

Before K. S. Tiwana and S. P. Goyal, JJ.

GURBACHAN SINGH,—Appellant.

*versus*

STATE OF PUNJAB,—Respondent.

*Criminal Appeal No. 173 of 1977.*

January 23, 1980.

*Code of Criminal Procedure (II of 1974)—Section 360—Code of Criminal Procedure (V of 1898)—Section 562—Prevention of Corruption Act (II of 1947)—Section 5(2)—Probation of Offenders Act (XX of 1958)—Sections 18 and 19—General Clauses Act (X of 1897)—Section 8(1)—Conviction under section 5(2) of the Prevention of Corruption Act—Benefit of probation under section 360 of the new Code—Whether available to the accused—Section 19 of the Probation Act excluding the applicability of section 562 of the old Code to areas covered by the said Act—Section 360 of the new Code—Whether can be read in place of section 562 in section 19 of the Probation Act.*

*Held*, that the malady of corruption has started eating into the vitals of our society and to make the law more effective and drastic, in the provisions of Probation of Offenders Act 1958 sections 18 and 19 were enacted to deny the benefit of this beneficial legislation to the persons convicted for the offences under section 5(2) of the Prevention of Corruption Act 1947. There are many offences against the society and corruption by the Government servants in connection with their official duties amongst those is one of the serious ones. The inclination of the legislature and the judiciary against the extending of the benefit of the beneficial legislations like the Probation of Offenders Act to the perpetrators of the white collar-crimes is clearly discernable from certain legislative enactments and judicial pronouncements. With the aid of section 8 of the General Clauses Act 1897, the legislative intent is clearly marked and section 360 of the new Code of Criminal Procedure 1973 has to be read in section 19 of the Probation of Offenders Act in place of section 562 of the old Code. Section 19 is clear enough to prohibit the use of section 360 of the new Code to the cases of section 5(2) of the Prevention of Corruption Act in those areas where the Probation of Offenders Act is applicable. Therefore, in the presence of sections 18 and 19 of the Probation of Offenders Act, neither the Probation of Offenders Act nor section 360 of the new Code applies to the cases under section 5(2) of the Prevention of Corruption Act 1947. (Paras 6 and 8).

*Jaswant Rai vs. State of Punjab, Criminal Appeal No. 1300 of 1973 decided on 4th January, 1978.*

*Suraj Parkash vs. State of Punjab, Criminal Appeal No. 720 of 1975 decided on 22nd February, 1979.*

---

*Amin Chand vs. State*, Criminal Appeal No. 1611 of 1975  
decided on 19th April, 1979.

OVERRULED.

Case referred by Hon'ble Mr. Justice D. S. Tewatia, vide order dated the 25th October, 1979, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Kulwant Singh Tiwana and Hon'ble Mr. Justice S. P. Goyal finally decided the case on January 23, 1980.

Appeal from the order of the Court of Shri Nirpinder Singh Additional Sessions Judge, Faridkot, dated the 25th January, 1977, convicting the appellant.

Jagjit Singh, Advocate with Gurjeet Singh, Advocate, for the Appellant.

H. S. Toor, Advocate for State, for the Respondent.

#### JUDGMENT

K. S. Tiwana, J.

(1) In *Jaswant Rai vs. The State of Punjab*, (1), a learned Single Judge of this Court, upholding the conviction of the accused under section 5(2) of the Prevention of Corruption Act, 1947, allowed him the benefit of section 360 of the Code of Criminal Procedure, 1973, (hereinafter referred as the new Code), and directed his release on probation for a particular period on his furnishing a surety bond to be of good behaviour and maintain peace. This judgment was followed by two other learned Single Judges of this Court sitting singly in *Suraj Parkash vs. The State of Punjab* (2), and *Amin Chand vs. The State (Union Territory, Chandigarh)*, (3). In the case in hand, D. S. Tewatia, J. affirmed the order of conviction of Gurbachan Singh appellant under section 5(2) of the Prevention of Corruption Act, 1947, on merits. The learned counsel for the appellant citing the above referred three judgments of this Court as precedents craved for the release of the appellant on probation by invoking the provisions of section 360 of the new Code. D. S. Tewatia, J. did not agree with the view expressed by the learned Judges of this Court in the three above referred appeals, as section 18 of the

---

(1) Cr. A 1300 of 1973 decided on 4th January, 1978.

(2) Cr. A 720 of 1975 decided on 22nd February, 1979.

(3) Cr. A 1611 of 1975 decided on 19th April, 1979.

Gurbachan Singh v. State of Punjab (K. S. Tiwana, J.)

