FULL BENCH

BEFORE S. S. SANDHAWALIA, C. J., S. C. MITAL AND A. S. BAINS, JJ.

JOGINDER SINGH,— *Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 573 *of* 1979.

May 23, 1980.

Code of Criminal Procedure (2 *of* 1974)—*Sections* 360 *and* 361—*Probation of Offenders Act* (20 *of* 1958)—*Sections* 4 *and* 6—*Punjab Excise Act* (1 *of* 1914)—*Section* 61(1)(c)—*Minimum sentence prescribed under the penal statute—Such prescription—Whether an absolute bar to the applicability of the provisions relating to probation—Sections* 360 *and* 361 *of the Code—Whether mandatory—Person convicted under the Excise Act claiming benefit of probation—Principles governing the grant of such benefit—Stated.*

Held, that the mere prescription of the minimum sentence under section 61(1)(c) of the Punjab Excise Act 1914 is no bar to the applicability of sections 360 and 361 of the Criminal Procedure Code 1973 and the same is not a special reason for denying the benefit of probation to a person convicted thereunder. In the alternative, it is equally no bar to the applicability of sections 4 and 6 of the Probation of Offenders Act. (Para 21)

Held, that section 361 of the Code of Criminal Procedure, 1973, prescribes that where in any case the court could have dealt with an accused person under section 360 of the Code, but has not done so, it shall record in its judgment special reasons for not having done so which would be a pointer to the mandatory nature. It is, therefore, held that the provisions of section 360 of the Code are mandatory in nature. (Para 6)

Held, that in the case of commercial production of illicit liquor illegally by running working stills, the dangers are inherent and sometimes more immediately fatal than those under the Prevention of Food Adulteration Act. The spate of deaths resulting from the clandestine imbibing of poisonous illicit liquor as often reported in the press provides a red light signal. The legislative trend is also evident in enhancing the minimum sentence under section

61(1) (c) of the Punjab Excise Act to two years' rigorous imprisonment and a fine of Rs. 5,000. Thus, it is only in exceptional circumstances and for special weighty reasons recorded that the broad policy of declining the benefit of probation to an accused person in these cases can be possibly deviated from.

(Paras 23 and 24)

Petition under section 439, Cr.P.C., for revision of the Order of Shri R. P. Gaind, Additional Sessions Judge, Kapurthala, dated 4th April, 1979, affirming that of Shri G. L. Chopra, Additional Chief Judicial Magistrate, Kapurthala, dated 5th December, 1978, convicting and sentencing the petitioner.

Case referred by Hon'ble Mr. Justice J. V. Gupta on 13th June, 1979, to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice S. C. Mital and Hon'ble Mr. Justice S. S. Sidhu again referred the case to a Full Bench of this Hon'ble Court, on 10th March, 1980. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice S. C. Mital and Hon'ble Mr. Justice A. S. Bains, finally decided the case on merits on 23rd May, 1980.

H. S. Brar, Advocate, *for the Petitioner.*

V. P. Prasher, A.A.G., *for the respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the prescription of a minimum sentence of imprisonment in section 61(1)(c) of the Punjab Excise Act, 1974 would operate as an absolute bar against the application of sections 360 and 361 of the Criminal Procedure Code, 1973, or of section 4 and 6 of the Probation of Offenders' Act, 1958?—is the somewhat meaningful question which is before the Full Bench in two references, which would be disposed of by this judgment.

2. It is manifest from the above that the question here is pristinely legal and the individual facts of the two cases before us would be of no great relevance. It would, therefore, suffice to mention that in *Joginder Singh's case,* the petitioner was convicted under section 61(1)(c) of the Punjab Excise Act, 1914, for having been found in possession of a working still and sentenced to the statutory

minimum sentence of one year's rigorous imprisonment and a fine of Rs. 1,000. On appeal, the learned Sessions Judge upheld the conviction and the sentence. Apparently finding no substance on the merits of the case, the admission of the revision petition was expressly confined to the issue of sentence only by the learned Judge admitting the same. The question posed at the outset was first raised before J. V. Gupta, J., who referred it for decision to a Division Bench which in turn has directed it to be placed before a Full Bench, in view of the earlier reference in *Khazan Singh's case.*

3. In *Khazan Singh's case,* the petitioner was convicted under section 61 (1) (c) of the Punjab Excise Act and sentenced to 1½ years' rigorous imprisonment and a fine of Rs. 5,000. On appeal, the learned Additional Sessions Judge; Hoshiarpur, dismissed the case on merits, but reduced the sentence to the statutory minimum of one year's rigorous imprisonment and Rs. 5,000 only as fine. At the motion stage, C. S. Tiwana, J., whilst submitting the petition, confined it expressly to the question of sentence—in the context of the issue, whether the benefit of section 360 of the Criminal Procedure Code, 1973, could be granted to the petitioner.

