

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Rev. Application No. 106 of 2017

Muhammad Taqi son of
Abdul Hameed Applicant.

Versus

The State. Respondent.

Mr. Muhammad Kamran, Advocate for Applicant.
Mr. Talib Ali Memon, APG

Date of hearing: 24.09.2018.
Date of Judgment: 24.09.2018.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J :- The Applicant, through the instant criminal revision application, assailed the judgment dated 15.06.2017 passed by the learned II Additional Sessions Judge, Karachi South in Cr. Appeal No. 13/2013, whereby the appeal of the Applicant was dismissed which was directed against the judgment dated 20.01.20153, whereby learned trial Court convicted the Applicant for the offence under Section 489-F PPC and sentenced him to undergo imprisonment for a period of 01 year and to pay fine of Rs.25,000/- and in case of default, he has to undergo simple imprisonment for one month in addition to the aforesaid sentence.

2. Learned counsel for the Applicant states that the case against the Applicant is one of insufficient evidence and he has never been involved in any criminal activity and is enjoying a good reputation in his locality. He prays for a lenient view regarding the applicant because he is not a habitual criminal and a first offender.

3. Learned Additional PG supports the conviction and sentence and submits that the trial court has already taken a lenient view.

4. After an initial hearing, this Court has already called the Probation Officer, who has shown his willingness to comply with any direction given by this Court regarding Applicant/convict. The Applicant is a first offender and on the same ground, the learned trial Judge has taken a lenient view regarding

him at the time of sentencing. In my humble view, there are good chances of reformation and rehabilitation for the first offenders, and it will be least beneficial for the society to send such offenders to jail instead of providing them a chance and opportunity of reformation.

5. The Probation of Offenders Ordinance, 1960 (hereinafter referred as 'the said Ordinance') is a reformatory measure, and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt, but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attaches to convicts often render the remedy worse than the disease and the very purpose of punishment stands in the danger of being frustrated. In recalcitrant cases, punishment has to be deterrent so that others similar minded may warn themselves of the hazards of taking to a career of crime. But the novice who strays into the path of crime ought, in the interest of society, be treated as being socially sick. Crimes are not always rooted in criminal tendencies, and their origin may lie in psychological factors induced by hunger, want and poverty. The said Ordinance recognises the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the offender can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a convict who, after a jail term, may think that he has no more to lose or fear, which resultantly may breed a litter of crime. The object of the said Ordinance is to nip that attitude in the bud.

6. The probation system in our country is usually considered as a boon for some of the selected offenders, but it is more than this limited scope. It is a system which provides a means of rehabilitation without the necessity of breaking up the offender's normal life and removing him from the natural surroundings of his home. As per provision under Section 5(2) of the said Ordinance, it may be used as a tool to raise the status of a convicted offender by making him a useful member of the society by inserting additional conditions in the Probation Order. The institution of probation may also be used for recompensing the society if it is integrated with community services for the benefit of the society. In this respect, I would like to take reliance from a case reported as ***Ghulam Dastagir and 3 others v. the State (PLD 2014 Baluchistan 100)***, in which it is held as:-

“The said language of subsection (2) of section 5 of the Ordinance does not exclude the making of a community service order. The court can impose conditions with regard to the offender's environment and which prevent a repetition of the same offence and which rehabilitate him as an honest, industrious and law-abiding citizen. Under the Rules also an offender can be required to take advantage of the social, recreational and educational facilities which might contribute towards his welfare and general well-being. The question under consideration is whether the petitioners would repeat the offence and would they indeed be rehabilitated if they were simply required to periodically mark their attendance before their probationer officer or is there a better chance to make them law-abiding citizens if they were to serve the community. I am drawn to the irresistible conclusion that the latter course with its element of reparation / pay-back would better achieve the stated goal, and one that would also benefit the community.”

7. As the Applicant is an amateur and a novice offender, therefore, it will be beneficial for him and the society alike to place him on probation. I, therefore, while maintaining the sentence of imprisonment imposed by the learned trial Court, give the Applicant under the supervision of the Probation Officer, District South, Karachi for one year upon executing the requisite bonds subject to furnishing surety of Rs. 100,000/- and PR bond of the equal amount. As the Applicant is on bail and has furnished surety of the same amount before Nazir of this Court; therefore, the same will suffice for his probation bond duly executed before the trial Court. The bond shall contain a condition that during the period of probation, the Applicant / Probationer shall restrain from any immoral, illegal activities and felonies and shall also improve his behaviour. As the Applicant is a Muslim, therefore, it is hereby directed that he shall perform the community service by participating in arrangements of Jumma Prayer in a Jamia Masjid close to his residence or workplace. He has to give assistance in sweeping and wiping the prayer area, spreading the prayer mats and other ancillary work along-with the regular staff and/ or volunteers of the said Jamia Masjid. At the end of each month, the Applicant shall obtain a certificate from the Imam of the Masjid or the President of the Masjid Committee that he is regularly performing such community service and produce the said certificate before the Probation Officer. The Probation Officer shall assure that the Applicant is performing the regular community service. After completion of the period of probation, there will be no stigma of conviction on the probationer as per provision of Section 11 of the said Ordinance. However, in case of violation of any terms and condition of the probation bond including the condition of community service, the Probation Officer may submit a report before the trial Court. The trial Court is authorised to pass an appropriate order on such report either by imposing a fresh condition or extending the period of probation or even cancellation of the probation order. In case of cancellation or annulment of the probation order,

the Applicant will be sent back to jail to pass the remaining period of his sentence.

The instant appeal is disposed of in the above terms.

J U D G E