

Before K. S. Tiwana and S. S. Dewan, JJ.

BHAGWAN, AND ANOTHER

—Petitioners.

versus

STATE OF HARYANA

—Respondent.

Criminal Revision No. 1558 of 1983

May 17, 1985

Probation of Offenders Act (XX of 1958)—Sections 3, 4, 5 and 6—Indian Penal Code (XLV of 1860)—Section 53—Code of Criminal Procedure (II of 1974)—Sections 357, 360, 421 and 422—Accused released on probation—Court—Whether could direct such an accused to pay compensation to the aggrieved party—Terms ‘fine’ and ‘compensation’—Whether synonymous—Person dealt with under Sections 4 or 6 of the Act—Imposition of fine on such a person—Whether against the policy of the Act.

Held, that punishment is described in section 53 of the Indian Penal Code and fine forms part of it. Fine is a sum of money fixed as penalty for an offence or a pecuniary penalty for an offence. When fine is imposed for an offence under the Indian Penal Code or any other criminal statute, it always takes care of a default in payment of fine making the person punished to be incarcerated in prison to undergo imprisonment in case he fails to pay fine. Fine, thus, is a punishment. Compensation on the other hand, though a punishment, is its separate and distinct form and is retributive. Even in probation the element of imprisonment in case of violation of any condition of the order, is to be found. There is no such penalty for default of payment of compensation. Objects and reasons of the Act also emphasise that special provisions have been made putting restrictions on the imprisonment of offenders below 21 years of age. It is in line with this policy of the Act that section 6 has been excluded from the purview of section 5. While releasing after admonition under section 3 and awarding deferred punishment under section 4 of the Act, the courts have been empowered to take retributory steps to compensate the victim of the crime affected directly or indirectly under section 5 of the Act, exists in the Code of Criminal Procedure in the form of Section 357, where compensation and costs are to be paid out of

fine, which forms a part of sentence. The payment of compensation out of fine under section 357 of the Code of Criminal Procedure is not similar to the provision under section 5(1) of the Act. Under Section 357 of the Code of Criminal Procedure the fine is first to be imposed and the compensation is to be paid out of it, while this is not the case under the Act. The compensation is awarded by the courts under section 5 of the Act for tortious acts of the persons indicted for the crime by the criminal courts after trial. It is always given to compensate the victim or the persons affected as a result of the crime for the sufferings, loss of the property, the expense of litigation, etc. Unlike in the case of fine, the person who defaults in the payment of compensation cannot be sent to jail. Section 5 of the Act, which provides for compensation, directs that any civil court trying the case for damages shall take into account the amount paid to the victim of the crime. This indicates that order for compensating the victim of the offence for the tortious acts of the offenders, found guilty of the offence charged, are for civil liability. Fine and compensation, thus, though form a part of punishment cannot be equated nor can be said to be synonymous. An injunction is enacted by the Act against passing of the sentence of imprisonment, which the Court under the normal circumstances and law is empowered or enjoined to pass. Section 5 of the Act makes distinction between 'fine' and 'compensation' and aims at compensating the victims of the offence for the loss suffered due to injuries, dispossession of property or expenses incurred by the complainant party in pursuing criminal litigation, etc., as a result of the crime. There is thus a clear distinction between 'fine' and 'compensation'. They cannot be equated. The mode of recovery of compensation as 'fine' does not bring it to the level of fine. The result is that compensation awarded under section 5 of the Act does not amount to fine. Thus, while releasing a person on probation, the court can order him to pay compensation to the aggrieved party.

...(Paras 7 and 9).

Held, that imposition of fine on a person being dealt with under sections 4 and 6 of the Act is against the policy of the Act as contained in the preamble and objects and reasons of the Act. Probation is a deferred punishment and if the circumstances given in section 4 for allowing probation exist, the person indicted for the offence is not to be immediately sent to prison. If fine is imposed alongwith the order of probation and the fine is not paid, the order granting probation is negated. The failure of payment of fine, unless the court imposing it defers its payment for the conditions prescribed, leads to the immediate operation of the sentence for its default. The indicted person has to go to jail to serve out the sentence awarded for non-payment of fine. In such a situation, sections 4 and 6 of the Act cannot be put into operation and the purpose of these provisions is likely to be frustrated. Thus, the

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imposition of fine alongwith the order under sections 4 and 6 of the Act in one order is inconsistent with the spirit of the Act.

(Para 10).

Sahi Ram vs. State of Haryana, 1983(2), Chandigarh Law Reporter, 555.

OVER-RULED.