4. Perhaps, at the very outset, it may be pointedly noticed that within this jurisdiction, judicial opinion has so far been uniform that the mere prescription of a minimum sentence under section 61(1)(c) of the Punjab Excise Act, 1914, does not totally bar the discretion of the court to grant probation to the convict either under the Criminal Procedure Code itself or expressly under the relevant sections of the Probation of Offenders Act, 1958. In the *State of Haryana* v. *Ramji Lal Devi Sahai and another* (1), the Division Bench after a lucid examination of the question held that in an appropriate case, it was open to the court to take resort to the provisions of section 4 of the Probation of Offenders' Act, 1958, even with regard to a conviction under Section 61(1)(c) of the Punjab Excise Act, 1914. Reliance therein was specifically placed on an earlier unreported Division Bench judgment of this Court in *Prita* v. *State* (2), wherein also a Division Bench had ruled that there was no legal bar to the application of section 562 of the old Criminal Procedure Code, to a case in which conviction had been recorded under section 61(1)(c) of the Punjab Excise Act, 1914. There is,

(1)) 1972 Cr. Law Journal 796.

(2) Cr. Rev. No. 754 of 1962 decided on 23rd October, 1963.

however, no gainsaying the fact that in the exhaustive reference order in *Khazan Singh's case*, C. S. Tiwana, J., has tended to take a view contrary to the aforesaid decisions and has sought to project the matter from a different angle by reference to section 4 of the Criminal Procedure Code, 1973, placing particular emphasis on sub-section (2) thereof. This aspect of the case would be adverted to in detail later.

5. Before entering into the examination of the question before us, I may first dispose of an issue on which there was little or no controversy. On behalf of the petitioners, it was contended that the provisions of sections 360 and 361 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Code') are mandatory in nature. This appears to us as too well settled to deserve any elaboration. In *Surindra Kumar* v. *State of Rajasthan* (3), their Lordships assumed section 360 of the Code to be mandatory in nature and gave the benefit thereof to the appellant in a short judgment. The same view has been reiterated in *Bishnu Deo Shaw* v. *State of West Bengal* (4). Lastly, apparently on a concession, Bhagwati, J. sitting singly seems to have taken the same view in *Nirmal Singh* v. *State of Punjab*, (5).

6. Apart from precedent, it deserves notice that section 361 of the Code prescribes that where in any case the court could have dealt with an accused person under section 360 of the Code, but has not done so, it shall record in its judgment special reasons for not having done so, which again would be a pointer to the mandatory nature of the provision. I would, therefore, hold that the provisions of section 360 of the Code are mandatory in nature.

7. Having held so, one may proceed to examine the matter with reference to the language of section 360 of the Code itself. The argument that the prescription of a minimum sentence of imprisonment would *ipso facto* exclude the applicability of this section, cannot easily hold water. It deserves highlighting that the provisions of section 360 of the Code in itself laid down the limitation within which it is to operate. It is attracted as regards persons above 21 years of

(3) (1979) 4 S.C.C. 718.
(4) (1979) 3 S.C.C. 714.
(5) 1977 P.L.R. 580.

age only when the conviction is for an offence punishable with fine only or with imprisonment for a term of seven years or less. As regards persons below 21 years of age or any woman, the provision is a little more liberal, and can be applied even for conviction of an offence not punishable with death or imprisonment for life, if no previous conviction is proved against the offender. It would, therefore, be evident that section 360 of the Code itself refers only to the maximum sentences provided for the offence for which an accused person may be convicted with regard to its applicability. Its provisions do not lay down anywhere that in the case of the prescription of minimum sentence, section 360 of the Code would not be applicable. It may, therefore, be inapt to impose such a bar by a process of interpretation, when the provisions of the section, whilst prescribing its applicability, have laid down no such limitation.