---

Probation of Offenders Act, 1958 excluded section 5(2) of the Prevention of Corruption Act from the operation of this Act. Because of this disagreement, D. S. Tewatia, J. referred this case to a larger Bench for a decision whether section 360 of the new Code is applicable to the cases under section 5(2) of the Prevention of Corruption Act. This is how this matter has come before this Bench.

2. A contrary view was expressed by Gurnam Singh, J. in *Bansi Dhar vs. The State of Haryana* (4), and it was observed in that judgment:—

“The provisions of the probation of Offenders Act of 1958 are not applicable to the offences punishable under section 5(2) of the Prevention of Corruption Act,—*vide* section 18 of the Probation of Offenders Act. The provisions of section 562, Criminal Procedure Code, 1898, will also not apply. Under section 19 of the Probation of Offenders Act the provisions of section 562 of the Code of Criminal Procedure, 1898, ceased to apply to the State or parts thereof in which this Act (Probation of Offenders Act) is brought into force but that is subject to the provisions of section 18 of the Probation of Offenders Act. The provisions of section 562, Criminal Procedure Code, 1898, are in *pari materia* with section 360, Criminal Procedure Code, 1973. Under these circumstances, in a corruption case, the accused cannot be ordered to be released on probation of good conduct or after admonition. It appears that the provisions of sections 18 and 19 of the Probation of Offenders Act were not brought to the notice of the Hon'ble Judges, who decided the aforesaid criminal appeals cited by the counsel for the appellant. The accused-appellant in this case thus is not entitled to be released on probation of good conduct”.

This judgment of Gurnam Singh, J. was not brought to the notice of D. S. Tewatia, J.

3. As the provisions of sections 4 and 5 of the Probation of Offenders Act and section 360 of the new Code are almost similar, the consideration of sections 18 and 19 of the Probation of Offenders

---

(4) Cr. A 503 of 1976 decided on 21st August, 1979.

---

Act would be beneficial. Sections 18 and 19 of the Probation of Offenders Act are as follows:—

*“Section 18.*

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 the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956), or of any law in force in any State relating to juvenile offenders or Borstal schools.

*Section 19.*

Subject to the provisions of section 18, section 562 of the Code shall cease to apply to the State or parts thereof in which this Act is brought into force”.

4. Section 18 of the Probation of Offenders Act is very clear and unambiguous to exclude the application of this Act to the cases under section 5(2) of the Prevention of Corruption Act.

5. The question in this case is the applicability of section 360 of the new Code to the cases under section 5(2) of the Prevention of Corruption Act. Section 562 of the Code of Criminal Procedure, 1898, hereinafter referred as the old Code, is as under:—

“562(1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, 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 Judicial Magistrate of the second class not specially empowered by the High Court, in this behalf, 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 Judicial 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 manner provided by section 380.

- (1-A) 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 punishable with not more than two years' imprisonment and no previous conviction is proved against him, the Court before whom 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.
- (2) An order under this section may be made by any Appellate Court or by the High Court when exercising its power of revision.
- (3) When an order has been made under this section in respect of any offender, the High Court 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 shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

- (4) The provisions of sections 122, 126-A and 406-A shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section”.

Sections 360 and 361 of the new Code are as under :—

“360(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 mis-appropriation, cheating or any offence under the Indian Penal Code 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, or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

**Section 361:**

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, or
- (b) a youthful offender under the Children Act, 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.”

Section 19 of the Probation of Offenders Act excluded the provisions of section 562 of the old Code from application, so far as the offences mentioned in section 18 of that Act were concerned. After the enactment of the new Code, section 19 of the Probation of Offenders Act was not amended, but that does not have any effect on the cases under the statutes mentioned in section 18 of that Act. When both these sections, that is, 562 of the old Code and 360 of the new Code are juxta-posed, it is revealed that both the provisions are in pari-materia. Section 360 of the new Code is no new provision but is section 562 of the old Code re-enacted. This was also observed in *Bishnu Deo Shaw v. State of West Bengal* (5).

“Section 360 of the 1973 Code re-enacts in substance section 562 of the 1898 Code”.

(5) A.I.R. 1979 S.C. 964.



Gurbachan Singh v. State of Punjab (K. S. Tiwana, J.)

---

In other words, it is a successor provision of section 562 of the old Code. The reference to section 562 of the old Code in any other provision, like the Probation of Offenders Act, is to be read as a reference to section 360 of the new Code. Such an interpretation is guided by section 8(1) of the General Clauses Act, 1897. Section 8(1) is as under:—

“8(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as reference to the provisions so re-enacted”.

When in the new Code a corresponding provision that in section 562 of the old Code, is re-enacted, then in section 19 of the Probation of Offenders Act, in place of the words, “section 562 of the Code”, the words section “360 of the Code” are to be read.

