

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 4860-4861 OF 2024
(Arising out of SLP (Crl.) Nos. 1134-1135 of 2023)

AMIT SINGH

... APPELLANT

VERSUS

THE STATE OF RAJASTHAN

... RESPONDENT

ORDER

1. Leave granted.
2. The appellant was made an accused in FIR No. 237 dated 31.07.2003 registered at Bhilwara Police Station, Subhash Nagar, Rajasthan, along with six other accused persons. He was tried for the charges under Sections 399, 402 and 307 of the Indian Penal Code, 1860 (IPC) and Sections 3/25 and 4/25 of the Arms Act, 1959 (Arms Act). The Trial Court convicted him for the charges under Sections 399/402 of the IPC and also under Sections 3/25 of the Arms Act and directed him to undergo sentence of two years and one year rigorous imprisonment respectively.

3. In appeal, the High Court set aside the conviction for the charges under Sections 399/402 of the IPC while upholding the conviction for the charges under Sections 3/25 of the Arms Act. The relevant portion of the order passed by the High Court is reproduced as under:

“13. Thus, the appeal deserves acceptance in part. The conviction of the appellants as recorded by the trial court for the offence under Section 399/402 IPC is hereby quashed and set aside. The appellants are acquitted of this charge. However, conviction of the respective appellants as recorded by the trial court for the offence under Section 3/25 and 4/25 of the Arms Act are hereby affirmed but while maintaining their conviction as recorded by the trial court, it is directed that instead of sentencing them immediately, they shall be given benefit of probation under Section 4 of the Probation of Offenders Act upon their entering into a personal bond in the sum of Rs.50,000/- each with one sound and solvent surety in the like amount to the satisfaction of the learned trial court to appear and receive the sentence when called upon during the period of next two years from today and in the meantime to keep peace and be of good behaviour. The appellant shall also furnish an undertaking to the trial court that they shall not commit any offence during the said period. The seized arms stand confiscated to the State. The appellants are on bail.

Their bail bonds stand discharged.”

4. In view of the foregoing, it is apparent that while upholding the conviction under Sections 3/25 and 4/25 against the accused persons, the conviction for the charge under Sections 399/402 of the IPC was set aside. The High Court was of the view that while maintaining the conviction, the benefit of Section 4 of the Probation of Offenders Act, 1958 may be given upon their entering into a personal bond and other terms and conditions as specified, instead of sentencing them.

5. The appellant got selected for employment after confirmation of conviction by the High Court under Sections 3/25 of the Arms Act. He applied to get benefit of Section 12 of the Probation of Offenders Act as on account of conviction under Sections 3/25 of the Arms Act, he was denied appointment. Therefore, he filed Criminal Miscellaneous Application No. 168 of 2022 asking for the benefit under Section 12. The High Court rejected the application on the ground that after decision in the criminal case, the Court becomes *functus officio* and cannot review its own order.

6. In the said facts, learned counsel for the appellant though

assailed the findings of the conviction for the charge under Section 3/25 of the Arms Act on the pretext that when the offence under Sections 399/402 itself has not been proved, the charges under Section 3/25 of the Arms Act cannot be proved in the facts of this case. In the alternative, it is urged by him that the High Court though granted benefit of Section 4 of the Probation of the Offenders Act, but denied the consequential benefit of Section 12 thereof. Therefore, in case the benefit of Section 12 is extended, he will not press this appeal so far as the finding of conviction is concerned.

7. Per contra, learned counsel for the State is not in a position to dispute the fact that the benefit of Section 4 of the Probation of Offenders Act was extended to appellant while convicting him along with other co-accused persons. It is further urged that this Court may consider the provisions of Section 12 of the Probation of Offenders Act and appropriate orders may be passed in case the appellant does not press the appeal challenging the finding of the High Court.

8. Having considered the submissions made by learned counsel for the parties, at present, we are not entertaining this Appeal to re-appreciate the findings recorded by the High Court regarding

conviction under Section 3/25 of the Arms Act. We are inclined to accept the alternative prayer as made by the appellant, as by the afore-quoted impugned order, the High Court itself extended the benefit of Section 4 of the Probation of Offenders Act to the convicts.

9. We have perused the language of Section 12 of the Probation of Offenders Act, which is relevant and is reproduced below:

“Section-12. Removal of disqualification attaching to conviction.—Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence.”

10. On perusal thereof, we had no scintilla of doubt that when a person who is found guilty, is extended the benefit of Section 3 or 4 of the Probation of Offenders Act, then he shall not suffer disqualification, if any, attached to the conviction of an offence under such law. Therefore, on extending the benefit of Section 4 by the High Court to the appellant and other co-accused persons, the grant of

benefit of Section 12 is consequential. Therefore, rejection of such a prayer by the subsequent order dated 05.07.2022 of the High Court does not appear to be justifiable.

11. Accordingly, the present appeals stand allowed. Maintaining the order dated 10.01.2020 in S.B. Criminal Appeal No. 455 of 2005, we set aside the order passed dated 05.07.2022 in S.B. Criminal Miscellaneous Application No. 168 of 2022.

12. The present appeals, one challenging the order dated 10.01.2020 in S.B. Criminal Appeal No. 455/2005 and the second challenging the order dated 05.07.2022 in S.B. Criminal Miscellaneous Application No. 168/2022, have only been filed by the accused Amit Singh. Six other convicts are there, who have not asked for the benefit of Section 12, though they were given benefit of Section 4 of the Probation of Offenders Act vide judgment dated 10.01.2020 similar to the appellant recording similar findings. Therefore, it is imperative on this Court that while extending the benefit to the appellant who has approached this Court, to extent similar benefits to all the convicts in the same crime.

13. Ordered accordingly.

14. Pending applications, if any, stand disposed of.

.....,J.
(J.K. MAHESHWARI)

.....,J.
(RAJESH BINDAL)

**NEW DELHI;
NOVEMBER 28, 2024.**

ITEM NO.20

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).1134-1135/2023

[Arising out of impugned final judgment and order dated 10-01-2020 in SBCRA No. 455/2005 05-07-2022 in SBCRLMA No. 168/2022 passed by the High Court of Judicature for Rajasthan at Jodhpur]

AMIT SINGH

Petitioner(s)

VERSUS

THE STATE OF RAJASTHAN

Respondent(s)

(FOR ADMISSION and I.R. and IA No.7795/2023-EXEMPTION FROM FILING O.T.)

Date : 28-11-2024 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE RAJESH BINDAL

For Petitioner(s) Mr. Anuj Bhandari, AOR
Mr. Ashish Saxena, Adv.
Mr. Anuj Bhandari, Adv.

For Respondent(s) Mr. B.S. Rajesh Agrajit, Adv.
Ms. Priya Nagar, Adv.
Mr. Aakash Sharma, Adv.
Mr. Milind Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeals stand allowed in terms of the signed order.
3. Pending applications, if any stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(NAND KISHOR)
COURT MASTER

(Signed order is placed on the file)