

**CASE COMMENT: LAKHANLAL @ LAKHAN SINGH v. STATE OF
MADHYA PRADESH**

*Kosha Doshi**

FACTS

The case⁴⁸⁸ appellant along with 7 others was charged with offences falling under Section 325, 307, 149, 148 and 147 of IPC. Two of the accused who went to trial were convicted and therein they appealed to the High Court of Madhya Pradesh. The HC maintained the conviction and sentence. But the appellant was convicted by the High Court with offences under Section 325 supplementing Section 34 of IPC. Based on this order, he was convicted and sentenced to rigorous imprisonment for a year along with 1000/- fine. Failure to pay the fine his term was extended by another 6 months. The appellant has thereby challenged the order of the High Court in this present appeal before the Supreme Court.

ISSUES

- i. Whether Section 360(10) of CrPC and the Probation Offenders Act, 1958 are applicable to the offender before this court?
- ii. Whether the High Court had misread Section 360 of CrPC to not have application in this case on the reasoning that matter falls under Section 3 and 4 of the Probation Offenders Act?

RATIO

Section 325 is punishable with imprisonment up to 7 years while the appellant was sentenced for a year. The HC erred in law for not granting probation benefit as under Section 360 to the appellant based on the reasoning that matter falls under Section 3 and 4 of the Probation Offenders Act. But Section 360(10) clearly states that the Code shall not be affected by the Probation Act and therefore the Supreme Court held that both Section 360 and the Probation Act shall be applicable to the offender in this case. The court took into account that the appellant had already suffered proceeding legalities for more than 3 decades; that there was no record to indicate his involvement in any offence for the time frame of more than 3 decades; along with

* Kosha Doshi, B.A. LL.B, Symbiosis Law School, Pune

⁴⁸⁸ Criminal Appeal No.1306/2013; Appeal heard on - 04-04-2019.

the conditions provided in Section 360. The Supreme Court granted the appellant to be released on probation of good conduct for a year along with personal bond.

ANALYSIS

The reformation and rehabilitation theories of punishment are reflected by Section 360.⁴⁸⁹ Based on the Tokyo⁴⁹⁰ and Beijing Rules⁴⁹¹ adopted by the United Nations; followed by the European Permanent Conference on Probation and Aftermath; Section 360 seeks at character improvement, promotion of lawful behavior.⁴⁹² Section 360 takes a reformatory approach whereby it aims to prevent first time offenders from turning into hard core criminals.⁴⁹³ Conditions for probation as laid in Section 360 are:

- i. Person aged more than 21 who has been convicted for a crime with imprisonment up to 7 years or fine
- ii. Person aged less than 21 or a woman who is not punished with death penalty or life imprisonment and has no previous conviction proved
- iii. Appears before court irrespective of the offence – based on promise of good conduct keeping in mind the age, character, antecedent and circumstances surrounding the offence

The Probation Act provides wider grounds by doing away with the distinction of age, gender or not confining it to first time offender. Section 4 provides any guilty person not punishable with death penalty or imprisonment could be granted probation with a bond up to 3 years.⁴⁹⁴ The major distinction is that under the 1958 Act, report by a probation officer is necessary before granting probation whereas under Section 360 there is no such bar.⁴⁹⁵

Section 360(10) provides that it shall not affect the 1958 Act of any other acts on similar lines (training, rehabilitating, treating youthful offenders). But the courts have time and again misinterpreted the coexistence of Section 360 and the Probation Act. In *Sanjay Dutt v. State*

⁴⁸⁹ DEERING, JOHN, and MARTINA Y. FEILZER. "RESPONDENT VIEWS ON THE PURPOSES AND VALUES OF THE PROBATION SERVICE." In *Privatising Probation: Is Transforming Rehabilitation the End of the Probation Ideal?*, 15-38. Bristol, UK; Chicago, IL, USA: Bristol University Press, 2015.

⁴⁹⁰ United Nations Standard Minimum Rules for Non-Custodial Measures.

⁴⁹¹ United Nations Standard Minimum Rules for Adminstrating Juvenile Justice.