6. The mere fact that section 19 of the Probation of Offenders Act was not suitably amended to replace the words ‘section 562’ with words ‘section 360’ does not reflect the legislative intent to draw a contrary conclusion than the one stated in the previous paragraph. The legislative intent is neither diffused nor blurred by the failure to carry out all necessary and relevant amendments in all the statutes in which the repealed statute is referred. The legislative intent is gathered from the main statute, the mischief of which by exclusion of certain offences is sought to be checked. The vice of bribery with the growth of the society, development and inflation is on the increase. The legislature wanted to equip the administration with strong and effective methods to check this growing malady. Although section 161 of the Indian Penal Code existed to check the offence of bribery and corruption, yet the legislature enacted section 5(2) of the Prevention of Corruption Act noticing the inadequacy of section 161 of the Indian Penal Code and other related provisions of the Code. In the object and reasons of the Prevention of Corruption Act, it was stated:

“The existing law has proved inadequate for dealing with the problem which has arisen in recent years and the Bill is intended to render the Criminal Law more effective in

---

dealing with cases of bribery and corruption of public servants”.

It was with this idea that the Prevention of Corruption Act was brought on the statute book. The malady of corruption has started eating into the vitals of our society and to make the law more effective and drastic, in the provisions of Probation of Offenders Act, section 18 and 19 were enacted to deny the benefit of this beneficial legislation to the persons convicted for the offence under section 5(2) of the Prevention of Corruption Act. There are many offences against the society and corruption by the Government servants in connection with their official duties amongst those is one of the serious ones. The inclination of the legislature and the judiciary against the extending of the benefit of the beneficial legislations like the Probation of Offenders Act to the perpetrators of the white-collar crimes is clearly discernible from certain legislative enactments and judicial pronouncements. With the aid of section 8 of the General Clauses Act, the legislative intent is clearly marked and section 360 of the new Code has to be read in section 19 of the Probation of Offenders Act in place of section 562 of the old Code. Section 19 is clear enough to prohibit the use of section 360 of the new Code to the cases of section 5(2) of the Prevention of Corruption Act in those areas where Probation of Offenders Act is applicable. It is not disputed that this Act is applicable to the State of Punjab.

7. Sub-section (10) of section 360 of the new Code does not pose any problem. Its language shows that if probation of Offenders Act applies, then this sub-section is also attracted for application; if that act does not apply then this sub-section (10) does not apply. Section 361 of the new Code is mandatory in those cases in which the provisions of section 360 of the new Code are held to be applicable. In this case, there is no scope for the consideration of the effect of section 361 of the new Code.

8. In the presence of sections 18 and 19 of the Probation of Offenders Act, as discussed above, neither the Probation of Offenders Act nor section 360 of the new Code applies to the cases under section 5(2) of the Prevention of Corruption Act, 1947. Sections 18 and 19 of the Probation of Offenders Act were not brought to the notice of the learned Judges deciding Criminal Appeal No. 1300 of 1973, Criminal Appeal No. 720 of 1975 and Criminal Appeal No. 1011 of 1975, referred to above. With respect to the learned Judges deciding

Dalipa v. Rulia (R. N. Mittal, J.)

---

those case, I am to say that these decisions do not lay down the correct law. The view expressed in those three appeals or any other decided case by any learned Single Judge of this court in line with these judgments, stands over-ruled. On the contrary, the view expressed in Criminal Appeal No. 503 of 1976 enunciates the correct legal position.

9. In the case in hand, the learned Single Judge has affirmed the order of conviction on merits. After deciding the question of the applicability of section 360 of the new Code, as has been done above, nothing further remains to be done in this case and the appeal is hereby dismissed.

---

N. K. S.

Before Rajendra Nath Mittal, J.

DALIPA,—Petitioner.

versus

RULIA,—Respondent.

Civil Revision No. 750 of 1979.

January 28, 1980.

*Code of Civil Procedure (V of 1908)—Section 151 and Order 9 Rule 8—Limitation Act (XXXVI of 1963)—Articles 122 and 137—Suit fixed for plaintiff's evidence—Miscellaneous application by the plaintiff fixed for an earlier date—Plaintiff absent on the date of hearing of the application—Court dismissing the suit in default—Application for restoration of the suit—Period of limitation for such application—Article 122—Whether applicable.*

*Held*, that where the suit filed by the plaintiff is fixed for his evidence and a miscellaneous application filed by him comes up for hearing on an earlier date and the plaintiff is not present, the court could not dismiss the suit under Order 9 Rule 8 of the Code of Civil Procedure 1908, as it provides that where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the said suit be dismissed. The words "the suit is called on for hearing" are important. These words show that the suit must be fixed for hearing for the date on which action is taken under the aforesaid rule. Where, however,