

DALJIT SINGH AND ORS.

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v.

STATE OF PUNJAB THROUGH SECRETARY HOME AFFAIRS

JULY 27, 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

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Code of Criminal Procedure, 1973/Probation of Offenders Act, 1958:

ss. 360 and 361/s.4—Applicability of—Held, Legislature in its wisdom has obliged the Court u/s 361 of the Code to apply one of the two beneficial provisions i.e. s.360 of the Code or provisions of the Probation Act—It is only by providing special reasons that their applicability can be withheld by the Court—However, where provisions of Probation Act are applicable, s.360 of the Code is not to be applied—Enforcement of Probation Act, in some particular area excludes applicability of provisions of ss. 360 and 361 of the Code—Comparative analysis of provisions of Probation Act and s.360 of the Code made—Since High Court has not considered the issue relating to applicability of these provisions, matter remitted to it for consideration of this issue—General Clauses Act, 1897—s.8(1)—Penal Code, 1860—ss. 324/34 and 323/34.

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Six persons including the four appellants were prosecuted on the allegation that they in furtherance of common object of the unlawful assembly, attempted a murderous assault on PW-3 and caused injuries on PW-4. The trial court acquitted two of them of all charges and convicted the appellants under ss. 307/34, 324/34 and 323/34 IPC. On appeal, the High Court acquitted them of the charge u/s 307/34, but maintained the conviction and sentence of one year's imprisonment for offence u/s 324/34 IPC. It also upheld the conviction of the appellants u/s 323/34 IPC.

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In the present appeals, counsel for the appellants confined his arguments only to non-consideration by High Court of applicability of provisions of s.4 of Probation of Offenders Act, 1958 and s.360 of the Code of Criminal Procedure, 1973.

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Allowing the appeal and remitting the matter to the High Court, the

A Court

HELD: 1. The legislature in its wisdom has obliged the Court under Section 361 of the Code of Criminal Procedure, 1973 to apply one of the two beneficial provisions; be it Section 360 of the Code or the provisions of the Probation of Offenders Act, 1958. It is only by providing special reasons that their applicability can be withheld by the Court. [118-A-B]

2.1. Where the provisions of the Prohibition Act are applicable the employment of Section 360 of the Code is not to be made, otherwise it would be an illegality resulting in highly undesirable consequences, which the legislature, who gave birth to the Probation Act and the Code, wanted to obviate. Enforcement of Probation Act in some particular area excludes the applicability of the provisions of Section 360 and 361 of the Code, in that area. Two statutes with significant differences could not be intended to co-exist at the same time in the same area. [118-A; E-G]

2.2. The intention to retain the provisions of Section 360 of the Code and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code. Therefore, by virtue of Section 8(1) of the General Clauses Act 1897, where the provisions of the Probation Act have been brought into force, the provisions of Section 360 of the Code are wholly inapplicable. [118-F-G]

3. The High Court has not considered the issue relating to applicability of the provisions aforementioned. Therefore, the High Court would consider the application under the Probation Act or Section 360 of the Code, as the case may be, so far as the appellants are concerned and pass appropriate order within three months from the receipt of this order. [119-A]

CRIMINAL APPEALLAT JURISDICTION : Criminal Appeal No. 797 of 2006.

G From the Judgment dated 26.10.2005 of the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 24-B of 1993.

R.K. Talwar and S.L. Aneja for the Appellants.

H Manu Mridul, Varinder Kumar Sharma and Arun K. Sinha for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Punjab and Haryana High Court. The appellants had filed Criminal Appeal No. 24-SB of 1993 questioning the correctness of the judgment of learned Additional Judge, Amritsar sentencing each of the accused to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- each with default stipulation for alleged commission of offence punishable under Section 307 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). They were also convicted in terms of Section 324 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for one year each. Further each was convicted for offence punishable under Section 323 read with Section 34 IPC. The accusation which led to the trial of the accused person was that in furtherance of the common object of an unlawful assembly there was a murderous assault on Bhajan Singh (PW3) and for causing injuries on Malkha Singh (PW4). They were originally six accused persons and two of them namely Dilbagh Singh and Jaswant Singh were acquitted by the trial court.

The High Court after analyzing the evidence and the conclusions of the trial court held that the appellants were rightly convicted for offences punishable under Section 324 read with Section 34 IPC and Section 323 read with Section 34 IPC. However, it was held that the accusations for commission of offence punishable under Section 307 read with Section 34 IPC were not established. The sentences in respect of offences punishable under Section 324 read with Section 34 and Section 323 read with Section 34 IPC were upheld.

In support of the appeal learned counsel for the appellants submitted that though there are sufficient reasons to challenge the judgment on merits yet they are restricting the challenge to non-consideration of the applicability of provisions contained in Section 4 of the Probation of Offenders Act, 1958 (in short the 'Probation Act') and Section 360 of the Code of Criminal Procedure Code, 1973 (in short the 'Code').

Per contra learned counsel for the respondent-State submitted that looking at the gravity of the offence, it was not necessary for the High Court to consider the benevolent provisions contained in the Probation Act and/or Section 360 of the Code.

- A Where the provisions of the Probation Act are applicable the employment of Section 360 of the Code is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, who gave birth to the Probation Act and the Code wanted to obviate. Yet the legislature in its wisdom has obliged the Court under Section 361 of the Code to apply one of the other beneficial provisions; be it Section 360 of the Code or the provisions of the Probation Act. It is only by providing special reasons that their applicability can be withheld by the Court. The comparative elevation of the provisions of the Probation Act are further noticed in sub-section (10) of Section 360 of the Code which makes it clear that nothing in the said Section shall affect the provisions of the Probation Act. Those provisions have a paramountcy of their own in the respective areas where they are applicable.
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- Section 360 of the Code relates only to persons not under 21 years of age convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less, to any person under 21 years of age or any woman convicted of an offence not punishable with sentence of death or imprisonment for life. The scope of Section 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Section 360 of the Code does not provide for any role for Probation Officers in assisting the Courts in relation to supervision and other matters while Probation Act does make such a provision. While Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the Probation Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain parallel provision. Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 of the Code and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of Section 360 of the Code are wholly inapplicable.
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Enforcement of Probation Act in some particular area excludes the applicability of the provisions of Sections 360 and 361 of the Code in that area.

The High Court has not considered the issue relating to applicability of the provisions aforementioned. Therefore, we direct the High Court to consider the application under the Probation Act or Section 360 of the Code, as the case may be, so far as the appellants are concerned and pass appropriate order within three months from the receipt of this order. We make it clear that we have not expressed any opinion in that regard.

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The appeal is allowed.

R.P.

Appeal allowed.