

**A.F.R.**

**Court No.-27**

**Case :-** CRIMINAL REVISION No. - 252 of 2011

**Revisionist :-** Ram Prakash Pandey

**Opposite Party :-** State Of U.P. And Anr.

**Counsel for Revisionist :-** Shashi Kant

Dwivedi, Ram Chandra Dwivedi

**Counsel for Opposite Party :-** G.A.

**Hon'ble Ajai Kumar Srivastava-I, J.**

**1.** Heard learned counsel for the revisionist and learned A.G.A. for the State.

**2.** This criminal revision has been preferred against the judgment and order dated 22.4.2011 passed by the Additional Sessions Judge, Court No.3, Hardoi in Criminal Appeal No.42 of 2010 and the judgment and order dated 3.3.2010 passed by the S.D.M., Bilgram, Hardoi in Case No.39/4104 of 2002, Case Crime No.263/2002 thereby convicting the sentencing the revisionist under Section 198-A(2) of U.P.Z.A. & L.R. Act for three months imprisonment and fine of Rs.1,500/-.

**3.** Learned counsel for the revisionist has submitted that the finding recorded by learned trial

Court regarding the conviction of revisionist, under Section 198A(2) U.P.Z.A. & L.R. Act is against the weight of evidence, which is illegal and not sustainable in the eye of law because there was a civil dispute pending between the parties. Therefore, the impugned order of conviction is liable to be set aside.

**4.** Per contra, learned A.G.A. has submitted that the finding of conviction by learned trial Court has been recorded on the basis of proper analysis and appreciation of evidence. Therefore, the same cannot be termed illegal or perverse and no interference by this Court in exercise of its revisional jurisdiction is warranted.

**5.** Having heard learned counsel for the parties and upon perusal of the record, it transpires that the learned trial Court as well as appellate Court has clearly recorded a finding of fact that Plot No.458/0.253 hectare was initially allotted to Harishankar, who was handed over the possession of the same. Thereafter, Harishankar, allottee was dispossessed by the present revisionist, Ram Prakash Pandey. The finding of the said fact is duly supported by the evidence of PW-2, Mahendra Kumar, Lekhpal of the area concerned. As such no illegality or perversity is decipherable from order of Additional Sessions Judge, Court No.3, Hardoi dated 22.04.2011 and order dated 3.3.2010 passed by the S.D.M.,

Bilgram, Hardoi. Therefore, there is no ground to interfere with the finding of conviction under Section 198A(2) U.P.Z.A & L.R. Act.

**6.** Section 198A(2) U.P.Z.A & L.R. Act provides as under:-

*"198-A.....*

*1.....*

*(2) Where any person, after being evicted under this section, re-occupies the land or any part thereof without lawful authority, he shall be punishable with imprisonment for a term which may extend to two years but which shall not be less than three months and also with fine which may extend to three thousand rupees:*

*Provided that the court convicting the accused may, while passing the sentence, direct that the whole or such portion of the fine that may be recovered as the court considers proper be paid to the allottee or lessee, as the case may be, as damages for use and occupation."*

**7.** Having regard to the aforesaid provision and also keeping in view the fact that there is nothing on record to show that the revisionist has been a previous convict or a person who has criminal antecedents. It is useful to quote Sections 4 of Probation of Offenders Act, 1958:-

*"4. (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) is made, 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), 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 or 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."*

**8.** It is also relevant to quote Section 11 of Probation of Offenders Act, 1958, which reads as under:-

*"11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.—*

*"(1) Notwithstanding anything contained in the Code or any other law, an order under this Act, may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision.*

*(2) Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.*

*(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under section 3 or section 4, and passes against him any sentence of imprisonment with*

*or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.*

*(4) When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law: Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty."*

**9.** This Court in the case of **Subhash Chand & others Vs. State of U.P. (2015 Law Suit (All) 1343)** , has emphatically laid down the need to apply the law of probation and give benefit of the beneficial legislation to accused persons in appropriate cases. This court issued following directions to all trial courts and appellate courts:-

*30. "It appears that the aforesaid beneficial legislation has been lost sight of and even the Judges have practically forgotten this provision of law. Thus, before parting with the case, this Court feels that I will be failing in discharge of my duties, if a word of caution is not written for the trial courts and the appellante courts. The Registrar General of this Court is directed to circulate copy of this Judgement to all the District Judges of U.P., who shall in turn ensure circulation of the copy of this order amongst all the judicial officers working under him and shall ensure strict compliance of this Judgement. The*

*District Judges in the State are also directed to call for reports every months from all the courts, i.e. trial courts and appellate courts dealing with such matters and to state as to in how many cases the benefit of the aforesaid provisions have been granted to the accused. The District Judges are also directed to monitor such cases personally in each monthly meeting. The District Judges concerned shall send monthly statement to the Registrar General as to in how many cases the trial court/appellate court has granted the benefit of the aforesaid beneficial legislation to the accused. A copy of this order be placed before the Registrar General for immediate compliance."*

**10.** The Hon'ble Apex Court in **State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand & others (2004) 7 SCC 659** has extended the benefit of Probation of Offenders Act, 1958 to the appellants, and observed as under:-

*"The learned counsel appearing for the accused submitted that the accident is of the year 1990. The parties are educated and neighbors. The learned counsel, therefore, prayed that benefit of the Probation of Offenders Act, 1958 may be granted to the accused. The prayer made on behalf of the accused seems to be reasonable. The accident is more than ten years old. The dispute was between the neighbors over a trivial issue of claiming of drainage. The accident took place in a fit of anger. All the parties educated and also distantly related. The accident is not such as to direct the accused to undergo sentence of imprisonment. In our opinion, it is a fit case in which the accused should be released on probation by directing them to execute a bond of one year for good behaviour."*

**11.** Similarly, in **Jagat Pal Singh & others Vs. State of Haryana, AIR 2000 SC 3622**, the Hon'ble Apex Court has given the benefit of probation while upholding the conviction of accused persons under Sections 323, 452, 506 IPC and has released the accused persons on executing a bond before the Magistrate for maintaining good behaviour and peace for the period of six months.

**12.** In the light of the above discussions, I find no illegality, irregularity or impropriety in the impugned judgment. Thus, the conviction of the revisionist, Ram Prakash Pandey recorded by Sub Divisional Magistrate Bilgram, Hardoi vide order dated 03.03.2010 passed in Case No.39/4104 of 2002, under Section 198 A (2) U.P.Z.A & L.R. Act; upheld by the learned appellate court vide order dated 22.04.2011, passed in Criminal Appeal No.42/10 deserves to be maintained. However, sentence, as discussed above, needs to be modified. The conviction of the revisionist, Ram Prakash Pandey for the offence under Section 198 A (2) U.P.Z.A & L.R. Act is upheld, however, the sentence is modified to the extent that instead of sentencing the revisionist, Ram Prakash Pandey, to the jail, he shall get the benefit of Section 4 of the Probation of Offenders Act. Further, the revisionist, Ram Prakash Pandey shall file two sureties to the satisfaction of the court concerned coupled with personal bonds to the effect that he shall not commit any offence and

shall be of good behaviour and shall maintain peace during the period of three months. The bonds aforesaid be filed by the revisionists within eight weeks.

**13.** In case of breach of any of the above conditions, he shall be taken into custody and shall have to undergo sentence awarded to him.

**14.** With the above modification, the instant revision is **dismissed**.

**15.** A copy of this order be communicated to the trial Court concerned for necessary information and compliance through e-mail/fax.

**(Ajai Kumar Srivastava-I, J.)**

**Order Date :- 11.3.2022**  
A.Dewal