MOHD. HASHIM

v.

STATE OF UP & ORS.

(Criminal Appeal No. 1218 of 2016)

NOVEMBER 28, 2016

[DIPAK MISRA AND AMITAVA ROY, JJ.]

Probation of Offenders Act, 1958 – s.4 – Powers of Court to release certain offenders on probation of good conduct – Extension of such benefit, only when offences under which conviction is done does not prescribe for minimum sentence – Held: Minimum sentence means a sentence which must be imposed without leaving any discretion to the court – However, if the legislation prescribes a minimum sentence but grants discretion, the Courts, for reasons to be recorded in writing, may award a lower sentence or not award a sentence of imprisonment – A provision that gives discretion to the Court not to award minimum sentence cannot be equated with a provision which prescribes minimum sentence – On facts, offences under which respondents were convicted do not prescribe minimum sentence, hence, the provisions of the PO Act would apply – However, before exercising power u/s. 4 of the PO Act, the Court has to keep in view the nature of offence and the conditions incorporated therein – Matter accordingly remitted to the appellate court (Sessions Judge) for disposal in accordance with law – Dowry Prohibition Act, 1961 – s.4 – Penal Code, 1860 – ss. 323 and 498-A.

Allowing the appeal, the Court

HELD: 1.1 The respondents were convicted under Sections 323 and 498-A, IPC and under Section 4 the Dowry Prohibition Act, 1961. On a plain reading of Section 323 and 498-A, IPC, it is quite clear that there is no prescription of minimum sentence. Further, the contention raised by the appellant with reference to Section 4 of the 1961 Act that the legislature has stipulated for imposition of sentence of imprisonment for a term which shall not be less than six months and the proviso only states that sentence can be reduced for a term of less than six months and, therefore, it has to be construed as minimum sentence, cannot be accepted. [Paras 2, 18 and 19][956-A; 963-D, G-H]

A **2. When the legislature has prescribed minimum sentence without discretion, the same cannot be reduced by the Courts. In such cases, imposition of minimum sentence, be it imprisonment or fine, is mandatory and leaves no discretion to the court. However, sometimes the legislation prescribes a minimum sentence but grants discretion and the courts, for reasons to be recorded in writing, may award a lower sentence or not award a sentence of imprisonment. Such discretion includes the discretion not to send the accused to prison. Minimum sentence means a sentence which must be imposed without leaving any discretion to the court. It means a quantum of punishment which cannot be reduced below the period fixed. If the sentence can be reduced to nil, then the statute does not prescribe a minimum sentence. A provision that gives discretion to the court not to award minimum sentence cannot be equated with a provision which prescribes minimum sentence. The two provisions, therefore, are not identical and have different implications, which should be recognized and accepted for the Prohibition of Offenders Act, 1958 Act. When there is no minimum sentence, the provisions of the PO Act would apply [Para 19][964-A-D]**

3.1 However, the Court before exercising the power under Section 4 of the PO Act has to keep in view the nature of offence and the conditions incorporated under Section 4 of the PO Act. [Para 23][965-G]

3.2 In the present case, the appellate court (Sessions Judge) has exercised the jurisdiction in a perfunctory manner. The matter is remitted to the appellate court for disposal in accordance with law. The court has to be guided by the provisions of the PO Act and the precedents of this Court. It will be open for the respondents-convicts to raise all points before the appellate court on merits including seeking release under the PO Act. [Paras 24, 25 and 26][967-B-D]

Shyam Lal Verma v. Central Bureau of Investigation **(2014) 15 SCC 340 : 2013 (1) SCR 398;** *State Through SP, New Delhi v. Ratan Lal Arora* **(2004) 4 SCC 590 : 2004 (1) Suppl. SCR 631;** *Arvind Mohan Sinha v.*

Amulya Kumar Biswas **(1974) 4 SCC 222 : 1974 (3) SCR 133;** *Rattan Lal v. State of Punjab* **AIR 1965 SC 444 : 1964 SCR 676 – relied on.**

Superintendent, Central Excise, Bangalore v. Bahubali **(1979) 2 SCC 279 – explained.**

State represented by Inspector of Police, Pudukottai, T.N. v. A. Parthiban **(2006) 11 SCC 473 : 2006 (7) Suppl. SCR 35;** *Ram Prakash v. State of Himachal Pradesh* **AIR 1973 SC 780;** *Dalbir Singh v. State of Haryana and others* **AIR 2000 SC 1677 : 2000 (3) SCR 1000 – referred to.**

