

CASE NO.:
Appeal (crl.) 721 of 2006

PETITIONER:
Chhanni

RESPONDENT:
The State of Uttar Pradesh

DATE OF JUDGMENT: 06/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No. 2700 of 2006)

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the order passed by a learned Single Judge of the Allahabad High Court, Lucknow Bench, Lucknow by which three appeals were disposed of rejecting the prayer made for modification of the judgment. Criminal Appeal No.492 of 1981 was filed by the State of U.P. against the present appellant who had filed Criminal Appeal No.276 of 1981. Criminal Appeal No.541 of 1983 was filed by the State of U.P. against four other persons who had faced trial before the learned II Additional Sessions Judge, Unnao who directed acquittal of Mohan Lal, Bhagwati, Girish and Vinod Kumar who were respondents in Criminal Appeal No.541 of 1983 before the High Court. Appellant Chhanni was convicted for the offences punishable under Sections 304 Part II, 323/149 and 147 of the Indian Penal Code, 1860 (in short the 'IPC'). He was sentenced to five years RI on the first count and six months RI and fine of Rs.250/- on the second count and one year RI on the third count. The High Court dismissed the appeal filed by the State against the acquittal of Mohan Lal and three others and the appeal for enhancement of sentences. So far as the appeal filed by present appellant is concerned, same was partly allowed. His conviction under Section 304 Part II IPC and the sentence thereunder was set aside, but he was convicted under Section 323 IPC and sentenced to undergo one year RI. His conviction under Section 323 read with Section 149 IPC for causing simple hurt to Raja Ram was altered to one under Section 323 IPC but the sentence was maintained for such conviction. His conviction under Section 147 IPC was set aside.

An application was filed by the appellant before the High Court which was numbered as Criminal Miscellaneous Application No.469 of 2006 for modification of the judgment and order dated 25.8.2004. Prayer was that he should be directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 (in short the 'Probation Act') or in the alternative under Section 360 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The High Court noted that there was no provision for permitting modification of an order and in fact the plea which was pressed into service was not urged before the High Court when the Criminal Appeal

was heard. Accordingly the application was rejected.

Learned counsel for the appellant submitted that when the matter was called before the High Court, the appellant's counsel was not present. But considering the fact that the appeal was pending for more than a decade, the High Court heard the learned counsel for the State and passed a judgment the modification of which was sought for. Because of genuine difficulties the appellant's counsel could not be present. In any event the High Court had set aside the conviction in terms of Section 304 Part II IPC.

There is no appearance on behalf of the State of U.P. in spite of notice.

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.

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.

Enforcement of Probation Act in some particular area excludes the applicability of the provisions of Sections 360, 361 of the Code in that area.

The High Court is justified in its view that there is no

provision for modification of the judgment. But considering the peculiar circumstances 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 appellant is concerned and pass the appropriate order within three months from the receipt of this order. We make it clear that we have not expressed any opinion as regards the merits.

The appeal is allowed.

JUDIS