

A

ABDUL QAYUM

v.

THE STATE OF BIHAR

November 15, 1971

B

[P. JAGANMOHAN REDDY AND D. G. PALEKAR, JJ.]*Probation of Offenders Act (20 of 1958), ss. 4 and 6—Application of Act—Courts to keep reformatory aspect in mind.*

C

The appellant, was convicted under s. 379 I.P.C. and sentenced to 6 months R.I.. He committed the theft along with another accused. At the time of the occurrence he was 16 years of age and at the time of conviction about 18 years. The Probation Officer recommended that he may be released on probation under s. 6 of the Probation of Offenders Act, 1958, but the trial court declined to do so on the ground that he was an associate of the other accused who was a hardened criminal. The order was confirmed in revision by the High Court.

Allowing the appeal to this Court,

D

HELD : The sentence should be set aside with the direction that the appellant be released under s. 4 of the Act on his entering into a bond, with his father as surety, to appear and receive sentence by the trial court whenever called upon to do so within a period of one year, and during that time, to keep peace and be of good behaviour. [385 C-D]

Section 4 empowers the trial court to release an offender on probation and under the Act the power can be exercised by an appellate court. [384 C-D]

E

In the present case, the report of the Probation Officer does not justify the conclusion that the appellant was an associate of the other accused, but on the contrary, the report was very favourable to him. The accused was neither a hardened criminal nor an associate of hardened criminals, and to sentence him to imprisonment would defeat the purpose of the Act to reform an offender and would achieve the object of associating him with hardened criminals. [384 E, H; 385 A-C]

F

Rattan Lal v. State of Punjab, A.I.R. 1965 S.C. 444, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 290 of 1968.

G

Appeal by special leave from the judgment and order dated August 8, 1968 of the Patna High Court in Criminal Revision No. 1583 of 1967.

S. N. Misra, K. K. Sinha, B. B. Sinha, S. S. Jauhar and *S. K. Sinha*, for the appellant.

D. Goburdhun, for the respondent.

H

The Judgment of the Court was delivered by **P. Jaganmohan Reddy, J.** This Appeal is by Special Leave against the Judgment of the Patna High Court exercising its Revisional jurisdiction by which the benefit of the provisions of the

Probation of Offenders Act, 1958 (Act No. 20 of 1958) (hereinafter called 'the Act') was denied to the Appellant Qayum. The Appellant was convicted under Sec. 379 of the Indian Penal Code and sentenced to rigorous imprisonment for six months. The prosecution case was that on the Vijaydashmi day in 1964, Jagdish Kumar Sinha alongwith his friends had gone to Mahalla Pathar Ki Masjid to see the procession. He had in the pocket of his pant a purse containing Rs. 56/- in currency notes. At about 1.30 a.m. when he got down from the Rikshaw and went to the pan shop to purchase pan and cigarette he discovered when he wanted to pay the price of the pan and cigarette that somebody had picked his pocket and his purse was gone. He raised a hue and cry and seeing that two boys were running, he and his friends chased them. They succeeded with the help of the members of the public in catching the Appellant who had immediately passed the money from the purse to his associate Shamim who however escaped. Both Shamim and the Appellant were convicted. It appears that before the Sub Divisional Magistrate a joint petition of the owner of the purse Jagdish Kumar Sinha and the Appellant for permission to compound the offence was filed under Sec. 345(2) of the Indian Penal Code, but it is said no order seems to have been passed on it and the Appellant was convicted as aforesaid. As we have not been able to ascertain the truth or otherwise of this fact we do not express any view thereon. There is no doubt that at the time of the alleged occurrence the Appellant was said to be only 16 years of age and at the time of his conviction he would be about 18 years of age. Before the sentence was passed on him it was prayed that under Sec. 6 of the Act he be released on probation and that no sentence should be passed against him. The Trial Court called for a Report from the Probation Officer in respect of both the Appellant and accused Shamim. The Probation Officer recommended that the Appellant should be given the benefit under the Act which recommendation however was rejected for reasons recorded by it and he was sentenced to six months rigorous imprisonment as aforesaid. The reasons given by the Trial Court for not giving the benefit to the Appellant are as under :—

"In spite of his recommendations I do not feel inclined to extend the benefit of the provisions of the Probation of Offenders Act to accused Qayum. Apparently he is an associate of accused Shamim who is a hardened criminal and a person of doubtful character. Incidents of pick-pocketing are very rampant in this subdivision and it was just a stray chance that accused Qayum was caught in this case. Having regard to these facts and the nature of offence and the circumstances in which

A accused Qayum was caught, he does not deserve the benefit of Section 4 of the Act”.