Case Law Reference

2013 (1) SCR 398	**relied on**	**Para 11**
2004 (1) Suppl. SCR 631	**relied on**	**Paras 16, 19**
2006 (7) Suppl. SCR 35	**referred to**	**Para 17**
(1979) 2 SCC 279	**explained**	**Para 12**
1974 (3) SCR 133	**relied on**	**Para 19**
1964 SCR 676	**relied on**	**Para 20**
AIR 1973 SC 780	**referred to**	**Para 21**
2000 (3) SCR 1000	**referred to**	**Para 23**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1218 of 2016.

From the Judgment and Order dated 09.05.2014 of the High Court of Judicature at Allahabad, Lucknow Bench in Criminal Revision Petition No. 252 of 2013.

Amit Anand Tiwari, Ashutosh Jha, Kushagra Pandey, Abhinav Raghuvanshi, Vinayak Gupta, Advs. for the Appellant.

Ranjit Kumar, SG, Ms. Pinky Anand, ASG., Ms. Swarupama Chaturvedi (For G. S. Makker), Ms. Pragati Neekhra, Utkarsh Sharma, Ms. Rashmi Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

A **DIPAK MISRA, J.** 1. Leave granted.

2. Respondent Nos. 2 to 10 were prosecuted for the offences punishable under Sections 498-A and 323 of the Indian Penal Code (IPC) and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (for short, 'the 1961 Act'). The respondent Nos.2 and 3 were convicted under Section B 498-A IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- (Rupees one thousand only) each with the default clause. The other accused, i.e., respondent nos.4 to 10 were convicted for the offence punishable under Section 498-A of the IPC and sentenced to undergo simple imprisonment of six months and pay a fine of Rs.1,000/- (Rupees one thousand only) each with the default C clause. All the accused persons were convicted under Section 323 of the IPC and Section 4 of the 1961 Act and sentenced to undergo rigorous imprisonment for six months on the first count and for a period of one year on the second score. They were also sentenced to pay fine with the stipulation of the default clause.

D 3. The respondents challenged the judgment of conviction and order of sentence before the learned Sessions Judge, Unnao, U.P. in Criminal Appeal No.55 of 2013 who, in course of hearing, taking note of the fact that the counsel appearing for the appellants had abandoned the challenge pertaining to the conviction but only confined the argument seeking benefit under Section 4 of the Probation of Offenders Act, 1958 E (for short, 'the PO Act'), extended the benefit as prayed for.

4. Being grieved by the aforesaid judgment of the learned appellate Judge, the informant preferred Criminal Revision No.252 of 2013 before the High Court. In its assail, the counsel for the informant placed reliance on ***Shyam Lal Verma*** **vs.** ***Central Bureau of Investigation***[1], ***State*** F ***Through SP, New Delhi vs. Ratan Lal Arora***[2], and ***State represented by Inspector of Police, Pudukottai, T.N. vs. A. Parthiban***[3] to buttress the submission that the benefit under Section 4 of the PO Act could not have been extended to the convicts regard being had to the nature of the offences and the punishment provided for the same. The High Court repelling the argument concurred with the opinion expressed by the G learned Sessions Judge.

5. We have heard Mr. Ashutosh Jha, learned counsel for the appellant, Ms. Pragati Neekhra, learned counsel for the State and Ms. Rashmi Singh, learned counsel for the respondents. As the controversy

[1] (2014) 15 SCC 340

[2] (2004) 4 SCC 590

H [3] (2006) 11 SCC 473

related to the Probation of Offenders Act, we have also heard Mr. Ranjit Kumar, learned Solicitor General of India and Ms. Pinky Anand, learned Additional Solicitor General for the Union of India.

6. There is no dispute over the fact that the respondents were convicted as has been stated earlier. The question is whether the approach of the learned appellate Judge which have been concurred by the High Court is legally sustainable.

7. In this context, it is pertinent to appreciate the scheme of the PO Act. Section 3 of the PO Act confers power on the Court to release certain offenders after admonition. The said provision reads as follows:-

> **"3. Power of court to release certain offenders after admonition.**—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition."

