REVISIONAL CRIMINAL

Before S. C. Mittal, J.

LEHRI & OTHERS,—*Petitioners.*

versus

AMAR SINGH & OTHERS,—*Respondents.*

Cr. R. 448 of 1970

April 24, 1974.

Probation of Offenders Act (XX of 1958)—Sections 4 and 6—Court choosing not to sentence the offender to imprisonment under section 4—Calling for the report of Probation Officer—Whether obligatory.

Held, that a comparative study of sections 4 and 6 of the Probation of Offenders Act, 1958 shows that while dealing with any person under 21 years of age, sub-section (1) of Section 6 debars the Court from sentencing him to imprisonment unless it is satisfied that it will not be desirable to deal with him under section 3 or 4. If the Court passes any sentence of imprisonment on such an offender, it shall record its reasons for doing so. If the Court is of the view that it will not be desirable to deal with the offender under section 3 or 4, it is required to call for a report from the Probation officer and consider it. Calling of the report of the Probation Officer is imperative only if the Court thinks that it will not be desirable to deal with the offender under section 3 or 4 of the Act. When the Court chooses not to sentence the offender to imprisonment, no report from the probation officer is required. Section 4(2) nowhere enjoins upon the Court to call for the report of the probation officer and it only lays down that if the report is there, the Court shall take it into consideration. When section 6 requires the release of an offender on probation without the report, there seems no reasonable basis to lay down that such release cannot be ordered under section 4(1) in the absence of a report of the probation officer. Hence, it is not obligatory on the Court to call for consider the report of the Probation Officer under section 4(2) of the Act if the Court chooses not to sentence the offender to imprisonment.

Petition u/s 430 *Cr.P.C. for conviction of the respondents and revision of the order of Shri V. D. Aggarwal, Additional* Sessions *Judge (III), Rohtak, dated April,* 1970 *affirming that of Shri R. L. Garg, Chief Judicial Magistrate, Rohtak, dated November* 11, 1969, *releasing the respondents in exercise of his discretion under section* 4 *of the Probation of Offenders Act,* 1958.

Charge: *Under Sections* 325/149, 323/149, *and* 148, *Indian Penal Code.*

Order : *Each of the respondents was ordered to execute bond in the sum of Rs.* 2,000 *with one surety in the like amount for a period of two years undertaking that each shall appear and receive sentence as and when called for.*

Present:

B. S. Gupta, Advocate, *for the petitioner.*

U. D. Gaur, Advocate,—*for the Respondents.*

JUDGMENT

Mital, J.—Respondents Amar Singh and six others named in the order of the trial Magistrate were convicted on their plea of guilty under sections 325/149. 323/149 and 148, Indian Penal Code, Instead of sentencing them to imprisonment, the Magistrate, in exercise of his discretion under section 4 of the Probation of Offenders Act, 1958, released them on probation of good conduct. Feeling aggrieved, Lehri and three others, the injured persons, filed a revision petition which was dismissed by the Additional Sessions Judge, Rohtak. They have now moved this Court under section 439, Criminal Procedure Code, for setting aside the release of the respondents on probation.

Learned counsel for the injured persons—the petitioners urged that the Magistrate, without calling for the report of the Probation Officer, acted illegally in passing the impugned order. Section 6 and relevant part of section 4 are as under :—

Section 4.

(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.

Section 6.

(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 should 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) Before making any order 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.	(2) For the purpose of satisfying itself whether it should not be desirable to deal under section 3 or section 4 with an offence referred to in sub-section (1), the Court shall call for a report from 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."

A comparative study of the two sections shows that while dealing with any person under 21 years of age, the law debars the Court from sentencing him to imprisonment unless it is satisfied that it will not be desirable to deal with him under section 3 or 4 and if the Court passes any sentence of imprisonment on the offenders it shall record its reasons for donig so. Sub-section (2) of section 6 further provides that if the Court be of the view that it will not be desirable to deal with the offender under section 3 or 4, it shall call for a report of the Probation Officer and consider it. In the scheme of section 6, calling of the report of the Probation Officer is imperative only if the Court thinks that it will not be desirable to deal with the offender under the two above-mentioned sections of the Act. In other words, if the Court, as required by sub-section (1) of section 6, chooses not to sentence the offender to imprisonment, no report from the Probation Officer is required. Adverting to the provisions of section 4, it will be noticed that sub-section (2) thereof is not framed in the same terms as sub-section (2) of section 6. The result is that the former section nowhere enjoins upon the Court to call for the report of the Probation Officer and it only lays down that if it is there the Court shall take it into consideration. Another aspect of the matter is that benefit of section 4 can also be granted to persons who are above 21 years of age. As section 6 requires the release of an offender on probation without the report, there seems no reasonable basis to lay down that under section 4 (1) in the absence of the report, such release shall not be ordered. I am in respectful agreement with a similar view taken by C. G. Suri, J in *Harbhajan Singh* v. *Tarlok Singh and*

