

**Debi Das Vs. State**

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**Court :** Allahabad

**Decided On :** Jul-28-1953

**Reported in :** AIR1954All9

**Judge :** B.D. Mukerji, J.

**Acts :** Uttar Pradesh First Offenders Probation Act, 1938 - Sections 4(1)

**Appeal No. :** Criminal Revn. No. 39 of 1953

**Appellant :** Debi Das

**Respondent :** State

**Advocate for Def. :** T.N. Madan, Adv.

**Advocate for Pet/Ap. :** B.S. Darbari and ;Satish Chander, Adv.

**Judgement :**

ORDER

**B.D. Mukerji, J.**

1. This revision has had a chequered career in this Court inasmuch as it came up for hearing on several dates. On 12-5-1953, it came up before me and on that date I heard counsel on both sides and came to the conclusion that on the facts and circumstances of the case I could not, sitting in revision disturb the decision of the

Court below. Sri Darbari appearing on behalf of the applicant prayed that instead of sentencing the applicant to any punishment I should exercise my powers under the U. P. First Offenders Probation Act. On behalf of the State it was argued that before I could exercise my powers under that Act it was the duty of the applicant to satisfy me in regard to certain matters provided for by Section 4 (1) of that Act. Sri Darbari thereupon took time to file an affidavit disclosing the circumstances which would entitle the applicant to have the benefit of the First Offenders Probation Act. Such an affidavit was filed on 5-6-1953, and thereafter the case was again listed before me for disposal. It was then contended on behalf of the State that relief under the First Offenders Probation Act could not be given to a convicted person in respect of a sentence of fine alone. Sri Darbari again took time to meet this objection on behalf of the State, The case was adjourned again since learned counsel for the State had no objection to Sri Darbari having an opportunity of meeting the objection raised on behalf of the State.

2. I have heard arguments on the question, whether under Section 4 (1) of the First Offenders Probation Act this Court can commute a sentence of fine and release the offender on probation of good conduct? The contention on behalf of the State is that the scheme of the Act clearly indicates that sentences of imprisonment alone fall within the purview of the Act and not sentences of fine. Emphasis was laid on the word 'release' used in Section 4 (1) of the Act. It was contended that a person can only be released, strictly speaking, from prison or from undergoing a sentence of imprisonment. On behalf of the applicant, however, it was contended that the word 'release' may equally apply to a sentence of fine because we do speak of releasing a man from the obligation of paying a fine.

It is undoubtedly true that the word 'release' can be used and often is used in that sense. Certain authorities were cited on behalf of the applicant, but in my opinion none of the cases cited actually applied to the question that I have to determine. There is however authority for the proposition and indeed it is also clear on the language used that the First Offenders Probation Act does not apply to those cases where the offence with which the offender is charged and punished is punishable with fine alone. Bennet J. in -- 'Jawahir v. Emperor : AIR1945 All206 , held thus:

'As I understand Section 3 the words 'any offence punishable with not more than two years' imprisonment' mean any 'offence punishable with imprisonment of not more than two years', and if this construction is adopted, there can be no doubt that it was intended to exclude offences punishable by fine only. It is, I think, difficult to say that an offence punishable with fine only is 'punishable with not more than two years' imprisonment'. The Legislature clearly seems to have been contemplating only cases where imprisonment is provided as a punishment and not cases where fine only is provided as punishment. Had it been the intention to include offences punishable with fine only it would have been easy to add the words 'or with fine only' after the words 'punishable with not more than two years' imprisonment.'

3. In my judgment if the First Offenders Probation Act cannot be invoked in aid by a convicted person who is sentenced to a fine only for relief then it follows that a convicted person cannot get relief in respect of a sentence of fine also even though he may have been sentenced to a term of imprisonment as well. I am also of the opinion that the scheme of the Act clearly indicates that the Legislature contemplated action being taken by Courts in the case of first offenders only when they were being sent to jail. The object of the legislation clearly was to provide Courts with the power of keeping away first offenders of a certain standard of life or of a certain status from being contaminated by the atmosphere prevailing in jails. The sentence of fine passed on an offender has no such dangers about it. If the intention of the First Offenders Probation Act were that by taking action under it the stigma of conviction was also to be wiped out then possibly it could have been contended that Courts were given powers to take action under the Act in a case where the offender was sentenced only or in addition to a sentence of fine; but that is not the Scope or the object of the Act. I am, therefore, of the view that action under the First Offenders Probation Act cannot be taken to relieve an offender in respect of a sentence of fine.

4. I wish further to say that even if I had the power under the First Offenders Probation Act to relieve the applicant of the sentence of fine which has been imposed on him, I would not have given him such relief. In my view all offences which are anti-social in their effect must be punished with severity. It is no doubt

true that in this case the applicant has not been found to have been, guilty of a flagrant breach of a Control Order, but that, in my judgment, makes no difference to the penalty that he incurred under the Foodgrains Control Order. It may further be noted that the applicant never pleaded that the excess stocks found in his possession were there because he had been misled by an incorrect publication (not authoritative however) of the prescribed limits. That being so, so far as the applicant was concerned, there was no extenuating circumstance which can persuade me to interfere with the sentence of fine that has been imposed. I, however, am of the opinion that in this particular case the sentence of imprisonment, namely, the sentence of six months' rigorous imprisonment, which has been awarded by the lower appellate Court to the applicant may be reduced to the period already undergone by the applicant.

5. In the result I uphold the conviction of the applicant and maintain his sentence of fine but reduce the sentence of imprisonment passed on him to the sentence already undergone by him. The sentence of imprisonment in lieu of fine is also reduced from six months to three months' rigorous imprisonment. In other respects this revision fails.

6. Mr. Darbari prays that this case be certified as a fit one for appeal to the Supreme Court. I do not consider that it is such a case in which a certificate of fitness for appeal to the Supreme Court can be granted. I, therefore, reject the prayer made by Mr. Darbari.

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