B The Appeal filed against the conviction and sentence however was dismissed and his prayer for giving him the benefit under the Act was also rejected. Thereafter he filed a Revision Petition against his conviction and sentence in the High Court of Patna where, as appears from the Judgment of that Court, the only point that was urged on behalf of the Appellant was that on the date when the revision came on for hearing the Appellant was below 20 years and the benefit of the provisions of the Act should have been given to him. The High Court after referring to the reasons given by the Trial Court said that the Probation Officer had not made any recommendations for granting benefit under the Act to the other accused Shamim, in as much as he was a hardened criminal and a habitual pick pocket and therefore rejected the Revision Petition as in its opinion the Trial Court was justified in not granting the benefit under the Act because of “the association of the petitioner with such a hardened criminal and a pick pocket. . . .”

D In our view neither the Trial Court, the Appellate Court, nor the High Court applied their mind to the requirement of the provision of the Act. As pointed out by this Court in *Rattan Lal v. The State of Punjab*⁽¹⁾, “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”. The provisions of the Act must therefore be viewed in the light of this laudable reformatory object which the legislature was seeking to achieve by enacting the legislation. The Act differentiated offenders below 21 years of age who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. It is only in the case of offenders who are below the age of 21 years and guilty of lesser offences than those punishable with death and life imprisonment that 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 Sec. 3 and Sec. 4. It is also provided in sub-sec. 2 of Sec. 6 that the Court shall for the purposes of satisfying itself whether it should give the offender the benefit referred to in sub-sec. (1), call for and consider a report from a Probation Officer along with any other information available to it relating to the character, physical and mental condition of the offender.

H It may be noted that Sec. 3 empowers the Court to release an offender after admonition where he has been found guilty of hav-

(1) A.I.R. 1965 (Vol. 52) S.C. 444.

ing committed an offence under Sections 379, 380, 381, 404, 420 or any offence punishable with imprisonment of not more than two years or fine or both either under the Indian Penal Code or under any other law and that there is no previous conviction proved against him; while Sec. 4 empowers it to release an offender on probation of good character where it considers it expedient to do so instead of sentencing him at once to any punishable. In *Rattan Lal's* case⁽¹⁾ a question had arisen as to whether Section 11(2) of the Act circumscribes the jurisdiction of an Appellate Court to make an order under the Act only in a case where the Trial Court could have made that order, and consequently in an appeal against an order of the High Court passed in exercise of its revisional jurisdiction, this Court could pass such an order. It was held that the phraseology used therein was wide enough to enable the Appellate Court or the High Court to make such an order and that it was purposely made comprehensive as the Act was made to implement a social reform, as such either it could do so itself or direct the High Court to do so. In either case the provisions of Sec. 6 of the Act have to be complied with.

In this case it is true that the Trial Court, the Appellate Court as well as the High Court did consider the question of giving the benefit to the Appellant under Sec. 6 but in our view they have completely misdirected themselves to the essential requirements of that provision. The Probation Officer's report nowhere indicates that the accused is 'an associate of accused Shamim'. The High Court thought apparently he is an associate of Shamim. Even if Shamim was a hardened criminal as it appears from the Probation Officer's report dealing with that accused there was no warrant for inferring that the Appellant was his associate. A reference to the report of the Probation Officer dated 7-8-65 would show that the accused was approximately 18 years of age and was physically and mentally normal. Though he was illiterate he had a vocational aptitude for tailoring and was working in the Bihar Tailoring Works. He was interested towards his work as a tailor and behaves properly with his father and brothers and has normal association with friends. Unfortunately he lost his mother when he was 10 years old and his family history disclosed according to the report that he comes from a poor family and though he has no landed property he has a house of his own to live in. Both his father and his elder brother are employed. The attitude of the family towards the offender appellant was one of sympathy and affection and the father exercised reasonable control over him. The report of the neighbours is also in his favour. In the end the Probation Officer expressed the view that there is no report against the character of the offender, no previous conviction has

(1) A.I.R. 1965 (Vol. 52) S.C. 444.

A been proved against him prior to this case and in the circumstances mentioned by him the release on probation may be a suitable method to deal with him. He therefore recommended that he be released on probation by getting his father to execute a suitable security. This report in our view does not justify the conclusion that the appellant is either a hardened criminal or is associated with hardened criminals for denying him the benefit of the provisions of the Act. To sentence him to imprisonment would itself achieve the object of associating him with hardened criminals which association the Courts thought was a good ground for denying him the benefit of being released on probation. We have no doubt that if he is released on probation of good conduct there is hope of his being reclaimed and afforded the opportunity to live a normal life of a law abiding citizen. In this view the Appeal is allowed and the sentence is set aside with the direction that he be released under Sec. 4 of the Act on his entering into a bond, with his father as a surety in the sum of Rs. 500/- to appear and receive sentence by the Trial Court whenever called upon to do so within a period of one year and during that time to keep the peace and be of good behaviour. The Trial Court is directed to take a bond from the Appellant and a surety bond from the Appellant's father as aforesaid. His bail bond will enure till then and will be deemed to be cancelled after the directions are carried out.

V.P.S.