

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P(Cr.).No. 228 of 2013

Shambhu Sharma Petitioner.

Versus
The State of Jharkhand Respondents
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Coram : The Hon'ble Mr. Justice Prashant Kumar.

For the Petitioner : Sri A.K.Chaturvedi
For the Respondents : Sri R.Mukhopadhyay,SC-II

06/29.11.2013. This application has been filed for quashing the last portion of order dated 02.08.2013 passed by Railway Judicial Magistrate, Daltonganj in R.P.F./Post/Patratu Case no.18/02, whereby learned court below sentenced the petitioner to undergo R.I. for Six months for the offence under section 3(a) of the R.P.(U.P.) Act.

It appears that petitioner filed application under section 265(B) of the Cr. P.C. for plea-bargaining. It further appears that after following the procedure, a report prepared under section 265(D) and as per said report petitioner agreed to compensate respondent by giving Rs.12,000/-. It appears that petitioner paid the aforesaid amount to the railway authority. It then appears that learned court below convicted the applicant and sentenced him to undergo R.I. for Six months, because one of the co-accused, who faced the trial, has been sentenced to undergo R.I. for two years. Against the said order, present application filed.

It is submitted by Sri A. K. Chaturvedi, learned counsel for the petitioner that before sentencing the petitioner to undergo R.I. for Six months, learned court below had not considered as to whether petitioner is entitled to be released either under the provision of Probation of Offenders Act or under section 360 of the Cr.P.C. as provided under section 265(E) (a) and (b) of the Cr.P.C.

Learned Standing Counsel No.II after going through the impugned order has fairly submitted that while passing the impugned order, learned court below has not given any special reason, as to why he is not giving any benefit to the petitioner either under the provisions of Probation of Offenders Act or under section 360 of the Cr.P.C.

Having heard learned counsel for the parties, I have gone

through the records of the case.

From perusal of impugned order, I find that as per Section 265(E)(a) and (b) of the Cr.P.C., it is incumbent for the court below to consider, at the first instance, as to whether the accused who filed application for plea-bargaining can be released under the provisions of Probation of Offenders Act or under section 360 of the Cr.P.C.

It is worth mentioning that under the provisions of Probation of Offenders Act or under section 361 of the Cr.P.C., it is necessary for the trial court to give special reason if it does not want to give benefit of Probation of Offenders Act and/or section 360 of the Cr.P.C.

In the instant case, I find that learned Railway Judicial Magistrate had not considered the question as to whether petitioner is entitled to get benefit under the Probation of Offenders Act or Section 360 of the Cr.P.C.

Under the said circumstance, I find that the impugned order is illegal. Accordingly, I quash the last portion of order dated 02.08.2013 passed by Railway Judicial Magistrate by which petitioner was sentenced to undergo R.I. for Six months under section 3(a) of the R.P.(U.P.) Act.

It is submitted by Sri A.K.Chaturvedi, that petitioner has no criminal antecedent. Under the said circumstance, I direct learned Railway Judicial Magistrate to release the petitioner, forthwith, as per provisions of Probation of Offenders Act after taking bond(of his satisfaction) from the petitioner that he will not be indulged in such activities and keep peace for one year.

With the aforesaid observation and direction, this writ application is disposed of.

Let this order be communicated to the court below through FAX at the cost of the petitioner.

(**Prashant Kumar, J.**)