Before Vinod S. Bhardwaj, J.

PRITAM SINGH—*Petitioner*

versus

NEELAM RANI AND ANOTHER—*Respondents*

CRR No.3811 of 2013 (O&M)

April 01, 2022

Code of Criminal Procedure, 1973—S.360—Probation of Offenders Act, 1958— Ss.4(1) and 5—Negotiable Instruments Act, 1881—S.138—Conviction under Section 138 of N.I. Act—Challenge to the release of the convict on probation for one year by complainant not interfered with—Held, offenses that are not heinous or grievous, the law should take recourse to extend indulgence to first time offenders—A person must not necessarily be labeled as a criminal for having committed a crime in lieu of reformative theory of sentencing—Revision dismissed.

Held that, invariably, the mandate of Section 360 Cr.P.C. as well as Section 4 and 5 of the Probation of Offenders Act contemplate that in the offences that are not heinous or grievous, the law should take recourse to extend certain indulgence to the first time offenders. The object of the said Act and the provisions contained in the Criminal Procedure Code offer an opportunity to an accused for mending himself without compromising the deterrent effect of law and sentencing. Punishment is not to be imposed always as a measure of imposing punitive punishment intended to confine a person in custody for each and every offence. The object of sentencing is also reformative and to assess as to whether a convict displays traits of a hardened criminal beyond reform or has potential for reform. A person must not necessarily be labeled as a criminal for having committed a crime. Thus, an element of reformative theory of sentencing comes into the picture. The same offers an opportunity to an offender to live in mainstream society.

(Para 9)

Further held that, learned counsel for the petitioner could also not indicate any illegality, infirmity or perversity in the judgment passed by the Courts below or to refer to any provision of law, as per which the respondent-accused ought not have been extended the benefit

of probation or that such discretion has been exercised wrongly or in violation of the statute.

(Para 13)

Naresh Kaushik, Advocate, *for the petitioner.*

Mohd. Sartaj Khan, Advocate, for respondent No.1.

Karanbir Singh, AAG Punjab, for respondent No.2

VINOD S. BHARDWAJ, J. (ORAL)

(1) The instant revision petition raises a challenge to the judgment of conviction dated 04.06.2011 and directing release of respondent-Neelam Rani on probation for a period of 01 year by the Judicial Magistrate First Class, Hoshiarpur in complaint preferred under Section 138 of the Negotiable Instruments Act as well as the judgment dated 17.09.2013 passed in the appeal filed by the petitioner against the grant of probation and seeking compensation. The said appeal was partly allowed by the Additional Sessions Judge (Ad hoc), Fast Track Court, Hoshiarpur vide judgment dated 17.09.2013, whereby even though the order releasing the petitioner on probation was upheld, however, the compensation amount, as awarded, was increased from Rs.2,000/- to Rs.10,000/-. Aggrieved thereof, the present revision petition has been preferred by the petitioner/ complainant.

(2) Learned counsel for the petitioner contends that it was improper on the part of the Courts below to have extended the benefit of probation to the respondent-accused, who had borrowed a sum of Rs.90,000/- from the complainant on 03.03.2005. The said loan had been obtained by respondent for domestic needs and on an assurance that she would return the same along with interest at the bank rate. Cheque No.582362 dated 01.08.2005 was issued in discharge of the said liability for sum of Rs.90,000/-. However, the same was dishonoured upon being presented to the bank for encashment with memo depicting remark “account not activated”.

(3) Upon consideration of the evidence led by the respective parties, the Judicial Magistrate First Class, Hoshiarpur vide judgment dated 04.06.2011 had recorded a finding of conviction against the respondent and extended the benefit in terms of Section 4(1) of the Probation of Offenders Act, 1958 after noticing all the relevant circumstances.

(4) The above judgment and order of sentence was a subject matter of challenge by the petitioner in an appeal before the Sessions Court, Hoshiarpur. The counsel for the petitioner had argued that there were no mitigating circumstances existing in the case and that the JMIC Hoshiarpur has let the respondent-accused off in a very light-handed manner and without ensuring that some proportionate punishment ought to be imposed on the accused.