8. Section 4 of the PO Act deals with the power of Court to release certain offenders on probation on good conduct. The said provision is as under:-

> **"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. A

9. Section 6 of the PO Act stipulates restrictions on imprisonment of offenders under twenty-one years of age. It is as under:-

> **"6. Restrictions on imprisonment of offenders under twenty-one years of age.**— (1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so. B C D
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> (2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1) the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender." E

We may note here that the appellate court has exercised the power under Section 4 of the PO Act.

10. It is submitted by the learned counsel for the appellant that as the respondents were convicted under Section 498-A of IPC and Section 4 of the 1961 Act, the respondents could not have been conferred the benefit of probation on good conduct, for Section 4 of the 1961 Act prescribes a minimum sentence. Additionally, it is also canvassed by him that even if the said provision is applicable, the Court has not considered the nature of offences and other requisite aspects to extend the benefit under the said provision. F G

11. We shall deal with the first aspect, that is, whether Section 4 of the 1961 Act prescribes a minimum sentence, first. In ***Shyam Lal Verma*** (supra), a two-Judge Bench, after referring to ***Ratan Lal Arora*** (supra), has held thus:- H

A "It is not in dispute that the issue raised in this appeal has been considered by this Court in *State Through SP, New Delhi Versus Ratan lal Arora* (supra) wherein in similar circumstances, this Court held that since Section 7 as well as Section 13 of the Prevention of Corruption Act provide for a minimum sentence of six months and one year respectively in addition to the maximum sentences as well as imposition of fine, in such circumstances claim for granting relief under the Probation of Offenders Act is not permissible. In other words, in cases where a specific provision prescribed a minimum sentence, the provisions of the Probation Act cannot be invoked. Similar view has been expressed in *State Represented by Inspector of Police, Pudukottai, T.N. Vs. A. Parthiban* (supra)."

[Emphasis added]

12. In this regard, the learned counsel appearing for the Union of India has commended us to a three-Judge Bench Decision in ***Superintendent, Central Excise, Bangalore vs. Bahubali***[4] wherein the Court was dealing with the case where the respondent was convicted by the High Court under Rule 126-P(2)(ii) of the Defence of India Rules which prescribes a minimum sentence of six months. Be it stated, the High Court had reversed the judgment of acquittal to one of conviction but directed that the respondent therein be released on probation of good conduct under Sections 3, 4 and 6 of the PO Act. Dealing with the applicability of the PO Act, the Court scanned the anatomy of the Defence of India Rules and the provisions of the PO Act and opined thus:-

"... It would also be seen that Section 6 of the Probation of Offenders Act, 1958 puts a restriction on the power of the court to award imprisonment by enjoining on it not to sentence an offender to imprisonment if he is under 21 years of age and has committed an offence punishable with imprisonment but not with imprisonment for life except where it is satisfied that having regard to the circumstances of the case including the nature of the offence and character of the offender it would not be desirable to deal with him under Sections 3 and 4 of the Probation of Offenders Act, 1958. The incompatibility between Sections 3, 4 and 6 of

[4] (1979) 2 SCC 279

the Probation of Offenders Act, 1958 and Rule 126-P(2)(*ii*) of the DI Rules is, therefore, patent and does not require an elaborate discussion. The view that the aforesaid provisions of the Probation of Offenders Act, 1958 are inconsistent with the provisions of the DI Rules which cast an obligation on the court to impose a minimum sentence of imprisonment and fine is reinforced by Section 18 of the Probation of Offenders Act, 1958 which saves the provisions of (1) Section 31 of the Reformatory School Act, 1897 (Act 8 of 1897), (2) sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 (Act 2 of 1947), (3) the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act 104 of 1956) and (4) of any law in force in any State relating to juvenile offenders or borstal schools, which prescribe a minimum sentence."

After so stating, the Court further proceeded to state that:-

"The provisions of the Probation of Offenders Act, 1958, being, therefore, obviously inconsistent with Rule 126-P(2)(*ii*) of the DI Rules under which the minimum penalty of six months' imprisonment and fine has to be imposed, the former have to yield place to the latter in view of Section 43 of the Defence of India Act, 1962 which is later than the Probation of Offenders Act, 1958 and embodies a non obstante clause clearly overriding the provisions of the enactments which contain inconsistent provisions including those of the Probation of Offenders Act to the extent of inconsistency. The result is that the provisions of rules made and issued under the Defence of India Act prescribing minimum punishment which are manifestly inconsistent with the aforesaid provisions of the Probation of Offenders Act are put on par with the provisions of the enactments specified therein so as to exclude them from applicability of the Probation of Offenders Act."