8. The aforesaid argument is further strengthened when reference is made to the recent insertion of section 20-AA of the Prevention of Food Adulteration Act, 1954. It deserves recalling that under section 16 of the said Act, a minimum sentence had been provided since long. This was apparently never construed by the courts as a legal bar to the application of either the Probation of Offenders' Act or of section 360 of the Code. Therefore, it was only by an express intendment that a legal bar was created by virtue of section 20-AA of the Prevention of Food Adulteration Act, 1954, which was enacted in 1976. This is in the following terms:—

> "20-AA. *Application of the Probation of Offenders Act,* 1958 *and section* 360 *of the Code of Criminal Procedure,* 1973.—Nothing contained in the Probation of Offenders Act, 1958 (20 of 1958), or section 360 of the Code of Criminal Procedure 1973 (2 of 1974) shall apply to a person convicted of an offence under this Act unless that person is under eighteen years' of age."

It would follow by necessary implication that before the enactment of the aforesaid provision inevitably both sections 360 of the Code and the Probation of Offenders Act, 1958, were attracted to offences under section 16 despite the fact that it prescribed a minimum sentence therefor.

9. Reference may again be made to section 18 of the Probation of Offenders Act which is in the following terms:—

> "*Saving of operation of certain enactments.*—Nothing in this Act shall effect the provisions of section 31 of the Reformatory Schools Act, 1897, or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947, or the Suppression of Immoral Traffic in Women and Girls Act, 1956, or of any law in force in any State relating to juvenile offenders or borstal schools."

It is evident from the above that specific mention is made herein of sub-section (2) of section 5 of the Prevention of Corruption Act, 1947. For facility of reference this may also be set down:—

> "5. *Criminal misconduct in discharge of official duty,*—(1) A public servant is said to commit the offence of criminal misconduct—
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> * * * * * *
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> (2) Any public servant who commits criminal misconduct *(* * *), shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine :
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> Provided that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.
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> * * * * * * *
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> * * *".

Plainly this provision provides for a minimum sentence which can be deviated from only for special reasons. Now, if the legislature had either assumed or intended that probationary provisions are not to be at all applied to cases where a minimum sentence of imprisonment is prescribed, there would be no rationale in specifying section 5(2) of the Prevention of Corruption Act, 1947, in section 18 of the Probation of Offenders Act, 1958. There is no dearth of statutory provisions which now provide for minimum sentences of imprisonment. The fact that out of all of them, section 5(2) of the Prevention of Corruption Act, 1947, was incorporated in section 18 of the Probation

of Offenders Act, 1958, would clearly indicate that as regards other offences for which the minimum sentence is prescribed, the provisions of the Probation of Offenders Act can possibly be invoked. It follows that if the mere prescription of a minimum sentence alone were to automatically exclude the probationary provisions, then no express specification of Section 5(2) of the Prevention of Corruption Act, 1947 was necessary in Section 18 of the Probation of Offenders Act, 1958.

10. Now apart from rationale and statutory provisions, it appears to me that the issue before us is so completely covered by way of analogy by the binding precedents of the final Court that it would preclude any further elaboration. Undoutedly, Section 16 of the Prevention of Food Adulteration Act, 1958 again provides for a minimum sentence of imprisonment. Equally, undeniable it is, that this statute is a Special Act which does not in itself provide for the procedure of criminal trials for offences committed thereunder and section 4(2) of the Code of Criminal Procedure, 1973 is plainly applicable to it. The position is identical as regards section 61(1)(c) of the Punjab Excise Act, 1914. This again provides a minimum sentence and the Excise Act is a special statute not prescribing the procedure for trials thereunder and is squarely within the ambit of section 4(2) of the Code of Criminal Procedure, 1973 with regard thereto. Therefore, it is plain that the position as regards offences under section 16 of the Prevention of Food Adulteration Act, 1958 and section 61(1)(c) of the Punjab Excise Act, 1914, is one of total identity. This being so, the issue arose virtually in similar analogous terms before their Lordships under section 16 of the Prevention of Food Adulteration Act, 1958. In *Isher Dass* v. *The State of Punjab,* Khanna, J., speaking for the Bench posed the question in the following terms:—

> "The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under the Prevention of Food Adulteration Act, the Court can resort to the provisions of the Probation of Offenders Act ..... ".