Case referred by Single Bench consisting of Hon'ble Mr. Justice M. R. Sharma, on 16th July, 1984 as an important question of law was involved in the case. The Division Bench consisting of Hon'ble Mr. Justice K. S. Tiwana and Hon'ble Mr. Justice S. S. Dewan decided the case on 17th May, 1985.

Petition under Section 401 Cr.P.C. for revision of the order of the Court of Shri R. D. Aneja, Additional Sessions Judge, Gurgaon, dated 16th September, 1983, modifying that of the order of the Court of Shri B. K. Aggarwal, Judicial Magistrate, 1st Class, Gurgaon, dated 31st May, 1983/9th June, 1983.

R. S. Sihota, Advocate, for the Petitioners.

R. K. Jhingan, Advocate, for A.G., Haryana.

K. S. Tiwana, J.—

(1) Bhagwan and Satbir, petitioners, were convicted by Shri B. K. Aggarwal, Judicial Magistrate, 1st Class, Gurgaon, under sections 325/34, Indian Penal Code. Each of them was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500. On appeal the Additional Sessions Judge, Gurgaon, upholding the conviction allowed the petitioners the benefit of section 4 of the Probation of Offenders Act and released them on probation on executing personal and surety bonds in the amount of Rs. 2,000 each to keep peace and maintain good behaviour for a period of two years. Each of them was further directed to pay Rs. 500 as compensation to the injured complainant.

2. The petitioners have filed this criminal revision petition. Before the learned Single Judge two cases decided by this Court, *Sahi Ram v. The State of Haryana* (1) and *Gurbachan Singh v.*

(1) 1983(2) Ch. Law Reporter 555.

The State of Punjab (2) were cited. The learned Single Judge doubted the correctness of the Single Bench decisions of this Court and observed :—

“With utmost respect to the learned Judges, who took the contrary view, I would like to mention that section 5 of the Probation of Offenders Act expressly empowers a Court to grant compensation to the victim. The grant of compensation cannot be equated with imposition of fine. Even when a person is released on probation, he has to execute a bond to keep the peace and to be of good behaviour and in case he does not comply with the conditions of the bond, he has to serve the sentence imposed upon him. However, while sitting in Single Bench, I do not propose to dilate further on this matter. In view of the importance of the question of law involved, I order that the papers be placed before the Hon'ble Chief Justice to constitute a larger Bench for decision of the point of law involved in the case.”

With these observations, the learned Single Judge recommended the consideration of this question by a larger Bench.

3. The preamble of the Probation of Offenders Act, 1958, hereinafter referred to as the Act, is:—

“An Act to provide for the release of offenders on probation or after due admonition and for matters connected therewith.”

The Objects and Reason of this Act are :—

“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,

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offenders will remain under the supervision of probation officers in order that they may be reformed and become useful members of society.”

4. Mainly four sections, that is, 3, 4, 5 and 6 of the Act come up for consideration in the case in hand. These are 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.*—
(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 exercise 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 interest 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 conditions specified in such order and such additional 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, absentation 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

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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 conditions of the offender.”
5. As is apparent, section 3 deals only with admonition of the offenders charged and convicted for the offences specified therein.

Section 4 provides for the grant of benefit of probation to a person irrespective of his age, convicted for an offence not punishable with death or imprisonment for life, if in the opinion of the court it is expedient to release him on probation in the circumstances of that case. Section 6 deals only with those persons whose age is below 21 years and are found guilty of the offences not punishable with imprisonment for life. It is of interest to note in this context that the provisions of sections 3 and 4 of the Act only apply to the cases of persons convicted for offences referred therein without any limitation of age while-section 6 is distinct and gives discretion to the courts to allow probation to the convicted persons if they happen to be only below 21 years of age on the relevant date.

(6) Section 5, which empowers the court to direct payment of compensation and costs takes in its purview only sections 3 and 4. It excludes section 6. This exclusion is not accidental or due to oversight. It is deliberate. One reason for this exclusion seems to be that the youthful offenders below 21 years of age may not be in good financial position or may not have the means to raise money to pay compensation or costs, which in some cases may be quite substantial and heavy. Section 5 thus does not cover the cases of those offenders, who are below 21 years of age to be burdened with costs of the type mentioned in section 5 of the Act.