13. It is profitable to state here that the Court referred to the decision in ***Arvind Mohan Sinha vs. Amulya Kumar Biswas***[5] wherein it has been held thus:-

"The broad principle that punishment must be proportioned

[5] (1974) 4 SCC 222

A to the offence is or ought to be of universal application save where the statute bars the exercise of judicial discretion either in awarding punishment or in releasing an offender on probation in lieu of sentencing him forthwith."

14. At this juncture, we must state with promptitude that the three-B Judge Bench in ***Bahubali*** (supra) opined that the applicability of the PO Act as has been held in ***Arvind Mohan Sinha*** (supra) could not be taken aid of inasmuch as attention of the Court was not seemed to have been invited in the said case to Section 43 of the Defence of India Act, 1962 which contains a *non obstante* clause.

C 15. The three-Judge Bench while adverting to the concept of "minimum sentence", relied on the observations made in ***Bahubali*** (supra) which we have reproduced hereinabove, and opined that:-

"The above observations also clearly show that where there is a statute which bars the exercise of judicial discretion in D the matter of award of sentence, the Probation of Offenders Act will have no application or relevance. As Rule 126-P(2)(*ii*) of the DI Rules manifestly bars the exercise of judicial discretion in awarding punishment or in releasing an offender on probation in lieu of sentencing him by laying down a minimum sentence of imprisonment, it has to prevail E over the aforesaid provisions of the Probation of Offenders Act, 1958 in view of Section 43 of the Defence of India Act, 1962 which is later than the Probation of Offenders Act and has an overriding effect."

16. In ***Ratan Lal Arora*** (supra) the learned single Judge of the F Delhi High Court while upholding conviction of the accused under the Prevention of Corruption Act, 1988 further held him to be entitled to the benefits of Section 360 of the Code of Criminal Procedure. The Court adverted to Section 7 and Section 13 of the Prevention of Corruption Act which provide for minimum sentence of six months and one year G respectively in addition to the maximum sentence as well as imposition of fine. Reference was made to Section 28 that stipulates that the provisions of the Act shall be in addition to and not in derogation of any other law for the time being in force. Reliance was placed on the decision in ***Bahubali*** (supra) while interpreting the said provision and relying on the authority in ***Bahubali*** (supra) the Court ruled that Section 28 of the

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Prevention of Corruption Act had a tenor of Section 43 of the Defence of India Act. In that context, it observed:- A

> "Unlike the provisions contained in Section 5(2) proviso of the old Act providing for imposition of a sentence lesser than the minimum sentence of one year therein for any "special reasons" to be recorded in writing, the Act did not carry any such power to enable the court concerned to show any leniency below the minimum sentence stipulated. Consequently, the learned Single Judge in the High Court committed a grave error of law in extending the benefit of probation even under the Code." B C

17. The said principle has been reiterated in ***State represented by Inspector of Police, Pudukottai, T.N. vs. A. Parthiban***[6].

18. The issue that arises for consideration is whether minimum sentence is provided for offences under which the respondents have been convicted. On a plain reading of Section 323 and 498-A, it is quite clear that there is no prescription of minimum sentence. Learned counsel for the appellant would contend that Section 4 of the 1961 Act provides for minimum punishment. To appreciate the said contention, the provision is reproduced below:- D

> "**4. Penalty for demanding dowry.**—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees: E F
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> Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

19. Learned counsel would submit that the legislature has stipulated for imposition of sentence of imprisonment for a term which shall not be less than six months and the proviso only states that sentence can be reduced for a term of less than six months and, therefore, it has to be construed as minimum sentence. The said submission does not impress G

[6] (2006) 11 SC 473 H

A us in view of the authorities in ***Arvind Mohan Sinha*** (supra) and ***Ratan Lal Arora*** (supra). We may further elaborate that when the legislature has prescribed minimum sentence without discretion, the same cannot be reduced by the Courts. In such cases, imposition of minimum sentence, be it imprisonment or fine, is mandatory and leaves no discretion to the
B court. However, sometimes the legislation prescribes a minimum sentence but grants discretion and the courts, for reasons to be recorded in writing, may award a lower sentence or not award a sentence of imprisonment. Such discretion includes the discretion not to send the accused to prison. Minimum sentence means a sentence which must be imposed without leaving any discretion to the court. It means a quantum
C of punishment which cannot be reduced below the period fixed. If the sentence can be reduced to nil, then the statute does not prescribe a minimum sentence. A provision that gives discretion to the court not to award minimum sentence cannot be equated with a provision which prescribes minimum sentence. The two provisions, therefore, are not
D identical and have different implications, which should be recognized and accepted for the PO Act.

