

Before K.Kannan, J.

DALWINDER SINGH,—Petitioner

versus

UNION OF INDIA AND ANOTHER,—Respondents

CWPNo.1511 of 2011

13th October, 2011

Constitution of India - Art. 226/227 - Probation of Offenders Act, 1958 - Ss. 3, 4, 9 & 12 -Passports Act, 1967 - S.6 - Petitioner convicted - In appeal, released on probation of good conduct for a period of two years - Meanwhile petitioner got married to a Canadian national and applied for a passport - Passport refused - Whether a person, who is released on probation of good conduct, is entitled to issue of a passport during the probation period - S.12 of 1958 Act of no avail, because so long as the probation period lasts, petitioner will have to reside under supervision of probation officer - Person will have to complete probation period - Petition dismissed.

Held, That this Section makes it clear that the Court could order release on probation only if the offender or surety has a fixed place of residence over which the Court has effective jurisdiction. A person, who takes a passport and leaves the country actually goes outside the jurisdiction of the jurisdictional Court which has ordered the release. Sub-section (3) empowers supervision by a probation officer. This will have to cease, if he goes out of the country.

(Para 5)

Further held, That issue of a passport with a prospect of flight out of country will render nugatory these provisions. Section 12 itself could be attracted only after the period of probation has expired.

(Para 6)

Further held, That under the circumstances, it will be inappropriate to order the issue of passport. The petitioner may however renew his application after the period of probation.

(Para 7)

R.S. Ahluwalia, Advocate, *for the petitioner.*

D.S. Bishnoi, Advocate, *for the respondents.*

K. KANNAN, J.

(1) The only point for consideration in the writ petition is the effect of a release on good conduct under the Probation of Offenders Act, 1958 (for short, 'the 1958 Act') for commission of offences punishable under Sections 323, 324, 325, 427, 506, 148, 149 IPC in the matter of issue of a passport. It is not now in denial that the petitioner had suffered a conviction for the prosecution laid against him before the Sub-Divisional Judicial Magistrate, Garhshankar by a decision rendered on 03.11.2009 and punished to undergo imprisonment for a period of 3 years. During the pendency of appeal, the petitioner had been married to a person from Canada and the petitioner's grievance is that when he had applied for a passport to join his wife on her return to Canada, the passport was refused to him citing the previous conviction rendered against him, without taking note of the manner of disposal of the appeal. In appeal, the Additional Sessions Judge had released the petitioner on probation of good conduct for a period of two years on furnishing personal probation bonds for a sum of Rs.5,000/- with one surety.

(2) Referring to Section 12 of the 1958 Act, the counsel would argue that no stigma or disqualification could attach in case the person is released on probation. The said Section reads as under:-

“Section 12: Removal of disqualification attaching to conviction. Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.”

(3) The learned counsel refers to a decision of this Court in **Tejwinder Singh versus State of Punjab (1)** that held that a person, who had been held guilty of offence under Sections 304-A, 279, 429 IPC, and who had been subsequently ordered to be released on probation, could not suffer

(1) 2009 (5) R.C.R. (Crl.) 526

a dismissal from service on the ground of his conviction. Even without reference to the effect of Section 12, the learned counsel would argue that what would be disqualify a person under Section 6 of the Passport Act shall be a conviction for an offence involving moral turpitude. The relevant Section reads as follows:-

- “(a)
- (b)
- (c)
- (d)
- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
- (f)
- (g)
- (h)]
- (i)”

(4) The contention taken by the learned counsel for the petitioner is that the conviction for an offence under Sections 323, 324, 325, 427, 506, 148, 149 IPC could not be treated to be an offence involving moral turpitude. The learned counsel refers me to a decision in **Krishan Dev versus State of Haryana (2)**. The Court proceeded to hold that a dismissal which had been made on account of alleged conviction was bad and directed reinstatement by reference to the fact that the offence did not come within the commission of an act involving moral turpitude. Even conviction under Section 307 to a person, who was appointed as a Constable, was held by this Court in **Parvesh versus State of Haryana and others (3)**, to be not an offence showing wickedness of character or lack of honesty, modesty or good morals to deny to him a right of employment. Moral

(2) 2003(3) SCT 100
(3) 2009 (4) RCR (CrI.) 469

turpitude itself is not defined and it admits of flexible application depending on the occasion when it is sought to be used for a person. While applying for passport, the predominant consideration is that a person, who is a danger to a community by his reckless or diabolic conduct and who has suffered a conviction, ought not to be granted a passport. In this case, there has been a conviction for voluntarily causing injury to another. I will not hold that to be a wholly irrelevant issue for the issue of passport. When the Additional Sessions Judge has directed that he was to be released on probation and this his conduct would be observed for two years, such a person going away from India on Indian passport cannot make himself unavailable for such a surveillance.

(5) A proper understanding to the effect of a release under probation could come only by referring to Section 4, which reads as under:-

“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 subsection (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.”

This Section makes it clear that the Court could order release on probation only if the offender or surety has a fixed place of residence over which the Court has effective jurisdiction. A person, who takes a passport and leaves the country actually goes outside the jurisdiction of the jurisdictional Court which has ordered the release. Sub-section (3) empowers supervision by a probation officer. This will have to cease, if he goes out of the country.

(6) Yet another section is of vital relevance. Section 9 makes possible cancellation of release order on failure to observe conditions and take him back to judicial custody by appropriate sentence. Section 9 is reproduced as follows:-

- “9. Procedure in case of offender failing to observe conditions of bond.** (1) If the Court which passes an order under section 4 in respect of an offender or any court which could have dealt

with the offender in respect of his original offence has reason to believe, on the report of a probation officer or otherwise, that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to him and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.

- (2) The court before which an offender is so brought or appears may either remand him to custody until the case is concluded or it may grant him bail, with or without surety, to appear on the date which it may fix for hearing.
- (3) If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith-
 - (a) sentence him for the original offence; or
 - (b) where the failure is for the first time, then, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.
- (4) If a penalty imposed under clause (b) of sub-section (3) is not paid within such period as the court may fix, the court may sentence the offender for the original offence.

Issue of a passport with a prospect of flight out of country will render nugatory these provisions. Section 12 itself could be attracted only after the period of probation has expired.

(7) Under the circumstances, it will be inappropriate to order the issue of passport. The petitioner may however renew his application after the period of probation. The writ petition is disposed of as such.

P.S. Bajwa