

Before M. M. Panchhi, J.

RATTAN SINGH AND OTHERS,—Appellants.

versus

THE STATE OF HARYANA,—Respondent.

Criminal Appeal No. 447-SB of 1984

April 20, 1985

Code of Criminal Procedure (II of 1974)—Section 376—Probation of Offenders Act (XX of 1958)—Section 11(2)—Accused convicted but no sentence passed—Accused, however, released on probation of good conduct—Appeal against such conviction—Whether maintainable.

Held, that no appeal would lie against a conviction which has resulted in no sentence to the accused. Section 376 of the Code of Criminal Procedure, 1973, is a clear pointer in that regard. When the Legislature in its wisdom has not permitted an appeal against the order of a Court of Sessions in which the sentence passed only was of imprisonment for a term not exceeding three months, or a fine not exceeding Rs. 200, or of both such imprisonment and fine, it cannot be conceived that an appeal was permissible when no sentence at all had been passed. When a Court of Sessions records an order of conviction after trying the case and releases the offender on probation, its order of conviction is not appealable for there is no sentence either of imprisonment or of fine, or both, beyond the prescribed doses under section 376 of the Code. An appeal, however, is maintainable against the order of probation under section 11(2) of the Probation of Offenders Act, 1958.

(Para 2).

Appeal from the order of Shri P. C. Nariala, Additional Sessions Judge, Ambala, dated 2nd July, 1984, releasing each of the accused on probation of good conduct to maintain peace and be of good behaviour for a period of two years on furnishing personal bond in the sum of Rs. 5,000 with one surety in the like amount as envisaged under section 4(1) of the Probation of Offenders' Act, 1958 and for breach of terms of bond in the stipulated period to be called to suffer imprisonment.

Charges:—Under Sections 324/34, 323/34, I.P.C.

Order:—Releasing on probation.

K. K. Aggarwal, Advocate, for the Appellant.

Nemo for the Respondent.

JUDGMENT

M. M. Punchhi, J. (oral)

(1) This is a petition for appeal in which the accused-appellants were convicted for offences under section 324/34 and 323/34, Indian Penal Code, by Shri P. C. Nariala, Additional Sessions Judge, Ambala. He thereafter heard them on the question of sentence but in lieu thereof ordered their release on probation, the bonded period being two years. In this petition, they have sought to challenge not only the conviction but also the order of their release on probation.

(2) At the outset, it need be observed that no appeal would lie against such a conviction which has resulted in no sentence to the accused-appellants. Section 376, Criminal Procedure Code, is a clear pointer in that regard. When the Legislature in its wisdom has not permitted an appeal against the order of a Court of Sessions in which the sentence passed only was of imprisonment for a term not exceeding three months, or a fine not exceeding Rs. 200, or of both such imprisonment and fine, it cannot be conceived that an appeal was permissible when no sentence at all had been passed. In my view, when a Court of Session records an order of conviction after trying the case and releases the offender on probation, its order of conviction is not appealable for there is no sentence either of imprisonment or fine, or both, beyond the prescribed doses under section 376, Criminal Procedure Code. An appeal, however, is maintainable against the order of probation under section 11(2) of the Probation of Offenders Act, 1958 which is in the following terms:—

“Notwithstanding anything contained in the Code, where an order under Section 3 or Section 4 is made by any Court trying the offender (other than a High Court), an appeal shall lie to the Court to which appeals ordinarily lie from the sentences of the former Court.”

Here, a fiction had been introduced. Appeals against sentences beyond the prescribed doses ordinarily lie to this Court against an original order of the Court of Session. Even though the appeal of the present appellants is competent, but nothing has been addressed to me as to how the appellants are aggrieved against the said order. The amount of bond is just Rs. 5,000 and is covered by one surety.

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(D. S. Tewatia, J.)

The period of two years specified in the bond cannot by any means be termed as excessive in the circumstances. This order would not require any interference by this Court.

(3) For the foregoing reasons, this appeal is dismissed.

N. K. S.

Before D. S. Tewatia and Pritpal Singh, JJ.

JASWANT SINGH GILL,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 652 of 1985.

April 23, 1985.

Punjab Municipal Act (III of 1911)—Section 16 and 22—President of a committee removed from office of President as also membership of the Municipal Committee—Allegations made that such member had flagrantly abused the powers conferred as a member of the Committee—Said member—Whether liable to be removed only from the office of President.

Held, that the removal of a President on a ground on which if he had been member of the Municipal Committee, he could have been removed then it cannot be urged that such person could only have been removed from the Presidentship and not from the membership of the Committee. If such a contention is accepted, then the order removing a President could be nullified by the members of a Committee by electing the same person again as a President of the Municipal Committee. Where, therefore, the allegations are that such person had flagrantly abused his powers as members of the Municipal Committee then such person can be removed from the office of President and also membership of the Committee by virtue of sections 16 and 22 of the Punjab Municipal Act, 1911.

(Paras 3 and 5).

Amended Petition under Article 226/227 of the Constitution of India praying that by issuing a writ of Certiorari, Mandamus, Prohibition such other writ or direction as may be deemed appropriate the order annexure P—6 may kindly be quashed.