

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Revisional Jurisdiction)

DATED : 24th April, 2024

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

Crl. Rev. P. No.01 of 2023

Petitioner/Revisionist : Chitraman Chettri

versus

Respondent : State of Sikkim

Application under Sections 397 and 401
of the Code of Criminal Procedure, 1973

Appearance

Mr. M. N. Dhungel, Advocate for the Petitioner/Revisionist.

Petitioner/Revisionist present in person.

Mr. S. K. Chettri, Additional Public Prosecutor for the Respondent.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Revisionist was employed as a Senior Product Executive of Shriram Transport Finance Company Limited on 20-07-2015 and entrusted with the responsibility of collecting Equated Monthly Installment (EMI) from customers who had availed of loan from the said company. On 04-09-2017, one Purna Bahadur Mukhia, Branch Manager, Shriram Transport Finance Company Limited, Jorethang Branch, filed a Complaint, Exhibit - 1, on behalf of the said Company, stating that the Revisionist, a permanent resident of Timburbong, Soreng, an employee of the company had collected EMIs from borrowers, amounting to a sum of ₹ 5,76,780/- (Rupees five lakhs, seventy six thousand, seven hundred and eighty) only, but had not deposited the collected amounts at the branch office. The Revisionist had misappropriated the said amount which had been deposited with him by fourteen

customers. Investigation was taken up after registration of the case and on completion of investigation, Charge-Sheet was submitted against the Revisionist under Section 408 of the Indian Penal Code, 1860 (hereinafter, the "IPC").

(i) The Learned Trial Court framed charge against the Revisionist under Section 408 of the IPC, to which he entered a plea of 'not guilty' and claimed trial. The Prosecution examined twenty-four witnesses including the Investigating Officer (I.O.) to establish their case. This was followed by the examination of the Accused under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C."), during which he claimed innocence and asserted that he was falsely implicated in the matter. The Court of the Learned Judicial Magistrate, Jorethang Sub-Division, South Sikkim, at Jorethang, on consideration of all the evidence and materials before it convicted the Revisionist under Section 408 of the IPC, vide its Judgment, dated 28-02-2022, in GR Case No.15 of 2019 (*State of Sikkim vs. Chitraman Chettri*). He was sentenced to undergo simple imprisonment of one year, with fine of ₹ 5,000/- (Rupees five thousand) only, for the offence under Section 408 of the IPC, with a default clause of imprisonment, vide the Order on Sentence of the same date.

(ii) On 24-03-2022 against the said Order of conviction, an Appeal was filed before the Court of the Learned Sessions Judge, at Namchi, Sikkim, being Criminal Appeal No.03 of 2022 (*Chitraman Chettri vs. State of Sikkim*) and on 28-03-2022, the Revisionist was enlarged on bail. The Court of the Learned Sessions Judge, vide its impugned Judgment, dated 28-02-2023, in Criminal Appeal Case No.03 of 2022 (*Chitraman Chettri vs. State of Sikkim*) upheld the

Judgment of conviction and Order on Sentence. The prayer for probation, in terms of Section 4 of the Probation of Offenders Act, 1958 (for short "Probation Act"), was however rejected by the Court of the Learned Sessions Judge. Against the said Judgment this Revision has been preferred.

2. Learned Counsel for the Revisionist submits that the only point that he seeks to press in Revision before this Court is that the Revisionist be extended the benefit of Section 4 of the Probation of Offenders Act, 1958. That, he has no criminal antecedents and his aged parents who live in a remote part of Soreng District, Sikkim, are dependent on him for their livelihood which he is presently eking out by selling vegetables. That, he has a wife, who is unemployed and a daughter aged about six years, who are also completely dependent on him. That, incarcerating him would in fact be extending the penalty to the family members as in his absence they would be deprived of their day to day requirements and means of livelihood. That, till date he has returned a sum of ₹ 2,50,000/- (Rupees two lakhs and fifty thousand) only, to the persons from whom he had collected the EMIs. That, should this Court be inclined to consider his prayer for probation, he undertakes to repay the remaining amount within a period of twelve months to the persons from whom he had collected the EMIs.

3. Learned Additional Public Prosecutor for the State-Respondent submits that he has no objection to the prayers put forth, subject to the condition that, the repayment shall be made by the Revisionist within twelve months of this Judgment. Should

he default, then he may be ordered to complete his sentence as pronounced by the Learned Trial Court.