(7) The question which has been referred by the learned Single Judge in this case is whether the two terms 'fine' and 'compensation' can be equated with each other and taken as synonymous. Punishment is described in section 53 of the Indian Penal Code and fine forms part of it. Fine is a sum of money fixed as penalty for an offence or a pecuniary penalty for an offence. When fine is imposed for an offence under the Indian Penal Code or any other criminal statute, it always takes care of a default in payment of fine making the person punished to be incarcerated in prison to undergo imprisonment in case he fails to pay fine. Fine thus is a punishment. Compensation on the other hand, though a punishment, is its separate and distinct form and is retributive. Even in probation the element of imprisonment, in case of violation of any condition of the order, is to be found. There is no such penalty for the default of payment of compensation. Objects and reasons of the Act also emphasise that special provisions have been made putting restrictions on the imprisonment of offenders below 21 years of age. It is in line with this policy of the Act that section 6 has been excluded from the purview of section 5. While releasing after admonition

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under section 3 and awarding deferred punishment under section 4 of the Act, the courts have been empowered to take retributory steps to compensate the victim of the crime affected directly or indirectly under section 5 of the Act. Somewhat similar provision, as is section 5 of the Act, exist in the Code of Criminal Procedure in the form of section 357, where compensation and costs are to be paid out of fine, which forms a part of sentence. The payment of compensation out of fine under section 357 of the Code of Criminal Procedure is not similar to the provision under section 5(1) of the Act. Under section 357 of the Code of Criminal Procedure the fine is first to be imposed and the compensation is to be paid out of it, while this is not the case under the Act. The compensation is awarded by the courts under section 5 of the Act for tortious acts of the persons indicted for the crime by the criminal courts after trial. It is always given to compensate the victim or the person affected as a result of the crime for the suffering, loss of the property, the expense of litigation, etc. Unlike in the case of fine, the person who defaults in the payment of compensation cannot be sent to jail. Section 5 of the Act, which provides for compensation, directs that any civil court trying the case for damages shall take into account the amount paid to the victim of the crime. This, in our view, indicates that orders for compensating the victim of the offence for the tortious acts of the offenders, found guilty of the offence charged, are for civil liability. Fine and compensation, thus, though form a part of punishment cannot be equated nor can be said to be synonymous.

(8) At this stage we may have a look at the procedure for the recovery of fine. For the recovery of compensation, in section 5(2) of the Act, sections 386 and 387 of the Code of Criminal Procedure are mentioned. These were the provisions of the Code of Criminal Procedure, 1898. After the enforcement of the Code of Criminal Procedure 1973, these sections have been recast as sections 421 and 422 of the new Code of Criminal Procedure. This amendment in the Act is long over due and should be made now. In place of sections 386 and 387 in section 5(2) of the Act, section 421 and 422 of the Code have to be read. For the recovery of fine a person may not in given circumstances be sent to jail as provided by section 421(3) of the Code of Criminal Procedure, 1973. It is not proper to assume that the provision for the recovery of compensation is to be treated as the same as fine. A person who

fails to pay compensation under section 357, Cr.P.C., cannot be sent to jail unless the court passing the order directs his detention for his failure to pay fine and that too for a period prescribed in the order. Even in case of fine when the convict is not sentenced to specified term of imprisonment in the event of default, he cannot be taken into custody.

(9) An injunction is enacted by the Act against passing of the sentence of imprisonment, which the Court under the normal circumstances and law is empowered or enjoined to pass. Section 5 of the Act makes distinction between 'fine' and 'compensation' and aims at compensating the victims of the offence for the loss suffered due to injuries, dispossession of property or expenses incurred by the complainant party in pursuing criminal litigation, etc., as a result of the crime. There is thus a clear distinction between 'fine' and 'compensation'. As stated earlier, they cannot be equated. The mode of recovery of compensation as 'fine' does not bring it to the level of fine. The result is that compensation awarded under section 5 of the Act does not amount to fine.

(10) We may add here that imposition of fine on a person being dealt with under sections 4 and 6 of the Act is against the policy of the Act as contained in the preamble and objects and reasons of the Act. Probation is a deferred punishment and if the circumstances given in section 4 for allowing probation exist, the person for the conditions prescribed, leads to the immediate operation indicted for the offence is not to be immediately sent to prison. If fine is imposed along with the order of probation and the fine is not paid, the order granting probation is negated. The failure of payment of fine, unless the court imposing it defers its payment for the conditions prescribed, leads to the immediate operation of the sentence for its default. The indicted person has to go to jail to serve out the sentence awarded for non-payment of fine. In such a situation, sections 4 and 6 of the Act cannot be put into operation and the purpose of these provisions is likely to be frustrated. *Isher Dass vs. The State of Punjab* (3) is an authority for that. That imposition of fine along with the order under sections 4 and 6 of the Act in one order is inconsistent with the spirit of the Act.

(3) A.I.R. 1972 S.C. 1295.