⁴⁹² DAVIES, MARTIN. "The Objectives of the Probation Service." *The British Journal of Social Work*, vol. 2, no. 3, 1972, pp. 313–322. JSTOR, www.jstor.org/stable/23692605.

⁴⁹³ Jugal Kishore Prasad v. State of Bihar, 1972 AIR 2522.

⁴⁹⁴ Choudhary, V., & Kumar, M. (2017). Law of Probation in India. *International Journal of Recent Research Aspects*, 4, 468–470. <http://www.prisons.tn.nic.in/probation.html>.

⁴⁹⁵ Pande, D.C., and V. Bagga. "PROBATION—THE LAW AND PRACTICE IN INDIA." *Journal of the Indian Law Institute*, vol. 16, no. 1, 1974, pp. 48–87. JSTOR, www.jstor.org/stable/43950312.

*of Maharashtra*⁴⁹⁶, the court held that there is no clear intent where both of these could be applicable at the same time in the same context provided; and its coexistence would merely result in anomalous results. Reiterating that Section 4 of the 1958 Act and Section 360 of the Code could not co-exist, the court passed a judgment in *Gulzar v. State of MP*⁴⁹⁷. The court in *Keshav Sitaram Sali v. State of Maharashtra*⁴⁹⁸, provided that benefit of probation could be opted for in either Section 360 or Section 3 – 4 of the Probation Act. Moving a step further, *Chhanni v. State of UP*⁴⁹⁹, it laid down that enforcement of Probation Act excludes applicability of Section 360. Taking lead, the court in *Moti Lal Bairwa v. State of Rajasthan*⁵⁰⁰, passed a judgment of probation conjointly with Section 360 or the Probation Act.⁵⁰¹ A divergent view has been taken up in this case which takes the onus of the society to reform the offender by allowing a nexus application of Section 360 and the Probation Act.

CONCLUSION

Section 360 and the Probation Act are overlapping to a great extent, where enforcement of Probation Act has an overriding effect on Section 360. But this case takes a stand against the conventional notion and analyses the misinterpretation by the High Court; creating a trail of passing a judgement that “*provisions relating to probation in CrPC (Section 360) shall not be excluded by the Probation Offenders Act.*”⁵⁰² In *Hansa v. State of Punjab*⁵⁰³, the accused is convicted for the offence under Section 325 for a year of imprisonment, following which he was released on probation under Section 360 – this reflects the similar factual matrix as the current case. In conclusion, the Lakhan Singh case distinctly imparted justice without bars.⁵⁰⁴ Almost half a century has passed since the enactment of Section 360 and the provision has been left to collect dust and bear testimony of the supposed bright reformatory future the judiciary would have held in promoting rehabilitation without offending community conscience.⁵⁰⁵

⁴⁹⁶ 2013 SCOnline SC 252.

⁴⁹⁷ Appeal (Crl.) 7 of 2007.

⁴⁹⁸ AIR 1983 SC 291.

⁴⁹⁹ (2006) 5 SCC 396.

⁵⁰⁰ 1986 (1) WLN 287.

⁵⁰¹ Bhardwaj, Vrinda. (2019). Sec. 360 CrPC, 1973 to be co-jointly read with Probation of Offenders Act, 1958.

⁵⁰² Burke, Lol. “The ‘Quality of Mercy’ in Probation Practice.” *Criminology and Public Theology: On Hope, Mercy and Restoration*, edited by Andrew Millie, by SHADD MARUNA, 1st ed., Bristol University Press, Bristol, UK, 2021, pp. 195–216.

⁵⁰³ 1984 (2) RCR (Criminal) 274.

⁵⁰⁴ Henderson, Jean. “The Value of Values in Probation Practice?” *Values in Criminology and Community Justice*, edited by Malcolm Cowburn et al., 1st ed., Bristol University Press, Clifton, Bristol, UK; Chicago, IL, USA, 2013, pp. 165–186.

⁵⁰⁵ Bala Krishnan, S. (2018). A TREND ANALYSIS TO REPORTED CASES ON GRANTING PROBATION BY SUPREME COURT. *International Journal of Pure and Applied Mathematics*, 120(5), 1515–1525.