

**Kauda Vs. State of Rajasthan**

**Kauda Vs. State of Rajasthan**

**SooperKanoon Citation :** [sooperkanoon.com/756840](http://sooperkanoon.com/756840)

**Court :** Rajasthan

**Decided On :** Oct-08-1982

**Reported in :** 1982WLN563

**Judge :** G.M. Lodha, J.

**Appeal No. :** Criminal Revision Petition No. 463/1982

**Appellant :** Kauda

**Respondent :** State of Rajasthan

**Advocate for Pet/Ap. :** Mr. D.L. Mehta

**Judgement :**

**G.M. Lodha, J.**

1. The accused-petitioner was prosecuted for the offence under Section 4(2) of the Rajasthan Prohibition Act (No.XVII of 19 9)(here in after referred to as 'the Act') for having been found in possession of one bottle of liquor on November 24, 1978. After trial, he was convicted under Section 4(2) of the Act and sentenced to six months simple imprisonment and a fine of Rs. 200/- and in default of payment of fine, to further suffer simple imprisonment for one month, by the Additional Judicial Magistrate. The accused-petitioner lodged an appeal against his conviction and sentence. The learned Sessions Judge, Dungarpur by his judgment dated October

5, 1982 confirmed the conviction and sentence and dismissed the appeal. Aggrieved, the accused-petitioner has filed this revision.

2. I have heard Mr. D.L. Mehta, learned Counsel for the petitioner and Dr. S.S. Bhandawat, learned Public Prosecutor.

3. Learned Counsel for the petitioner has made one prayer only i.e. that the accused-petitioner may be granted benefit of probation in this case. Mr. D.L. Mehta contended that though the offence under Section 4(2) of the Act is punishable with two years imprisonment and with fine which may extend to two thousand rupees, still it does not exclude the applicability of the provisions of Section 360 Cr.PC. or of Section 4 of the Probation of Offenders Act(No. XX of 1958)(for short 'the Act of 1958'). Section 18 of the Act of 1958 is as under;

18. Saving of operations of certain enactments: Nothing in this Act shall affect the provisions of Section 31 of the Reformatory Schools Act, 1897(Act No. VIII of 1897), or Sub-section (2) of section at Revision Petition No. 463/1982--Decided on October 8, 1982 5 of the Prevention of Corruption Act, 1947(Act No. II of 1947), or of any law in force in any State relating to juvenile offenders of Borstal schools.

This section expressly excludes the operation of its provisions in respect of the Acts mentioned therein. There is no such exclusion of the Act. It was held while considering Sections 7 and 16 of the Prevention of Food Adulteration Act, in *Isher Dos v. State of Punjab* : 1972 CriLJ874 that Section 18 of the Act of 1958 expressly excludes the operation of its provisions in respect of the offences under the Prevention of Corruption Act and there is no such exclusion of the provision of the Prevention of Food Adulteration Act.

4. It will be useful here to notice Section 19 of the Act of 1958 which is as under:

19. Section 562 of the Code not to apply in certain areas : Subject to the provisions of Section 18, Section 562 of the Code shall cease to apply to the States or parts there of in which this Act is brought into force.

A learned single Judge of this Court in *Smt. Somali v. The State of Rajasthan S.B. Criminal Revision Petition No. 267 of 1980*, decided on September 8, 1980)

opined that unless any Act excludes the applicability of Section 360 Cr.P. C. or the Act of 1958, the mere fact that the minimum sentence prescribed for the offence is six months or so, is not sufficient to refuse the benefit of the provisions of the Act of 1958 and that it will depend on the facts and circumstances of each case as to whether benefit should be extended to the accused or not Smt. Somali's case (Supra) was followed by me in Jagta Ram v. State of Rajasthan 1981 RCC 1 Before another learned single Judge of this Court, in Tamu v. State of Rajasthan 1982 RCC 249, a some what similar question arose It was held that since the Act has been repealed and prohibition has been scrapped in Rajasthan, the accused-petitioner should be released under Section 4 of the Act of 1958. The learned single Judge granted benefit of probation under Section 4 of the Act of 1958 in that case to the petitioner, who was convicted under Section 4(2) of the Act. The very same question arose before M. C Jain, in Gordhan v. State S.B. Criminal Revision No. 203 of 1978, decided on October 7, 1982). In that case, the learned Judge gave benefit of Section 4 of the Act of 1958 to the accused-petitioner.

5. In view of the aforesaid decisions of the Supreme Court and of this Court and Section 18 of the Act of 1958, I am of opinion that benefit of Section 4 of the Act of 1958 can be granted to an accused who is convicted under Section 4(2) of the Act though the offence was punishable with two years imprisonment and with fine which may extend to two thousand rupees.

6. Only one bottle of liquor was recovered from the possession of the accused-petitioner on November 24, 1978. The Act has now been repealed. Having considered the aforesaid facts and circumstances of the case, in my opinion, ends of justice would be met if the accused-petitioner Kauda is given benefit of Section 4 of the Act of 1958.

7. The result is that the revision petition is allowed in part. The conviction of the petitioner under Section 4(2) of the Act is maintained. However instead of sentencing him it is ordered that the petitioner shall be released on furnishing a personal bond in the sum of Rs.2,000/- (Rupees two Thousand) and one surety in the like amount to the satisfaction of the Additional Judicial Magistrate, First Class, Dungarpur to appear and receive sentence whenever called upon to do so during

the period of one year and in the meantime to keep the peace and be of good behaviour.

8. Learned Counsel for the petitioner prays that one month's time may be allowed to the accused-petitioner for furnishing the personal Judicial bound & the Magistrate, 1st Class, Dungarpur. One month's time is allowed as prayed for. In case, the accused-petitioner fails to do so, he will undergo the sentence awarded by the Additional Magistrate, First Class, Dungarpur and confirmed by the Sessions Judge, Dungarpur.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**