

# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 19<sup>th</sup> FEBRUARY, 2020

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**DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE  
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

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IA No.10 of 2019 and I.A. No.12 of 2019

arising out of

Crl.A. No.04 of 2016

**Appellant-State** : State of Sikkim

**versus**

**Applicant/Respondent** : Sashidhar Sharma

Applications under Sections 4 and 12 of the Probation of Offenders Act, 1958 read with Section 482 of the Code of Criminal Procedure, 1973 and under Section 4(2) and (3) of the Probation of Offenders Act, 1958

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**Appearance**

Dr. (Ms.) Doma T. Bhutia, Public Prosecutor with Mr. Sujan Sunwar, Mr. Hissey Gyaltzen and Ms. Mukun Dolma Tamang, Assistant Public Prosecutor for the Appellant-State.

Mr. B. Sharma, Senior Advocate with Ms. Gita Bista, Advocate for the Applicant/Respondent-Accused.

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## O R D E R (ORAL)

Meenakshi Madan Rai, J.

**1.** By filing these applications being I.A. No.10 of 2019 and I.A. No.12 of 2019, the Applicant/Respondent-Accused (hereinafter, the Respondent) prays that he be released on probation under Sections 4 and 12 of the Probation of Offenders Act, 1958 read with Section 482 of the Code of Criminal Procedure, 1973. It is submitted by Learned Senior Counsel that the Respondent is of good character and good conduct. Besides, he is aged about 60 years and retired as the Headmaster of a Government Primary School.

During his service he was felicitated by the Sikkim Teachers Association in the year 2007 and received two commendation Certificates from the Government of Sikkim and the Limboo Cultural society respectively. These documents adequately establish the good antecedents of the Respondent. He is also suffering from various ailments and considering that the penalty is imposed under Section 354A of the Indian Penal Code, 1860 (hereinafter, IPC), he be released on probation. That, the Respondent has infact already undergone imprisonment of approximately one year and five months during the trial. Learned Senior Counsel for the Respondent fortifies his submissions with the ratio in ***Soney Lal Pasi vs. State of U.P.***<sup>1</sup>, ***Mukesh @ Munno Mansukhbhai Handa vs. State of Gujarat***<sup>2</sup> and ***State of Rajasthan vs. Shyam Lal***<sup>3</sup> where the accused person in each of the cases *supra* were released on probation having been convicted under Section 354 of the IPC. It was urged that as the conviction handed out to the Respondent herein is also under Section 354A of the IPC and is by and large an extension of the offence under Section 354 of the IPC. Hence, the same consideration be meted out to him.

**2.** Objecting to the prayer of the Respondent, the Learned Public Prosecutor submits that the Respondent has made no grounds to establish that he satisfies the ingredients of Section 4 of the Probation of Offenders Act inasmuch as the character of the offender has already been established by the conviction handed out to him in the Judgment of this Court dated 30-09-2019 in Crl.A. No.04 of 2016. Placing reliance on the decision of ***Ajahar Ali vs. State of West***

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<sup>1</sup> Criminal Revision No.2820 of 2003 of the Allahabad High Court

<sup>2</sup> Criminal Appeal No.1245 of 2016 of the Gujarat High Court

<sup>3</sup> Criminal appeal No.49 of 2017 of the Rajasthan High Court

**Bengal**<sup>4</sup> it was contended that the offence committed therein was one under Section 354 of the IPC, the Supreme Court held that it was a heinous crime and the modesty of the woman has to be strongly guarded and refused to grant the relief under Section 4 of the Probation of Offenders Act. Reliance was also placed on the decision of the Hon'ble Delhi High Court in **Ajay Tiwari vs. University of Delhi and Others**<sup>5</sup>.

**3.** We have heard at length and considered the rival submissions of Learned Counsel for the parties.

**4.** In the first instance it may be pointed out that the Respondent was convicted of the offence under Section 354A of the IPC for sexual harassment of the victim. He was sentenced for a term of three years with fine of Rs.25,000/- (Rupees twenty five thousand) only, with default clause of imprisonment. From the submissions of Learned Senior Counsel for the Respondent it is clear that no grounds were made by him to establish the good character of the offender or that consideration ought to be taken of the nature of the offence. It is clear that the Respondent had used criminal force upon the victim which by no stretch of the imagination can it be stated to be decent behaviour. As pointed out by Learned Public Prosecutor in the decision of **Ajay Tiwari (supra)** it has been held that the teacher should be more like a "*loco parentis*" and that is the duty, responsibility and charge expected of a teacher. Here the victim a student was subjected to unwelcome sexual advances of the Respondent her teacher. The documents relied on by the Respondent are of no assistance to him. In **Ajahar Ali (supra)** the

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<sup>4</sup> (2013) 10 SCC 31

<sup>5</sup> WP(C) No.1288 of 2012 of the Delhi High Court

Supreme Court had held that provisions of Section 354 of the IPC have been enacted to safeguard public morality and decent behaviour. Therefore, if any person uses criminal force upon any woman with the intention or knowledge that the woman's modesty will be outraged he is to be punished. In ***State of Rajasthan vs. Sri Chand***<sup>6</sup> it was held as under:

**"12.** In the present case the accused is not a minor, rather he has committed an offence against a minor girl who is helpless. Further, it is clear from the evidence on record that he ran away only when the prosecutrix screamed and PW 3 came to the place of incident, which goes on to show that the accused could have had worse intentions. The offence is heinous in nature and there is no reason for granting benefit of probation in this case. The trial court has not given any special consideration to the character of the accused apart from the fact that this was the first conviction of the accused. We find this is far from sufficient to grant probation in an offence like outraging the modesty of a woman."

It is clear that offences of sexual harassment to a woman is not to be taken lightly. Such offences are heinous in nature and have to be dealt with sternly.

**5.** In view of the entirety of the facts and circumstances placed before us and considering the conviction handed out to the Respondent, we are not inclined to consider the prayer of the Respondent which accordingly stands rejected.

**6.** IA Nos. 10 of 2019 and 12 of 2019 stand disposed of accordingly.

**( Bhaskar Raj Pradhan )**  
**Judge**  
19-02-2020

**( Meenakshi Madan Rai )**  
**Judge**  
19-02-2020

Approved for reporting : Yes

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<sup>6</sup> (2015) 11 SCC 229