4. Heard the submissions of Learned Counsel for the parties.

5. Section 4 of the Probation Act of Offenders Act, 1958, reads as follows;

"4. Power of court to release certain offenders on probation of good conduct.—(1) 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 the 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 sureties, 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:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."

6. The provision is thus applicable where a person is found guilty of having committed an offence but the penalty for the offence committed does not extend to life imprisonment or death. The Court at its discretion may release such a convict on probation of good conduct, on his furnishing a bond as provided in the section. It needs no reiteration here that while invoking the provision, the circumstances of the case, the character of the offender and the nature of the offence have to be taken into consideration.

7. The Supreme Court in **Jagat Pal Singh and Others vs. State of Haryana**¹ extended the benefit of probation while upholding the conviction of the convicts under Section 323, 452 and 506 of the IPC and released them on executing a bond before the Magistrate for maintaining good behaviour and peace for the period of six months.

(i) In **Sitaram Paswan and Another vs. State of Bihar**², the Supreme Court observed that for exercising the power which is discretionary, the Court has to consider the circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the Accused under Section 4 of the Probation Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation Act, having regard to the nature of the offence and the

¹ AIR 2000 SC 3622(1)

² AIR 2005 SC 3534

character of the offender and overall circumstances. The power under Section 4 of the Probation Act vests with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Court while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the Accused, the power can be exercised by the Court even at the Appellate or Revisional stage or also by the Supreme Court while hearing Appeals under Article 136 of the Constitution of India.

8. I have given due consideration to the submissions put forth before me, as also the documents on record. I have also taken note of the social background of the Revisionist, the gravity and impact of the offence and the fact that he is a first offender with no criminal antecedents. The conduct of the Revisionist who remained on bail during the course of trial and post the trial is also noted. After his conviction, he was enlarged on bail but he made no attempts to flee. There were no adverse reports against him from any quarter during the trial or when he was on bail, post the conviction. The mitigating circumstances such as the dependence of his aged parents, unemployed wife and minor child are also taken into consideration as also the fact that he has repaid almost 50% of the amount defalcated by him and he undertakes to repay the remaining amount. The Learned Additional Public Prosecutor has also not placed any evidence before this Court to establish that the Revisionist is a recidivist. Perusal of the Learned Trial Court records also reveals no such antecedents.

9. In light of the above facts and circumstances, I am of the considered view that the discretion vested on this Court can be exercised in favour of the Revisionist.

10. As the State Government is yet to frame Rules under the Act as envisaged under Section 17 of the Probation of Offenders Act, 1958, the Station House Officer (SHO), Jorethang Police Station, is appointed as the Probation Officer, in terms of Section 13 of the Probation Act. The Probation Officer as per Section 14 of the Probation Act shall advise and assist the Revisionist in the payment of compensation as ordered by this Court and submit a monthly report before the Learned Trial Court of Judicial Magistrate, Jorethang, Sikkim, on this aspect.

11. The conviction of the Revisionist under Section 408 of the IPC is upheld. However, the Revisionist shall be released on probation under Section 4 of the Probation Act, upon furnishing a personal bond in the sum of ₹ 50,000/- (Rupees fifty thousand) only and two sureties in the sum of ₹ 25,000/- (Rupees twenty five thousand) only, each, to the satisfaction of the Learned Trial Court. The Revisionist shall maintain peace and good behaviour for a period of one year from today and shall not repeat the offence. Should he fail to maintain the peace or not be of good behaviour or repeat the offence and should he fail to pay the compensation as undertaken by him, he shall serve out the sentence imposed by the Learned Trial Court.

12. The Revisionist shall furnish the bail bonds and sureties as Ordered by this Court (*supra*) before the Court of the Learned Judicial Magistrate, Jorethang, Sikkim on 30-04-2024.

- 13.** The Revisionist is released from his bail bonds.
- 14.** Revision application allowed on the above terms.
- 15.** Copy of this Judgment be remitted forthwith to the Station House Officer, Jorethang Police Station, Sikkim for information and compliance.
- 16.** Copy of this Judgment also be remitted to the Learned Trial Court for information and compliance along with its records.

(Meenakshi Madan Rai)
Judge
24-04-2024

Approved for reporting : **Yes**