

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Revisional Jurisdiction)

DATED : 8th September, 2022

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl. Rev. P. No.01 of 2022

Petitioner : Sashi Shekhar Thakur

versus

Respondent : State of Sikkim

Petition under Section 11 of the Probation of Offenders Act, 1958, read with Section 397 and 401 of the Code of Criminal Procedure, 1973.

Appearance

Mr. N. Rai, Senior Advocate with Mr. Yozan Rai, Advocate for the Petitioner.

Mr. Sudesh Joshi, Public Prosecutor with Mr. Thinlay Dorjee Bhutia, Additional Public Prosecutor, Mr. Yadev Sharma, Additional Public Prosecutor and Mr. Sujan Sunwar, Assistant Public Prosecutor for the State-Respondent.

ORDER (ORAL)

Meenakshi Madan Rai, J.

1. The Revisionist/Petitioner herein was charged and faced trial for the offence under Section 354 A(1) of the Indian Penal Code, 1860 (hereinafter, the "IPC"), in General Register Case No.08 of 2018 (*State of Sikkim vs. Sashi Shekhar Thakur*). Vide Judgment and Order on Sentence dated 30-04-2018, he was sentenced to undergo simple imprisonment for two years and to pay a fine of Rs.5,000/- (Rupees five thousand) only, with a default clause of imprisonment, by the Court of the Learned Chief Judicial Magistrate, South Sikkim, at Namchi for the offence under which he was charged. Aggrieved thereof, the Revisionist was before the Court of the Learned Sessions Judge, South Sikkim, at Namchi, in Criminal Appeal Case No.02 of 2018 (*Sashi Shekhar Thakur vs. State*

of Sikkim), which confirmed the Judgment and Order on Sentence, dated 30-04-2018.

2. Being further aggrieved, the Petitioner was before this Court in Criminal Revision Petition Case No.03 of 2018 (*Sashi Shekhar Thakur vs. State of Sikkim*). This Court having considered the Petition and while declining to interfere with the Judgment and Order on Sentence of the Learned Courts below was of the opinion that the prospect of releasing the convict under Section 360 of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C") and Section 4 of Probation of Offenders Act, 1958 (hereinafter, the "Probation Act"), could be examined by the Learned Courts below. In compliance thereof, the Court of the Learned Chief Judicial Magistrate, South Sikkim, at Namchi, took up the matter on 14-12-2020 and observed *inter alia* that the convict was in a position of power/authority and he had misused the same taking advantage of the situation of need/desperation of the victim. It was further observed that the offence for which the Revisionist was convicted was heinous in nature and he ought not to be let off lightly. It was concluded that the convict did not deserve to be released on probation either under Section 4 of the Probation Act or under Section 360 of the Cr.P.C. The Court of the Learned Sessions Judge, South Sikkim, at Namchi, on Appeal by the Petitioner herein, confirmed the findings of the Learned Trial Court and while upholding the Order cancelled the Bail Bonds of the Petitioner and ordered that he be taken into custody forthwith for serving out the remainder of the Sentence imposed on him.

3. Learned Senior Counsel for the Petitioner before this Court urges that the case of the Petitioner may be considered compassionately in view of the fact that he has already lost his job

which suffices thereby as penalty. That, he is a first time offender. That, he was about twenty-seven years of age at the time of offence and he now needs to settle in life and rehabilitate in society. It was also submitted that one of the Bail conditions was that he was not to leave Sikkim. Accordingly, he remained in Sikkim during the course of trial and was not able to carry out his duties as a son to his aged parents. That, he has been in custody for about six months now and in consideration of all the above facts and circumstances, the benefit of Section 4 of the Probation Act may be extended to him. To fortify his submission reliance was placed on ratio ***Pritam Singh*** vs. ***State of H.P¹***, ***State of Haryana*** vs. ***Prem Chand²***, ***Ishar Das*** vs. ***The State of Punjab³*** and also on ***B. S. Narayanan*** vs. ***State of A.P⁴***.

4. Learned Public Prosecutor for the State-Respondent put forth the contention that the victim was a Bank Manager at the relevant time and the Bank was recruiting lady staff where the victim had also appeared to take part in the interview. Being thus in a dominant position, he tried to extract sexual favours from the hapless victim by dictating to her that the kind of clothes she ought to wear and by touching her physically. While considering extending the benefit of the Probation of Offenders Act, it was urged that the nature of offence and the character of the offender is to be taken into consideration. That, in the instant case as held by both the Learned Courts below the nature of offence is heinous and the victim has to be lauded for her courage to complain despite risking her chances of not being recruited. That, considering the official position of the convict at his place of employment at the relevant time and that of the victim, who was

¹ 2012 CRI.L.J. 468

² (1997) 7 SCC 756

³ (1973) 2 SCC 65

⁴ 1987 (Supp) SCC 172

at a disadvantageous position, the convict deserves no mercy and consequently, the Petition be dismissed and disposed of. To buttress his submission, reliance was placed on **State of Rajasthan vs. Sri Chand⁵**.

5. Having duly considered the submissions put forth by Learned Counsel for the parties, it is apparent that the Revisionist took undue advantage of the victim who had come to appear for an interview in the Bank where the Revisionist was the Manager and conducting the interview. It was not his place at the relevant time to make suggestions as put forth or to physically touch the victim. It is not necessary to make observations about the details of the case herein, suffice it to observe that the actions of the Revisionist reeks of depravity, is antisocial and reflects misogyny.

6. Having perused the Orders of the Learned Chief Judicial Magistrate, South Sikkim, at Namchi and that of the Learned Sessions Judge, South Sikkim, at Namchi, in my considered opinion, the Orders brook no interference, considering the nature of the offence and the character of the Petitioner, writ large on his actions.

7. Consequently, the Petition stands dismissed and disposed of accordingly.

8. Pending applications, if any, also stand disposed of.

9. No orders as to cost.

10. Copy of this Order be transmitted to the Learned Courts below, for information, along with its records.

(Meenakshi Madan Rai)
Judge
08-09-2022