



Magnum Lex
Advocates & Consultants

NEWSLETTER

Issue IV, Dated: 26.01.2021

JUDGEMENTS

1. Lakhvir Singh Etc. vs The State Of Punjab

Benefit of probation under Probation of Offenders Act, 1958 is not excluded by the provisions of the mandatory minimum sentence prescribed for the offences under IPC – Supreme Court of India

The brief facts of the case are the Appellants were youngsters aged 20 and 19 years, when they fell foul of the law. In pursuance to the reporting of the crime by complainant, an FIR was registered under Section 382 and Section 307 read with Section 34 of Indian Penal Code, 1860 (IPC). Knife and dagger were recovered alongwith the taxi and the trial Court framed charges under Section 397 of IPC. Post trial, the Appellants was convicted by the trial Court vide judgment and sentenced to undergo Rigorous Imprisonment of 7 years each. The appeal preferred by the Appellants has been dismissed by the impugned judgment.

The Appellants approached this Court by a special leave petition. The compromise deed arrived at between the complainant and the appellants, in terms whereof the complainant has stated that, he did not want to pursue any action against the Appellants and has no objection to their release on bail or acquittal. The Appellants have already served about 50% of their sentence while in custody. Counsel for Respondent no.2 confirmed that, the dispute had been amicably resolved. However, counsel for Respondent no.1 submitted that the minimum sentence provided by the statute under Section 397 is 7 years and the same cannot be reduced

below that period. Learned counsel for the Appellants sought benefit under the Probation of Offenders Act, 1958.

Section 6 of the Act provides that, a Court “must not” sentence a person under the age of 21 years to imprisonment unless sufficient reasons for the same are recorded, based on due consideration of the probation officer’s report. The relevant aspects while giving benefit under Section 6 of the Act are: the nature of offence, the character of the offender, and the surrounding circumstances as recorded in the probation officer’s report.

The benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 of IPC, the offence in the present case. The facts of the present case are that, the Appellants have not served out the minimum sentence of 7 years though they have served about half the sentences. They were aged under 19 and 21 years of age as on the date of offence but not on the date of sentence. The redeeming feature in their case is that, the person who suffered, appears to have forgiven them, possibly with the passage of time. There is no adverse report against them about their conduct in jail otherwise the same would have been brought to our notice by learned counsel for the State. Present is a fit case that the benefit of probation can be extended to the Appellants under the said act in view of the provisions of Section 4 of the said Act on completion of half the sentence.

The Hon’ble Supreme Court held that “*Even though, Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as ‘the PC Act’) prescribes a minimum sentence of imprisonment for not less than 1 year, an exception was carved out keeping in mind the application of the Act. In Ishar Das (supra), this Court noted that if the object of the legislature was that the Act does not apply to all cases where a minimum sentence of imprisonment is prescribed, there was no reason to specifically provide an exception for Section 5(2) of the PC Act. The fact that Section 18 of the Act does not include any other*

such offences where a mandatory minimum sentence has been prescribed suggests that the Act may be invoked in such other offences. A more nuanced interpretation on this aspect was given in CCE vs. Bahubali. It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non-obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act.¹² It is in this context, it was observed in State of Madhya Pradesh vs. Vikram Das (Supra) that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. We are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 of IPC, the offence in the present case.”

The Hon’ble Supreme Court released the Appellants on probation of good conduct under Section 4 of the said Act on their completion of half the sentence and on their entering into a bond with two sureties each to ensure that they maintain peace and good behaviour for the remaining part of their sentence, failing which they can be called upon to serve that part of the sentence.

Link:

https://main.sci.gov.in/supremecourt/2020/22389/22389_2_020_38_1502_25477_Judgement_19-Jan-2021.pdf

NOTIFICATIONS

1. Reserve Bank of India imposes monetary penalty on Standard Chartered Bank – India – Reserve Bank of India (21.01.2021)

The Reserve Bank of India (RBI) has, by an order dated January 21, 2021, imposed a monetary penalty of ₹2 Crore

(Rupees Two Crore only) on Standard Chartered Bank–India (the bank) for non-compliance with certain directions issued by RBI contained in the “Reserve Bank of India (Frauds - Classification and Reporting by commercial banks and select FIs) Directions 2016”.

The penalty has been imposed in exercise of powers vested in RBI under the provisions of Section 47 A (1) (c) read with Section 46 (4) (i) of the Banking Regulation Act, 1949, for delays in reporting of frauds to RBI, revealed during the statutory inspection of the bank with reference to its financial position as on March 31, 2018 and March 31, 2019.

A notice was issued to the bank advising it to show cause as to why penalty should not be imposed on it for such non-compliance with the directions. After considering the bank’s reply to the notice and oral submissions made in the personal hearing, RBI concluded that the charge of non-compliance with aforesaid RBI directions was substantiated and warranted imposition of monetary penalty.

This action is based on the deficiencies in regulatory compliance and is not intended to pronounce upon the validity of any transaction or agreement entered into by the bank with its customers.

Link:

https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=51006

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Magnum Lex, Advocates & Consultants

Office No. 101, A-32, First Floor, Patparganj, Mayur Vihar-Phase 1, Near
Una Enclave, Delhi-110091

Email Id: info@magnumlex.com , magnumlex123@gmail.com

Website: www.magnumlex.com