

Susil Kumar Parida Vs. State

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Court : Orissa

Decided On : Jul-20-1992

Reported in : 74(1992)CLT806; 1993CriLJ544; 1992(II)OLR476

Judge : D.P. Mohapatra, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 3, 4 and 12

Appeal No. : Criminal Revision No. 715 of 1988

Appellant : Susil Kumar Parida

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : M.K. Mohanty, Adv. for ;Y.S.N. Murty, Adv.

Judgement :

D.P. Mahapatra, J.

1. The short question that arises for determination in this case is whether in the facts and circumstances of the case the petitioner can be given benefit of the provisions of the [Probation of Offenders Act, 1958](#) (hereinafter referred to as 'the Act')

2. The factual backdrop of the case leading to the present proceeding may be stated thus.

The petitioner Susil Kumar Parida was a clerk in United Commercial Bank in its branch at Gupada. On 16-4-1985 he applied for advance of Rs. 100/- which was turned down by the Branch Manager (PW 5). On being intimated about the order of the Branch Manager he entered his office room, abused him in obscene words in presence of others and threatened to assault him, thereby causing annoyance to him and also caused obstruction in lawful discharge of his duties. After the incident, on the report lodged by the Branch Manager the police investigated the case, G.R. Case No. 43 of 1985 and submitted charge-sheet Under Sections 353/506/294, Indian Penal Code (I.P.C.) in the Court of the Sub-divisional Judicial Magistrate, Nilgiri.

3. Having denied the allegations the petitioner faced trial on the charges under the aforementioned sections of the Penal Code. In his statement Under Section 313, Cr.P.C. the petitioner stated that there was an altercation between him and the Branch Manager on 16-4-1985 but he has not used any obscene words against the officer.

4. The prosecution examined eight witnesses and the defence none. On assessing the evidence the learned Magistrate held the petitioner guilty Under Sections 353/506/294, I.P.C. convicted him thereunder and imposed sentence of rigorous imprisonment for one month on each count with that the sentences shall run concurrently. Since he found that the petitioner had been in custody as under-trial prisoner for more than a month (from 8-4-1986 to 12-5-1986) the learned Magistrate set off the period of detention Under Section 432 Cr.P.C. and directed that the petitioner be set at liberty and be released from the bail bond.

On appeal by the petitioner the learned Sessions Judge, Balasore acquitted him of the offence Under Sections 506, I.P.C. but maintained the conviction Under Sections 353 and 294, I.P.C. Since the petitioner had already undergone the sentences, he did not feel the necessity of modification of the same except that the order passed Under Section 506, I.P.C. was set aside.

The petitioner filed this revision petition challenging the orders passed by the Courts below.

5. At the commencement of his argument Shri M. K. Mohanty, learned counsel for the petitioner, fairly stated that keeping in view the limited scope for interference by this Court in exercise of revisional jurisdiction with the concurrent findings arrived at by the Courts below, he does not intend to assail the conviction of the petitioner. He raised the contention that the petitioner should be given benefit Under Section 3 or Section 4 of the Act, so that he will not lose his service in the Bank on account of conviction in the criminal case. Therefore, the question formulated earlier arises for consideration.

6. Section 3 of the Act deals with the power of trial Courts to release certain offenders after admonition, it provides that when any person is found guilty of having committed an offence punishable Under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the IPC or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under The I.P.C. or any other law, and no previous conviction is proved against him and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct Under Section 4, release him after due admonition.

Section 4(1) of the Act vests power in the trial Court to release certain offenders on probation of good conduct. It provides, inter alia that when any person is found guilty of having committed an offence not punishable with death or imprisonment for life and The Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, 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

secretion 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 The other sub-sections of Section 4 are not relevant for the present purpose.

Section 11 of the Act provides that notwithstanding anything contained in the Code or any other law an order under this Act may be made by any Court empowered to try and sentence the offender to imprisonment and also by the High Court or any other Court when the case comes before it on appeal or in revision. Section 12 of the Act lays down that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such laws provided that nothing in this section shall apply to a person who, after his release Under Section 4 is subsequently sentenced for the original offence.

7. On a first look it would appear that the contention raised by Shri Mohanty cannot be entertained since the petitioner, as observed by the Courts below had already suffered the sentences imposed against him. The object of the Act is to avoid imprisonment of the person covered by the provisions of the Act and Sections 3 and 4 of the Act only make provisions for substituting the sentence imposed by the trial Court/ appellate Court/ revisional Court and do not affect the order of conviction. But on a close look at the provisions of the Act, particularly Section 12 it becomes clear that the question does not become infructuous simply because the petitioner has already suffered the sentence. It is open to him to plead that he should be given the benefit of Section 3 or Section 4 of the Act notwithstanding that fact that he has already undergone sentence imposed.

In the case of *Iqbal Singh v. Inspector General of Police and Ors.* , AIR 1970 Delhi 240 the Court held that the word 'disqualification' in Section 12 of the Act would include a person losing his right or qualification to remain or to be retained in service and that the provisions save the convict from suffering such disqualification attached to his conviction.

9. The Apex Court in the case of *Rajbir v. State of Haryana*, AIR 1985 SC 1278 in circumstances similar to those in the present case held That the appellant was entitled to the benefit of the provision Under Section 3, of the Act, In that case the appellant was convicted under Section 323, IPC and sentenced to six months' imprisonment, he had already offered over one year imprisonment. While maintaining the conviction the Court directed that he shall be released on probation of good coi Under Section 4 of the Act and directed the appellant to appear before the Chief Judicial Magistrate, Bhiwani within four weeks and the Magstrate was directed to release him after due admonition. The Court did nor it necessary to direct the appellant to enter into a bond, The Court observed that ordinarily in a situation like that, there would be no need to interfere; the Court took into account the contingency that the appellant who was in Government service was to lose his service if the conviction and sentences were maintained. Therefore, considering the other facts and circumstances of the case, the Court passed the order as noted above.

10. In the case of *Trikha Ram v. V.K. Seth and Anr.* AIR 1988 SC 285, the Apex Court held that where the Government sesrvant was convicted for a criminal offence but was released on probation by the Court recording the order of conviction it was not open to the (sic)- nary authority to impose punishment of dismissal of service which disqualified him from future Government service since that would be against the provisions of Section 12 of the Act. Considering the facts and circumstances of that case the Court converted the impugned order of dismissal into an order of removal from service.

11. It was not disputed before me that the provisions of Sections 3 and 4 of the Act are applicable in the present case. No material was produced to show that there was any previous conviction against the petitioner. Having regard to the allegations made against the petitioner and the nature of offences, I am of the view that the petitioner should be admitted to the benefit of Section 3 of the Act and should be released on probation of good conduct Under Section 4 after due admonition. I have been persuaded to take this decision on consideration of the contention of Shri Mohanty that if the order of conviction and sentence is allowed to stand the petitioner will face dismissal from service, which in turn will entail

further disqualification in getting service in any other govt. department or public sector undertaking.

12. Therefore, following the decisions of the apex Court in the case of Rajbir v. State of Haryana (supra) and Trikha Ram v. V. K. Seth and Anr. (supra) while maintaining his conviction I direct that the petitioner shall be released on probation of good conduct Under Section 4 of the Act. He will appear before the S. D. J. M., Nilgiri with in six weeks from today, who shall release him after due admonition. In the special facts and circumstances of the case, I do not consider it necessary to direct the petitioner to enter into a bond. The conviction should not affect his service.

The revision petition is disposed of accordingly.

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