

**Rahamtulla and ors. Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/375438](http://sooperkanoon.com/375438)

**Court :** Karnataka

**Decided On :** Sep-20-1977

**Reported in :** 1978CriLJ109

**Judge :** S.R. Range Gowda, J.

**Appellant :** Rahamtulla and ors.

**Respondent :** State

**Judgement :**

ORDER

**S.R. Range Gowda, J.**

1. This petition is directed against the judgment dated 16-7-1976 passed by the Sessions Judge, Shimoga, in Criminal Appeal No. 51/1972, confirming the judgment and order dated 30-9-1972 passed by the Special First Class Magistrate, Shimoga, in C. C. No. 2171/1971 convicting the petitioners who were respectively A-1, A-2, A-3, A-5, A-6 and A-7 Under Section 14 (2) r/w 32 of the Karnataka Excise Act and sentencing each of them to undergo rigorous imprisonment for four months and to pay a fine of Rs. 500/- and in default of payment of fine to undergo R.I. for a further period of one month. The prosecution case was that on 10-11-1969- at about 4-50 AM near Sowlanga Gate situate<sup>1</sup> within the jurisdiction of Shimoga Rural Police Station, petitioners 1 to 3 and another viz. N. Basheer Ibrahim when was A-4 before the trial Court and who has been acquitted, were

found transporting 720 Brandy bottles without any valid permit in a Car bearing Reg. No, MRZ-7386, and that at about the same time and place petitioners 4 to 6 were found transporting 694 Brandy bottles without any valid permit in a Car bearing Reg. No. MRZ-8722.

2. Sri B.K. Ramachandra Rao who appeared for the petitioners did not challenge the correctness and the legality of the convictions of the petitioners, All that he submitted was that this is a fit case for applying the provisions of the Probation of Offenders Act (hereinafter called the P O. Act). His argument was that the petitioners having suffered prosecution for over 8 years should not further be made to suffer by undergoing the sentences imposed on them.

3. Having regard to<sup>1</sup> the facts that the offence in question took place as long back as 10-11-1969 and that there are no previous convictions against the petitioners for having committed such or similar offences, I think it would be sufficient to meet the ends of justice if instead of sentencing them to imprisonment an order is made Under Section 4 of the P. O. Act.

4. No doubt Section 32 of the Karnataka Excise Act prescribes for the first offence a minimum sentence of three months' rigorous imprisonment and fine of not less than Rs. 100/-. But, as pointed out by the Supreme Court in *Isher Das v. State of Punjab* AIR 1972 SC 1295 : 1972 Cri LJ 874, the provisions of Section 4 of the P. O. Act point to the conclusion that their operation is not excluded in the case of persons found guilty of offences under the said Act though a minimum punishment is prescribed thereunder. In that case, the question that arose for consideration was 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 Food Adulteration. Act, the Court can resort to the provisions of the Probation of Offenders Act, and while dealing with that question His Lordship Khanna, J. who spoke for the Bench said thus (at pp 1298, 1299 of AIR) :-

In this respect we find that Sub-section

(1) of Section 4 of the Probation of Offenders Act contains the words 'notwithstanding anything contained in any other law for the time being in force.' The above non obstante clause points to the conclusion that the provisions of Section 4 of the Probation of Offenders Act would have overriding effect and, shall prevail if the other conditions prescribed are fulfilled. Those conditions are

(1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life,

(2) the court finding him guilty is of the 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 and

(3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such (period not exceeding 3 years as the court may direct and, in the meantime to keep the peace and be of good behaviour, Sub-section

(1) of Section 6 of the above mentioned Act, as stated earlier, imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offender it would not be desirable to deal with him Under Section 3 or 4 of the Act but to award a sentence of imprisonment to him. The underlying object of the above provisions obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals. So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life he shall not be sentenced to imprisonment unless there exist reasons which justify such a course. Such reasons have to be recorded in writing.

According to Section 18 of the Probation of Offenders Act the aforesaid Act shall not affect the provisions of Sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 (Act 2 of 1947). The last mentioned provision namely, Sub-section (2) of Section 5 of the Prevention of Corruption Act, prescribes, in the absence of special reasons, a minimum sentence of imprisonment for a term of not less than one year for those convicted Under Section 5 of that Act. If the object of the legislature was that the provisions of the Probation of Offenders Act should not apply to all cases where a minimum sentence of imprisonment is prescribed by the statute, there was no reason to specify Sub-section (2) of Section 5 of the Prevention of Corruption Act in Section 18 of the Probation of Offenders Act. The fact that out of the various offences for which the minimum sentence is prescribed, only the offence under Sub-section (2) of Section 5 of the Prevention of Corruption Act has been mentioned in Section 18 of the Probation of Offenders Act and not the other offences for which the minimum sentence is prescribed shows that in case of such other offences the provisions of Probation of Offenders Act can be invoked.

In view of the above enunciation, there can hardly be any doubt that despite the fact that a minimum sentence of three months' R.I. and a fine of not less than Rs. 100/- is prescribed by the Karnataka Excise Act for a person found guilty of the offence Under Section 32 of that Act, the Court can still resort to the provisions of the P.O. Act if the conditions required for the application of those provisions exist. In the case on hand, there is nothing to show that the petitioners were men of bad character and were indulging in similar or such activities prior thereto.

5. For the above reasons, the sentences imposed on the petitioners are set aside and instead acting Under Section 4 of the Probation of Offenders Act I direct them to be released on each of them executing a bond in a sum of Rs. 1000/- with a surety for like sum to the satisfaction of the Chief Judicial Magistrate, Shimoga, within a month from this date, and to appear and receive sentence when called upon during a period of one year and in the meantime to be of good behaviour. With this modification in the sentence, this petition is dismissed.