others, Criminal Revision No. 54-R of 1972 (1). I am further of the opinion that section 4(1) directs the Court to have regard to the circumstances of the case, including the nature of the offence and the character of the offender. The nature of the offence and the circumstances of the case are generally very well known to the Court. As regards the character of the offender, in hurt cases, like the present one, the injured party can bring to the notice of the Court the offender's bad antecedents, if any, In this view of the matter, when material on record of a case satisfies the Court that it is expedient to release an offender on probation of good conduct, no particular purpose is required to be served by the report of the Probation Officer. With utmost respect, I am unable to agree with the view expressed by the learned Judge in *State* versus *Naquesh G. Shet Govenkar and another,* (2) that it is obligatory on the Court to call for and consider the report of the Probation Officer in terms of section 4(2) and that it is a condition precedent to the legality or validity of the order passed under sub-section (1) of section 4.

Now what is required to be seen is, whether the release of the respondents on probation ordered by the Magistrate is valid or not. The circumstances of the present case are that the seven respondents and the four members of the complainant-party (the petitioners in this Court) are neighbours in the town of Rohtak. On the day of the incident, the petitioners were sitting on cots in front of their house and smoking *huqqa.* Smt. Karko belonging to the family of the respondents while returning home objected to the obstruction on the passage caused by the petitioners. Even when the petitioners agreed to the removal of the cots, she did not refrain from abusing them. In the meanwhile, the seven respondents armed with sword, spear and *lathis* came, attacked and caused them grievous and simple injuries. It is patent that the parties had been living as good neighbours in the past. In other words the existence of any animosity between them is nobody's case. As held by the Magistrate, the incident was sudden and in consequence of altercation between Smt. Karko and the petitioners. Against the character of any of the respondents, there is no stigma either on record or in the ground of revision. As held by their Lordships of the Supreme Court in *Rattan Lal* v. *State of Punjab* (3), "the Act is a milestone in the progress of the modern liberal trend of reform in the field of penology.

(1) Cr. R. 54-R/72 decided on 19.9.73:
(2) A.I.R. 1970 Goa, Daman & Din 49.
(3) A.I.R. 1965 S.C: 444:

It is the result of recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him."

In view of the above, no case is made out to interfere with the discretion exercised by the Magistrate. The revision petition is, therefore, dismissed.

B. S. G.

Before B. R. Tuli & B. S. Dhillon, JJ.

CHANAN MAL,—*Petitioner.*

versus

THE STATE OF HARYANA, ETC.,—*Respondents.*

C. W. 1133 of 1974.

May 7, 1974.

Haryana Minerals (Vesting of Rights) Act (48 *of* 1973—*Sections* 3 & 4—*Mines and Minerals (Regulation and Development) Act (LXVII of* 1957)—*Sections* 2 & 18—*Constitution of India* (1950)—*Article* 31 *and Seventh Schedule, List I, entry* 54 *List II Entries* 18 *and* 23—*Haryana Minerals Act—Whether beyond the legislative competency of the Haryana Legislature—Such Act—Whether saved under article* 31-*A* (1) (*a*) *of the Constitution—Compensation for acquisition fixed under section* 4 *of the Act—Whether violative of article* 31(2).

Held, that Haryana Minerals (Vesting of Rights) Act, 1973 was passed by the Haryana Legislature in order to acquire the right to minerals in or on any land in the State of Haryana by the State Government. However once a legislation is made by the Union Parliament with regard to the regulation of mines and mineral development, it has the power to acquire land where-in such mines and minerals exist and the State Government has no power to acquire the same. It follows that no legislation for the acquisition of the mines or minerals can be enacted by the State Legislature. Section 2 of Mines and Minerals (Regulation & Development) Act, 1957, a Central Act, contains a declaration made under Entry 54 of List 1 of Seventh Schedule of the Constitution and from this declaration it is quite clear that the regulation and development of minerals have been taken over by the Union Government in their entirety. Any legislation by the State after such declaration and