(5) *Per contra*, learned counsel for the respondent-accused contends that the compensation has already been enhanced by the First Appellate Court. He submits that the respondent is not a previous convict and sentence prescribed for the commission of the offence is less than 03 years. Respondent being a woman, she is entitled to be considered for release on probation owing to the said factor as well. He further contends that there is no reason why the benefit under the Probation of Offenders Act can not be extended to the respondent as the provision is intended to give benefit to the first time offender for offences where the punishment prescribed is less than 03 years.

(6) I have considered arguments advanced by the respective parties and also perused the judgments of the Courts below with the able assistance of their counsel.

Parameters and Principles of Sentencing:

(7) The Hon'ble Supreme Court has laid down certain principles to govern the Courts in the matter of sentencing. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in the matter of ***State of Punjab*** *versus* ***Prem Sagar & Ors***[1], the relevant extract of the said judgment is reproduced hereinbelow:-

> 'Whether the court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstance of each case.
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> a. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

[1] (2008) 7 SCC 550

b. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be bornein mind.

c. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice delivery system. The Parliament, however, in providing for a hearing on sentence, as would appear from Sub-section (2) of Section 235, Sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

d. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.

e. What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.

f. In Dhananjoy Chatterjee Alias Dhana v. State of W.B. [(1994) 2 SCC 220], this Court held:

"15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts

reflect public abhorrence of the crime..."

g. Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjoy Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges.

h. In a recent decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], this Court opined:

"7. The law regulates social interests, arbitratesconflicting claims and demands. Security of persons and property of the people is an essential function of the State.It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposingappropriate sentence. Therefore, law as a cornerstone ofthe edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be-- as it should be--a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be,and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration."

Relying upon the decision of this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471], this Court furthermore held that it was the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

18. Don M. Gottfredson in his essay on "Sentencing Guidelines" in "Sentencing: Hyman Gross and Andrew von Hirsch" opines:

"It is a common claim in the literature of criminal justice- and indeed in the popular press- that there is considerable "disparity" in sentencing.. The word "disparity" has become a prerogative and the concept of "sentencing disparity" now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase "unwarranted disparity" may bepreferred; not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly justified, beneficial and proper, so long as the variable qualities are carefully monitored or consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment- that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate."

[Emphasis supplied]

The learned author further opines:

"In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima, leaving a broad range of discretion, as to the length of sentence."

19. Kevin R. Reitz in Encyclopedia of Crime and Justice, Second edition "Sentencing guidelines" states:

"All guideline jurisdictions have found it necessary to create rules that identify the factual issues at sentencing

that must be resolved under the guidelines, those that are potentially relevant to a sentencing decision, and those viewed as forbidden considerations that may not be taken into account by sentencing courts. One heated controversy, addressed differently across jurisdictions, is whether the guideline sentence should be based exclusively on crimes for which offenders have been convicted ("conviction offenses"), or whether a guideline sentence should also reflect additional alleged criminal conduct for which formal convictions have not been obtained ("nonconviction offenses").

Another difficult issue of fact-finding at sentence for guideline designers has been the degree to which trial judges should be permitted to consider the personal characteristics of offenders as mitigating factors when imposing sentence. For example: Is the defendant a single parent with young children at home? Is the defendant adrug addict but a good candidate for drug treatment? Has the defendant struggled to overcome conditions of economic, social or educational deprivation prior to the offense? Was the defendant's criminal behavior explicable in part by youth, inexperience, or an unformed ability to resist peer pressure? Most guideline states, once again including all jurisdictions with voluntary guidelines, allow trial courts latitude to sentence outside of the guideline ranges based on the judge's assessment of such offender characteristics. Some states, fearing that race or class disparities might be exacerbated by unguided consideration of such factors, have placed limits on the list of eligible concerns. (However, such factors may indirectly affect the sentence, since judges are permitted to base departures on the offenders particular "amenability" to probation (Frase, 1997).)"

20. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

1. What interest are violated or threatened by the standard case of the crime- physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.

2. Effect of violating those interests on the living standards of a typical victim- minimum well-being, adequate well-being, significant enhancement.