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

And, after a detailed discussion on principle and the relevant statutory provisions, returned the following answer:—

> "The provisions of Probation of Offenders Act, in our opinion, point to the conclusion that their operation is not excluded in the case of persons found guilty of offences under the Prevention of Food Adulteration Act. Assuming that there was reasonable doubt or ambiguity, the principle to be applied in construing a penal act is that such doubt or ambiguity should be resolved in favour of the person who would be liable to the penalty (see Maxwell on Interpretation of Statutes p. 239 12th Edition). It has also to be borne in mind that the Probation of Offenders Act was enacted in 1958 subsequent to the enactment in 1954 of the Prevention of Food Adulteration Act. As the legislature enacted the Probation of Offenders Act despite the existence on the statute book of the Prevention of Food Adulteration Act, the operation of the provisions of Probation of Offenders Act cannot be whittled down or circumscribed because of the provisions of the earlier enactment, viz., Prevention of Food Adulteration Act. Indeed as mentioned earlier, the non-obstante clause in section 4 of the Probation of Offenders Act is a clear manifestation of the intention of the legislature that the provisions of the Probation of Offenders Act would have effect notwithstanding any other law for the time being in force.....".

In the light of the aforesaid observations, it may perhaps also be noticed that both the provisions of Section 360 and 361 of the Criminal Procedure Code, 1973 and the Probation of Offenders Act were enacted long after the Punjab Excise Act, 1914 and the relevant amendments thereto.

11. It would inevitably, follow from the above that in view of the aforementioned precedent of the final court, the provisions of sections 4 and 6 of the Probation of Offenders Act would in strictness be applicable to offence under section 61(1)(c) of the Punjab Excise Act, 1914 as well. Once that is so, one fails to see as to how the position under sections 360 and 361 of the Criminal Procedure Code, 1973 can in any way be different and as to why these would not also be applicable within the limitations prescribed thereunder.

12. As already stands noticed earlier, the position within this Court again is not different. A bare look at section 562 of the old

Criminal Procedure Code, 1898 and the provisions of section 360 of the new Code would make it manifest that the two provisions, if not in *pari materia,* are practically the same. In *Prita* v. *The State,* (supra), the question was raised before the Division Bench that there was a legal bar to the application of section 562 of the old Code of Criminal Procedure, 1898 to a case in which conviction had been recorded under section 61(1) (c) of the Punjab Excise Act, 1914, because of the prescription of a minimum sentence therein. Repelling this contention the Bench held as follows:—

> "The answer to the legal point referred to the Bench, therefore, is that there is no legal bar to the application of section 562 of the Code to a case in which conviction has been registered under section 61(1)(c) of the Punjab Excise Act.....".

An analogous, if not identical issue was again raised before the Division Bench in *State of Haryana* v. *Ramji Lal, Devi Sahai and another,* (supra), that the provisions of section 4 of the Probation of Offenders' Act could not be applied to a conviction under section 61(1)(c) of the Punjab Excise Act, 1914 in view of the prescription of a minimum sentence therein as also because of Part III Chapter XXI, Volume-III of the Rules and Orders of the Punjab High Court. Negativing the argument, it was concluded as follows:—

> "for the reasons recorded above we hold that, in an appropriate case, it is open to the Court to take resort to the provisions of section 4 of the Probation of Offenders Act, 1958 and keep in abeyance the imposition of punishment envisaged under section 61 (1) (c) of the Punjab Excise Act, 1914....".

It may be pointedly noticed that not a hint of criticism was offered on behalf of the respondent-State to the correctness of the aforesaid judgments of this Court. We are inclined to unreservedly affirm their ratio.

13. Even though, there is an unbroken line of precedent without a hint of dissent on the point, it nevertheless becomes necessary to examine the view projected by C. S. Tiwana, J. in his detailed order of reference in *Khazan Singh's case* (supra). The tenor of the same would indicate that the learned Judge is inclined to take contrary view and has presented the issue in a refreshing manner from

an altogether different angle. Primary reliance has been placed therein on section 4(2) of the Code of Criminal Procedure, 1973, which may be quoted for facility of reference:—

> "4(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.
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> (2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences".

