

Shyam Sunder vs. State of H.P.

Cr. Revision No. 83 of 2013

Reserved on 19.11.2025

28.11.2025 Present:

M/s Rajesh Kumar Sharma and Vishal Sharma,
Advocates, for the applicant/petitioner.

Mr Lokender Kutlehria, Additional Advocate
General, for the respondent/State.

Cr. MP No. 4999 of 2025

The applicant/petitioner has filed the present application for calling the report of the Probation Officer in the appeal/revision. It has been asserted that after going through the record of the revision, it transpired that the learned Trial Court and learned Appellate Court had not exercised the jurisdiction under Section 360 of Cr.P.C. corresponding to Section 401 of Bharatiya Nyaya Sanhita (BNS) 2023, and no reasons were assigned for not exercising the jurisdiction. This ground was not taken in the revision. A prayer was made to amend the grounds of revision, and this prayer was declined by the Court. Liberty was granted to the applicant to argue any point which he may wish during the arguments. The report of the Probation Officer is a condition precedent for granting the benefit of the Probation. Therefore, it was prayed that the report of the Probation Officer be called.

2. Mr Rajesh Sharma, learned counsel for the applicant, submitted that the learned Courts below had erred in not granting the benefit of probation to the applicant/petitioner. The applicant was permitted to agitate this point during the hearing of this revision. The

benefit of the Probation cannot be granted without considering the report of the Probation Officer. Therefore, he prayed that the present application be allowed and the report of the Probation Officer be called for. He relied upon the judgment of the Hon'ble Supreme Court in *Chellammal and another vs. State represented by the Inspector of Police 2025 INSC 540* and judgment of this Court in *Ram Krishan vs. State of H.P. 2025:HHC:35823* in support of his submission.

3. Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State, submitted that the application is premature. The Court is yet to test the legality of the orders passed by the learned Courts below. The report can be called as and when the judgments and order passed by the learned Courts below are confirmed. Therefore, he prayed that the present application be dismissed.

4. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

5. There is force in the submissions of the learned Additional Advocate General that the application is premature. The Court has to apply its mind to determine whether the learned Trial Court had rightly convicted the applicant and whether the learned Appellate Court had rightly upheld the judgment of conviction. The question of

sentence would arise only after the conviction is maintained.

6. In *Chellammal* (supra), it was held that the benefit of the Probation of Offenders Act cannot be granted without calling for a report. Since the stage of extending the benefit of the Probation of Offenders Act has not reached as yet, therefore, the cited judgment does not apply to the present case.

7. It was held in *Ram Krishan* (supra) that the benefit of the Probation of Offenders Act can be granted to a person convicted of the commission of offences punishable under Section 279, 337, 338 and 201 of the IPC. A perusal of the judgment shows that the statement was made on behalf of the accused that he did not press the revision against the conviction and had only prayed for the grant of probation. Since, in the present case, the validity of the conviction is yet to be seen, therefore, the cited judgment does not apply to the present case.

8. In view of the above, the present application fails, and it is dismissed.

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List the matter for hearing on 17th December, 2025.

(Rakesh Kainthla)
Judge

28th November 2025
(ravinder)