social obligations may be secured.

(38) I am inclined that in this case the petitioners may be given the benefit of the Probation Act. I am also satisfied that the petitioners have fixed place of abode and regular occupation. I, therefore, direct that the petitioners be released under Section 4(1) of the Probation Act, and instead of maintaining their sentence direct that they be released on their entering into a bond before the trial Court with one surety each, to appear and receive sentence when called upon during the period of one year from the date of release and in the meantime to keep the peace and be of good behaviour. The petitioners shall furnish the bonds and the sureties before the trial Court within three weeks from today and probation period of one year shall commence from 01.06.2015. It is made clear that they will be released on probation w.e.f. 01.06.2015 on their furnishing bonds as aforesaid subject to the satisfaction of trial Court/Duty Magistrate, if not required in any other case. Petitioners shall also be entitled to the benefit of Section 12 of the Probation Act. The impugned judgment of conviction is upheld and order of sentence stands modified in above terms.

(39) The revision petition stands disposed of accordingly.