It would be evident from the above that the Code of Criminal Procedure would be generally attracted to the investigation and trial of offences under the special statutes including the Punjab Excise Act, 1914, but subject to the provisions of the said Act. However, no special procedural provisions have been laid therein. Holding that the imposition of sentence was part of the trial, the learned Judge seems to opine that the provision of sentence under section 61(1)(c) of the Punjab Excise Act, 1914 was a special procedural provision which would exclude or override sections 360 and 361 of the Criminal Procedure Code, 1973.

14. Apparently, to escape the ambit of the aforesaid reference order (Khazan Singh's case), Mr. H. S. Brar, learned counsel for the petitioner had attempted to urge that the imposition of a sentence was not a part of a trial at all which according to him stands concluded by the rendering of a judgment of conviction or acquittal. A reference was made by him to sections 435(2), 353 and 437(7) of the Criminal Procedure Code, 1973, for seeking some sketchy support for the aforesaid contention. Counsel also fell back on a few passing observations in *Public Prosecutor* v. *Chockalinqa* (7), made in the context of the transfer of cases under section 526 of the old Code of Criminal Procedure, 1898. Reliance was also placed on re *Bhogole China Somayya and others* (8), wherein with regard to the pronouncing of a judgment by a successor Magistrate it was held that the same was not illegal.

(7) A.I.R. 1929 Madras 201.

(8) A.I.R. 1933 Madras 251(1).

15. I am of the view that it is not at all possible to subscribe to the hypertechnical argument that the imposition of a sentence is not part of a criminal trial. Indeed it appears to me on principle as an integral part thereof and indeed the final culmination of a trial. Now it seems that the foothold for the tenuous argument raised by Mr. Brar can be easily explained away by the history of the legislation. It would perhaps be undeniable that under the prior Code of Criminal Procedure, 1898, the findings of conviction and sentence were part and parcel of the same judgment and indeed indivisible from each other. Under that Code, it would obviously be impossible to draw any line between the order of conviction and the sentence imposed thereunder. That Code prescribed the mode in which judgment was to be rendered and in a case of conviction inevitably, the sentence therefor must follow and be the culminating or the concluding part of the judgment. It was only later in the Criminal Procedure Code, 1973 that in view of the desirability of giving a convict a specific opportunity for a hearing on the point of sentence that a thin line was drawn betwixt a conviction simplicitor and the imposition of the sentence later. This, however, to my mind would in no way lead to the untenable inference that whilst rendering of the judgment of conviction is part of the trial, the hearing provided now on the point of sentence and the imposition thereof is something extraneous or alien to the same criminal trial. On principle, therefore, there is no option but to hold that the sentencing process is as much a part of the criminal trial as the necessary preceding steps thereto.

16. What appears to be plain on principle and rationale seems to be equally evident by the provisions of sections 247 and 248 of the present Code.

> "247. The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of section 243 shall apply to the case.
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> *C.—Conclusion of trial.*
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> "248. (1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal. (2) Where, in any case under this Chapter the Magistrate finds the accused guilty, but does not proceed in accordance with

the provisions of section 325 or section 360 he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

* * * *".

The very language of the aforesaid provisions, the detailed reference to the sentencing process and the heading of the section would show that in fact the imposition of sentence is the finale or the conclusion of a criminal trial and therefore, must be construed as an integral part thereof.

17. On this point, apart from principle and the specific statutory provisions, the position appears to be equally plain on precedent. A plethora of judgments have held to the same effect and it would be instructive in this connection to refer to *Rex* v. *Grant,* (9), *Basil Ranger Lawrence* v. *Emperor,* (10). *The State* v. *Narammuddin Ahmed and another,* (11) and, *Queen-Empress* v. *McCarthy* (12).

18. In fairness to Mr. Brar, I may mention that the statutory provisions relied upon by him are no warrant for holding that the imposition of sentence is not part of a trial. Similarly the two Madras judgments *Public Prosecutor* v. *Chockalinga and Bhoople China Samayya etc.* (supra), which are relied upon by him, appear to be distinguishable. In *Public Prosecutor* v. *Chockalinga Ambalam and others,* (supra) the observation was made in the context of transfer of a case under section 526(8) of the old Code of Criminal Procedure, 1898, whilst in *Bhoople China Somayya and others* v. *Emperor,* (supra) the case related to the validity of a judgment pronounced by the success or magistrate. The question was not directly and pointedly raised in the said cases and if they are to be viewed as authorities for the proposition—that even the rendering of a judgment is not part of a criminal trial, then I would respectfully dissent from the same.

