

**Ganpat Ram Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/758322](http://sooperkanoon.com/758322)

**Court :** Rajasthan

**Decided On :** Dec-04-1989

**Reported in :** 1990WLN(UC)71

**Judge :** M.B. Sharma, J.

**Appeal No. :** S.B. Cr. Revision Petition No. 7 of 1987

**Appellant :** Ganpat Ram

**Respondent :** State of Rajasthan

**Disposition :** Petition allowed

**Judgement :**

M.B. Sharma J.

1. The petitioner who was a complainant and had filed complainant against the accused non-petitioner Under Section 500 read with 107 IPC in the court of Magistrate has filed the present revision petition against the order dated 9-8-1986 of the learned Sessions Judge, Alwar. Under the aforesaid order the learned Sessions Judge, Alwar on the basis of some recommendations of the Lok Adalat has extended the benefit of Section 4 of the Probation of Offenders Act, 1958 (for short the Act) to the accused petitioner.

2. The main ground for challenging the aforesaid judgment of the learned Sessions Judge is that the same was made without compromise having been arrived at in between the petitioner and accused non-petitioner. In a case where a complaint has been filed and conviction is recorded, more so when even an appeal against conviction has been filed, the matter could not be placed before the Lok Adalat and even if it is placed, only on the recommendations of the Lok Adalat the benefit of Probation of Offenders Act could not be extended without affording an opportunity of hearing to the respondent in the appeal.

3. It appears that a pamphlet Ex. P.I was alleged to be published by or with connivance of the accused non-petitioner Mahesh. A look at Ex. P.I will show that prima facie it contains the defamation relating to the petitioner who was an elected Sarpanch of village Khurdikalan. Virtually it appears to be a charge-sheet in respect of conduct of the petitioner the said Sarpanch since the year 1965. It contains the allegations of alleged mis-appropriation etc. The learned trial court on the basis of the material on record and evidence produced before him held that it was at the instance of accused Mahesh Kumar and convicted and sentenced accused Mahesh Kumar Under Section 500 IPP and sentenced him to undergo six months simple imprisonment and fine of Rs. 500/-. In default of payment of fine he was further sentenced to undergo one month's simple imprisonment. Revision against enhancement of sentence was filed before the learned Sessions Judge. I have my own reservations whether revision petition for enhancing the sentence even lies before the learned Sessions Judge. Be that as it may, the question is as to whether this court should interfere in the order of the learned Sessions Judge or not There can be no dispute that Section 500 IPC is such which could have been dealt with under the Probation of Offenders Act, 1958, or even Under Section 360 Cr. PC and in view of the mandate of Section 361 unless special reasons to be recorded in the judgment, it was the right of the accused to be considered for probation without recommendation of the Lok Adalat and if the court comes to the conclusion that in the facts and circumstances of the case including the fact that case was as old as 8 years and on hearing the complainant it could have extended the benefit. But in a complaint case and more so when the complainant was respondent in that appeal it could only do so after hearing or giving an opportunity of hearing to the complainant-respondent. It appears that the proforma which was

signed for the case being listed before the Lok Adalat is cyclostyled form and was signed by the accused and not by the complainant. Generally before the Lok Adalat such of the cases are placed for which both the parties do not agree, the Lok Adalat cannot take up the matter and cannot make any recommendation. Even if any recommendations reach the court is not bound to agree with those recommendations. In the instant case it appears that the cyclostyled proform for placing the case before the Lok Adalat was only signed by Mahesh Kumar and was not signed by Ganpat Ram, one of the respondent to the appeal. It is mentioned that compromise had been arrived at between the parties which fact does not appear to be correct. The learned Sessions Judge in his judgment dated 9-8-1986 has only taken into consideration the recommendations of the Lok Adalat. He was mainly governed by the recommendations of the Lok Adalat.

4. I hereby allow this revision petition and set aside the judgment of the learned Sessions Judge, Alwar and the case is remanded back to the learned Sessions Judge to decide the appeal afresh filed by Mahesh Kumar in accordance with law after hearing the State and the counsel for the complainant who is one of the party in the appeal as aforesaid.