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(11) In *Sahi Ram's case* (supra), the facts and the observations were :—

“Sahi Ram, petitioner was convicted by the Sub-Divisional Judicial Magistrate, Palwal, for offences under sections 323 and 325, Indian Penal Code but on account of being a first offender and some other circumstances brought on the record, he was ordered to be released on probation under section 4(1) of the Probation of Offenders Act on entering into a bond in the sum of Rs. 3,000 with one surety in the like amount for a period of one year. The petitioner was also directed to pay Rs. 300 as compensation to Nand Lal (P.W. 5), the injured person and another Rs. 200 as prosecution costs. The appeal of the petitioner against the aforesaid decision of the trial Court was dismissed by the Additional Sessions Judge, Gurgaon, and hence the present Revision Petition.

2. The only point which has been urged in this Revision Petition is that under the law, when an accused person is ordered to be released on probation, he cannot be further penalised by the imposition of a fine either for the purpose of compensating the injured person or on account of expenses of prosecution. The counsel relied upon *Gurbachan Singh v. The State of Punjab* (4), in support of this contention. The contention aforesaid is not rebutted on behalf of the State, nor any authority to the contrary has been cited at the bar by the learned State Counsel.

3. Consequently, the Revision Petition is accepted to the extent that while the order directing the petitioner to be released on probation is maintained, the direction issued to him for the payment of Rs. 300 as compensation to the injured person and Rs. 200 as prosecution costs is set aside.”

(12) In another case of this court reported as *Nanak Singh vs. State of Punjab* (5), a contrary view was taken. The facts and observations in *Nanak Singh's case* were:—

“The petitioner was convicted on the offences under sections 408 and 477-A of the Indian Penal Code. The trial

(4) 1977 C.L.R. (Pb. & Har.) 20.

(5) 1983 (2) C.L.R. 553.

Magistrate awarded him rigorous imprisonment as also imposed on him fine thereunder. On appeal the convictions were maintained by the learned Additional Sessions Judge, Gurdaspur, but in lieu of sentences, the petitioner was released on probation and in place of fine costs were awarded and the sum, if any paid towards fine, was ordered to be diverted towards cost of proceedings. The petitioner challenging the said order maintained before the Motion Bench that under the Probation of Offenders Act no sentence could be awarded as costs.

2. There is a marked distinction between the costs which are awardable under section 357 of the Code of Criminal Procedure and those awardable under section 5 of the Probation of Offenders Act. Whereas cost under section 357 of the Code of Criminal Procedure can only be awarded out of fine as ruled in *Girdhari Lal v. State of Punjab* (6), for imposition of fine is a sentence, costs awarded under section 5 of the Probation of Offenders Act has no such penal element. The claim of the petitioner is misconceived. A specific power has been conferred upon the Court to award costs under section 5(1)(b) of the Probation of Offenders Act.....”

(13) *Gurbachan Singh's case* (supra) was under section 360 of the Code of Criminal Procedure. In that case for non-payment of fine, Gurbachan Singh was to be sent straightaway to jail to serve imprisonment for default of payment of fine, which goes against the policy of the Act. Gurbachan Singh's case is based on the decision reported as *Isher Dass v. The State of Punjab* (7), because it was only a fine and no compensation was involved. In *Sahi Ram's case*, compensation was directed to be paid, which cannot be treated as fine. There was no imposition of the fine. It was not a case in which for non-payment of fine, Sahi Ram was to be sent to prison to be incarcerated there for the time specified by the court for the default of payment of fine. Neither *Isher Dass's case* nor *Gurbachan Singh's case* is applicable to *Sahi Ram's case*. Sahi

(6) A.I.R. 1982 S.C. 1229.

(7) A.I.R. 1972 S.C. 1295.

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Ram's case is, therefore, not correctly decided and is hereby overruled. In Nanak Singh's case, the first Appellate Court diverted the amount of fine, if paid, towards the payment of compensation. The imposition of fine, as a sentence, was set aside. In Nanak Singh's case, correct view of the provisions of section 5(1) of the Act has been taken.

(14) In the case in hand, there could not be any practical difficulty for the realisation of compensation as the fine which was already deposited by the petitioners under orders of the trial Court has been converted into compensation.

(15) With the above observations, we do not find any merit in this revision and dismiss it.

N. K. S.

Before S. P. Goyal and G. C. Mital, JJ.

RAJESHWAR PRASHAD,—Applicant.

versus

THE COMMISSIONER OF INCOME-TAX, HARYANA,—Respondent.

Income Tax Reference No. 92 of 1977.

July 10, 1985.

Income Tax Act (XLIII of 1961) as amended by Finance Act, 1972—Section 2(14)(ii)—Capital gain on selling jewellery—Amending Act brought into effect from 1st day of April of financial year—Such amendment—Whether applies to the assessment of that year or the subsequent year.

Held, that when the Income Tax Act, 1961 stands amended on the first day of April of any financial year, then the amendment must apply to the assessment of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force. Thus, when amendment making capital gain on the sale