19. Even though I hold that the sentencing process is an integral part of the trial, with respect, I am unable to agree that this would in any way affect the issue of the applicability of sections 360 and

(9) 1951 1 K.B. 500.
(10) A.I.R. 1933 Privy Council 218.
(11) A.I.R. 1955 Assam 214.
(12) 1887 I.L.R. IX Allahabad 420.

361 of the Code of Criminal Procedure, 1973, to the sentencing process. Indeed, it may be said that if sentencing is an integral part of the trial then the Code which governs it would inevitably be applicable to this part also with the same force as it is to the other parts of the trial. Consequently, the provisions of sections 360 and 361 of the Criminal Procedure Code, 1973, would be as much attracted as the other provisions of the Code to a sentence under a special statute. What perhaps deserves highlighting is the fact that sections 360 and 361 of the 1973 Code do not prescribe any sentence for any offence. They inevitably come into play in a situation where the sentence is prescribed by any other statute—be it the Indian Penal Code or any other special penal statute. Therefore, sections 360 and 361 of the Code are in no way in conflict, with or in substitution of any section of a special statute which prescribes the sentence for an offence.' To my mind, they are plainly supplementary to the sentencing provision whether spelled out in the basic penal law; namely, Indian Penal Code or other special statute like the Punjab Excise Act to which by virtue of section (4), the provisions of the Criminal Procedure Code would be applicable. Therefore, even though a special Act may provide the sentence for an offence whether fixing a minimum therefor or otherwise, this would be no reason for saying that these provisions would be excluded or be inapplicable. I am unable to subscribe to the view that a sentencing provision like section 61(1)(c) of the Punjab Excise Act, 1914, is a special procedural provision which would override sections 360 and 361 of the Code of Criminal Procedure, 1973.

20. In the above context, it may particularly be noticed that section 397 of the Indian Penal Code provides a minimum sentence in cases not punishable with death or life imprisonment. If the prescription of the minimum sentence alone were to operate as a bar to the application of sections 360 and 361 of the Criminal Procedure Code, 1973, then even to a sentence under section 397 of the Indian Penal Code, these provisions will have to be excluded. No judgment or principle could be advanced before us to show as to why the Code of Criminal Procedure, which in its totality would apply to the offences under the Indian Penal Code, would, as regards sections 360 and 361 of the Criminal Procedure Code, 1973, be inapplicable to a conviction under section 397 thereof merely because it lays down a minimum sentence therefor. To hold that even as regards offences under the Indian Penal Code, Sections 360 and 361 of the Criminal

Procedure Code, 1973, would be inapplicable, seems to me as rather plainly untenable.

21. To conclude on the legal aspect, therefore, it must be held that the mere prescription of the minimum sentence under section 61(1)(c) of the Punjab Excise Act, 1914 is no bar to the applicability of sections 360 and 361 of the Criminal Procedure Code, 1973 and the same is not a special reason for denying the benefit of probation to a person convicted thereunder. In the alternative, it is equally no bar to the applicability of sections 4 and 6 of the Probation of Offenders Act. The answer to the question posed at the outset is rendered in the negative.

22. Though as a matter of law, the aforesaid answer has been rendered a note of caution must necessarily be sounded as regards the sentencing policy thereunder. Herein again, the observations of the final Court appear to me as conclusive. With regard to the prevention of Food Adulteration Act, their Lordships have set their face firmly against any facile application of the Probation of Offenders Act to offences thereunder prior to 1976 when the legislature itself intervened to create a legal bar. Indeed, whilst holding that as a matter of law, probation could be resorted to with regard to offences under the Prevention of Food Adulteration Act, a virtual ban on a resort thereto has been laid in actual practice. In *Isher Das* v. *The State of Punjab* (13), it was observed as follows :—

> "Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by a fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences under the Prevention of Food Adulteration Act".

Reiterating the aforesaid view, Krishna Iyer, J. speaking for the Constitution Bench in *Pyarali K. Tejani* v. *Mahadeo Ramchandra*

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

Dange and others (14), seems to take even a stricter view in the following words:—

> "The kindly application of the probation principle is negatived by the imperatives of social defence and the improbabilities of moral proselytisation. No chances can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white collar criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the incentive—not easily humanised by the therapeutic probationary measure. It is not without significance that the recent report (47th report) of the Law Commission of India has recommended the exclusion of the Act to social and economic offences by suitable amendments.
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> ".....In the current Indian conditions the probation movement has not yet attained sufficient strength to correct these intractables. May be, under more developed conditions a different approach may have to be made. For the present we cannot accede to the invitation to let off the accused on probation".