20. Presently, we shall advert to the second plank of the submission advanced by the learned counsel for the appellant. In ***Rattan Lal vs. State of Punjab***[7]. Subba Rao, J., speaking for the majority, opined thus:-

E "The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and
F offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after
G admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that having regard to the

[7] AIR 1965 SC 444

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circumstances of the case; including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act." A

We have reproduced the aforesaid passage to understand the philosophy behind the Act.

21. In this regard, it is also seemly to refer to other authorities to highlight how the discretion vested in a court under the PO Act is to be exercised. In ***Ram Prakash vs. State of Himachal Pradesh***[8], while dealing with Section 4 of the PO Act in the context of the Prevention of Food Adulteration Act, 1954, the Court opined that the word 'may' used in Section 4 of the PO Act does not mean 'must'. On the contrary, as has been held in the said authority, it has been made clear in categorical terms that the provisions of the PO Act distinguishes offenders below 21 years of age and those above that age and offenders who are guilty of committing an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. Thereafter, the Court has proceeded to observe:- B C D

"While in the case of offenders who are above the age of 21 years, absolute discretion is given to the Court to release them after admonition or on probation of good conduct in the case of offenders below the age of 21 years, an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act. (*Ratan Lal vs. State of Punjab* (supra) and *Ramji Missir vs. the State of Bihar* (AIR 1963 SC 1088)." E F

22. Be it noted, in the said case, keeping in view the offence under the Prevention of Food Adulteration Act, 1954, the Court declined to confer the benefit under Section 4 of the PO Act.

23. We have referred to the aforesaid authority to stress the point that the Court before exercising the power under Section 4 of the PO Act has to keep in view the nature of offence and the conditions incorporated under Section 4 of the PO Act. Be it stated in ***Dalbir Singh*** G

[8] AIR 1973 SC 780

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A ***vs. State of Haryana and others***[9] it has been held that Parliament has made it clear that only if the Court forms the opinion that it is expedient to release the convict on probation for the good conduct regard being had to the circumstances of the case and one of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence". The Court has further opined that though the discretion as been vested in the court to decide when and how the court should form such opinion, yet the provision itself provides sufficient indication that releasing the convicted person on probation of good conduct must appear to the Court to be expedient. Explaining the word "expedient", the Court held thus:-

> "9. The word "expedient" had been thoughtfully employed by Parliament in the section so as to mean it as "apt and suitable to the end in view". In *Black's Law Dictionary* the word expedient is defined as "suitable and appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In *State of Gujarat* v. *Jamnadas G. Pabri*[10] a three-Judge Bench of this Court has considered the word "expedient". Learned Judges have observed in para 21 thus:
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> > "Again, the word 'expedient' used in this provisions, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view', 'practical and efficient'; 'politic'; 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right' (see *Webster's New International Dictionary*)."
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> 10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence...". This means Section 4 can be resorted to when the court considers the

[9] AIR 2000 SC 1677

[10] AIR 1974 SC 2233

circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct." A

24. We have highlighted these aspects for the guidance of the appellate court as it has exercised the jurisdiction in a perfunctory manner and we are obligated to say that the High Court should have been well advised to rectify the error. B

25. At this juncture, learned counsel for the respondents would submit that no arguments on merits were advanced before the appellate court except seeking release under the Po Act. We have made it clear that there is no minimum sentence, and hence, the provisions of the PO Act would apply. We have also opined that the court has to be guided by the provisions of the PO Act and the precedents of this Court. Regard being had to the facts and circumstances in entirety, we are also inclined to accept the submission of the learned counsel for the respondents that it will be open for them to raise all points before the appellate court on merits including seeking release under the PO Act. C D

26. Resultantly, the appeal is allowed, the judgment and order passed by the High Court and the appellate court are set aside and the matter is remitted to the appellate court for disposal in accordance with law. E

Divya Pandey Appeal allowed.