3. Culpability of the offender.

4. Remoteness of the actual harm as seen by a reasonableman.'

(8) The said issue was also examined by the Hon'ble Supreme Court in the matter of ***Soman*** *versus* ***State of Kerala***[2]**,** the relevant extract of the said judgment is reproduced hereinbelow:-

'15. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are nolegislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. In State of Punjab v. Prem Sagar (2008) 7 SCC 550, this Court acknowledged as much and observed as under –

"2. In our judicial system, we have not been able todevelop legal principles as regards sentencing. The superior courts except making observations with regardto the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines."

16. Nonetheless, if one goes through the decisions of this Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitationetc. (See: Ramashraya Chakravarti v. State of Madhya Pradesh (1976) 1 SCC 281, Dhananjoy Chatterjee alias Dhana v. State of W.B. (1994) 2 SCC 220, State of Madhya Pradesh v. Ghanshyam Singh (2003) 8 SCC 13, State of Karnataka v.Puttaraja (2004) 1 SCC 475, Union of

[2] (2013) 11 SCC 382

India v. Kuldeep Singh (2004) 2 SCC 590, Shailesh Jasvantbhai and another v. State of Gujarat and others (2006) 2 SCC 359, Siddarama and others v. State of Karnataka (2006) 10 SCC 673, State of Madhya Pradesh v. Babulal (2008) 1 SCC 234, Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498).

14. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. The question is whether the consequences of the offence can be taken as the measure for determining its harmfulness? In addition, quite apart from the seriousness ofthe offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while awarding a sentence. Thus, to understand the relevance of consequences of criminal conduct from a Sentencing standpoint, one must examine: (1) whether such consequences enhanced the harmfulness of the offence; and (2) whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence.

26. Punishment should acknowledge the sanctity of human life. We fully agree.

27.From the above, one may conclude that:

Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.

The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

Unintended consequences/harm may still be properly attributed to the offender if they were reasonably

foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.

(9) Invariably, the mandate of Section 360 CrPC as well as Section 4 and5 of the Probation of Offenders Act contemplate that in the offences that are not heinous or grievous, the law should take recourse to extend certain indulgence to the first time offenders. The object of the said Act and the provisions contained in the Criminal Procedure Code offer an opportunity to an accused for mendinghimself without compromising the deterrent effect of law and sentencing. Punishment is not to be imposed always as a measure of imposing punitive punishment intended to confine a person in custody for each and every offence. The object of sentencing is also reformative and to assess as to whether a convict displays traits of a hardened criminal beyond reform or has potential for reform. A person must not necessarily be labeled as a criminal for having committed a crime. Thus, an element of reformative theory of sentencing comes into the picture. The same offers an opportunity to an offender to live in mainstream society.

(10) The Hon'ble Supreme Court had held in the matter of ***Ved Prakash*** versus ***State of Haryana***[3]**,** to the effect that sentencing of an accused is a sensitive matter and not a routine mechanical prescription. It becomes a duty of a sentencing Court to become an activist enough to consider such facts as have a bearing on punishment with a rehabilitatory object.

(11) Benefit should ordinarily be extended unless the Court feels that the convict is incorrigible and cannot be reformed. The Court takes into consideration varied factors including social, educational, physical and psychological circumstances of an accused; the gravity, nature and manner of committing the offence; the consequences, the social reaction of the offence; the antecedents and tendencies of an accused and assesses the punishment ought to be deterrent, reformative or proportionate. Such an exercise once undertaken and Court reposes

[3] AIR 1981 S.C. 643

faith in imposing reformative punishment as probation etc., it should not be interfered with unless the punishment disregards the parameters blatantly. As a Court of law, a Judge sits not only with an eye on evil but also with a vision to see good in people.

(12) The object of the Probation of Offenders Act would stand defeated in case strict and stringent method is adopted by the Courts and such benefits are not to be extended at all. No such circumstances as ought to have been taken into consideration and are alleged to have been violated are pointed out.

(13) Learned counsel for the petitioner could also not indicate any illegality, infirmity or perversity in the judgment passed by the Courts below or to refer to any provision of law, as per which the respondent-accused ought not have been extended the benefit of probation or that such discretion has been exercised wrongly or in violation of the statute.

(14) In view of the above, the instant petition is dismissed.

Dr. Payel Mehta