The aforesaid view has been reiterated with force again in *Prem Ballab and another* **v.** *The State* (Delhi Admn.) (15).

23. It appears to be plain that what has been said above in the context of edible food and economic offences applies with even greater emphasis to the commercial production of illicit liquor illegally by running working stills. The dangers herein are inherent and sometimes more immediately fatal than those under the Prevention of Food Adulteration Act. The spate of deaths resulting from the clandestine imbibing of poisonous illicit liquor, as often reported in the press provides a red-light signal. The legislative

(14) A.I.R. 1974 S.C. 228.

(15) A.I.R. 1977 S.C. 56.

trend is again evident in enhancing the minimum sentence under section 61 (1) (c) of the Punjab Excise Act, 1914 to two years' rigorous imprisonment and a fine of Rs. 5,000 by the Amendment Act No. 31 of 1976. The following observations of my learned brother S.C. Mital, J. in *Harnam Singh* v. *The State of Punjab* (16) are most apposite in this context:—

> "... On principle, prescribing of the minimum punishment may not deprive the court of its power to release a person on probation, but the fact remains that by so doing the Legislature has clearly expressed its intention of punishing the offender with deterrent effect. It is common knowledge that illicit liquor is manufactured not only unscientifically but also under unhygienic conditions. Drinking of such liquor is hazardous to public health. The persons indulging in illicit distillation are motivated by greed of money to such an extent that they have no regard for human life. The other sordid aspect of this trade is that it is carried out by preparing schemes involving active participation of several persons. For the foregoing reasons the release of a person on probation indulging in illicit distillation of liquor has to be for very exceptional reason, which is lacking in this case. In the result, it is not at all expedient to release Harnam Singh on probation".

24. It will be plain from the aforesaid catena of authorities that it is only in exceptional circumstances and for specific weighty reasons recorded that the broad policy of declining the benefit of probation to an accused person in these cases can be possibly deviated from.

25. Adverting now to the merits of the two cases before us, it bears repetition that they were admitted on the point of sentence only. Learned counsel for the petitioners were wholly unable to point out anything exceptional which could possibly merit the invoking of the beneficient provisions of probations either under section 360 of the Code of Criminal Procedure or under the Probation of Offenders Act itself. Applying the principle laid above, we do not find the least

(16) 1976 P.L.R. 739.

justification for interfering with the sentences imposed by the courts below. The revision petitions are hereby dismissed.

S. C. Mital, J.—I agree.

A. S. Bains, J.—I also agree.

N. K. S.

FULL BENCH

Before Prem Chand Jain, Harbans Lal and M. M. Punchhi, JJ.

AJIT KAUR and others,—*Petitioners*

versus

PUNJAB STATE and others,—*Respondents.*

Civil Writ Petition No. 3053 *of* 1979.

May 30, 1980.

Punjab Land Reforms Act (*X of* 1973)—*Sections* 8 *and* 11—*Punjab Security of Land Tenures Act* (*X of* 1953)—*Sections* 10-A *and* 10-*B*—*Pepsu Tenancy and Agricultural Lands Act* (*XIII of* 1955)—*Sections* 32-*D*, 32-*E and* 32-*FF*—*Land declared surplus under the* 1953 *Act in the hands of a land-owner but not utilized*—*Such land devolving on the heirs on the death of the land-owner*—*Land in the hands of each of the heirs within the permissible limit*—*Such surplus land*—*Whether vests in the Government for utilization under the* 1973 *Act*—*Protection as embodied in section* 11(5) *of the* 1973 *Act*—*Whether available to the heirs.*

Held (per P. C. Jain and Harbans Lal, JJ.) that :

(1) sub-section (7) of section 11 of the Punjab Land Reforms Act, 1973 will be attracted only in those cases where surplus area and the permissible area are determined by the Collector under the Act of 1973 and that subsequent to such a decision the death of a land-owner and the opening of succession in favour of his heirs will have no effect on the surplus area already determined; and