restore that of the Judicial Magistrate, 1st Class, Barnala, dated 15th December, 1981. However, it is made clear that if, at any stage, material comes on the record and it becomes necessary, the bar of section 197 of the Code of Criminal Procedure may successfully be pleaded.

(10) For the foregoing reasons, this petition is allowed. The order of the learned Additional Sessions Judge is set aside restoring that of the Judicial Magistrate, 1st Class, Barnala. It is, however, directed that the learned Magistrate, shall expedite the proceedings time-bound. And since the matter is at the pre-charge stage so far as the accused-respondent is concerned, he may, if so approached, consider granting exemption from appearance to the accused-respondent in view of his office and public duties and permit a lawyer to appear in his stead, till the culmination of pre-charge stage at least. Ordered accordingly.

N. K. S.

Before S. S. Sandhawalia, C.J. and D. S. Tewatia, J.

STATE (UNION TERRITORY), CHANDIGARH,—*Appellant.*

versus

MANJIT SINGH AND OTHERS,—*Respondents.*

Criminal Appeal No. 324/SB/1982

April 20, 1983.

Code of Criminal Procedure (II of 1974)—Sections 374 and 377—Probation of Offenders Act (XX of 1958)—Sections 4 and 11—Accused convicted under various sections of Penal Code by the trial Magistrate—Such accused subsequently released on probation under section 4 of the Act by the said Magistrate—Appeal to the High Court against the order under section 4—Whether competent.

Held, that on a plain reading of sub-section (2) of section 11 of the Probation of Offenders Act, 1958, it would emerge that an appeal against an order passed by any Court trying the offender under section 3 or section 4, would lie to that court to which appeal ordinarily lies from the sentence of the former court. For locating the

forum of appeal, sub-section (2) afore-mentioned beckons us to the Code of Criminal Procedure. Sub-section (3) of section 374 of the Code of Criminal Procedure, 1973 confers on any person the right of appeal to the Court of Sessions, if convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the First Class or the Second Class. Clause (b) and (c) of sub-section (3) of the said section which provides for an appeal against sentence fall in the category of special provisions providing for an appeal against the sentence, because appeal from sentence in terms of clause (b) and (c) is not always competent in view of the provisions of clause (b), (c) and (d) of section 376 of the Code. Section 377 of the Code on the other hand provides for an appeal to the High Court at the instance of the State Government against inadequacy of the sentence imposed by the trial Court. Therefore, reading sub-section (2) of section 11 of the Probation of Offenders Act with section 377(1) of the Code, it is clear that an appeal ordinarily lies to the High Court under the Code. As such an appeal in the case at the instance of the State Government against the order under section 4 of the Offenders Act passed by the trial Magistrate can be maintained only in the High Court.

(Paras 6, 13, 14, 16, 24 and 25)

Case referred by a Single Judge Hon'ble Mr. Justice D. S. Tewatia on 21st July, 1982 to the larger Bench for the decision of the important question of law arising out of this case. The larger Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia and the Hon'ble Mr. Justice D. S. Tewatia decided the relevant question of law on 20th April, 1983.

Appeal from the order of the court of Shri R. S. Sharma Additional Chief Judicial Magistrate Chandigarh, dated the 14th May, 1981 releasing the respondents on probation of good conduct under section 4(1) of the Act on their furnishing bonds in the sum of Rs. 2000 with one surety in the like amount with a direction to appear and receive sentence when called upon during the period of one year and in the meantime to keep peace and be of good behaviour.

Charge under section 120-B/408/468 IPC.

Order : Conviction maintained on Probation.

H. S. Brar with G. S. Bali Advocate, *for Appellant.*

G. S. Gandhi Advocate, *for Respondent No.* 1.

S. S. Chopra Advocate, *for Respondent No.* 2.

G. S. Grewal with T.P.S. Mann, Advocate, *for Respondent No.* 3.

JUDGMENT

D. S. Tewatia, J.

(1) This appeal preferred at the instance of State (Union Territory), Chandigarh, in the first instance, came up for motion hearing before me for dealing with the objection raised by the Registry to the entertainability of this appeal as also 27 such other appeals as according to the office, the appeals lay to the Court of Session. I referred the office objection to be decided by a larger Bench, in view of the importance of the law point, that arose for consideration and that is how this appeal is before us.

(2) Whether an appeal to the High Court by the State Government against an order passed by the trial Magistrate under section 4 of the Probation of Offenders Act, 1958 (hereinafter referred to as the 'Act'), is competent, is the legal question of some significance that falls for resolving in this appeal.

(3) The facts relevant to the proposition aforementioned are not in dispute and can be stated thus. Respondents were held guilty under section 120-B/408/478 Indian Penal Code and were convicted accordingly by the Additional Chief Judicial Magistrate, Chandigarh,—*vide* order dated 14th May, 1981. The learned Magistrate released them on probation of good conduct under section 4(1) of the Act on their furnishing bonds in the sum of Rs. 2,000 with one surety in the like amount with a direction to appear and receive sentence when called upon during the period of one year and in the meantime to keep peace and be of good behaviour. The respondents were put under the supervision of Probation Officers, Chandigarh/Amritsar, during that one year in terms of section 4(3) of the Act. They were also directed to enter into a bond in the sum of Rs. 2,000 with one surety in the like amount to observe the conditions specified in the supervision order.

(4) The appellant—State (Union Territory, Chandigarh), has challenged this order through the present appeal.

(5) The relevant provision providing for appeal and revision and the powers of such Courts is that of section 11 and the portions relevant thereto, are in the following terms:—

Section 11.

Courts competent to make order under the Act, appeal and revision and powers of Courts in appeal and revision.

(1) .....

(2) Not with standing 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) .....

(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 offenders 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."

(6) On a plain reading of sub-section (2) of section 11, it would emerge that an appeal against an order passed by any Court trying the offender under section 3 or section 4, the appeal shall lie to that Court, to which appeal ordinarily lies from the sentence of the former Court. For locating the forum of appeal, sub-section (2) aforementioned beckons us to the Code of Criminal Procedure, (hereinafter referred to as the 'Code'), notwithstanding the use of the *non obstante* clause in the beginning of the said sub-section because it is the Code which provides the forum for trial of various offences and for preference of appeals against convictions and sentences to the forums indicated therein.

(7) It deserves highlighting that in the present case we are concerned with the filing of appeal by the State. It also does not admit of any doubt that the State as also the convict could both avail the right of appeal provided by sub-section (2) of section 11 of the Act as rightly held by a Division Bench of Gujrat High Court in *State of Gujrat* v. *Purani Jagatpawandas Guru Bhakti Jiwandas,* (1).

(8) A search for the relevant provisions of the Code takes us to sections 374 and 377.

(1) 1981 Gujrat Law Repots 895.

(9) Section 374 of the Code, which is in the following terms provides for appeals primarily at the instance of the convicts from convictions.

Appeals from convictions.

(1) Any person convicted on a trial held by a High Court on its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2) any person:—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class,

or

(b) sentenced under Section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 350 by any Magistrate, may appeal to the Court of Session."

(10) Section 377 provides for an appeal by the State Government against sentence and is in the following terms:—

Appeal by the State Government against *sentence.*

(1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Public Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence."

(11) Apart from the above two sections, there is no other section in the Code providing for an appeal either against the sentence or against conviction from the orders of the Courts subordinate to the High Court.

(12) Before proceeding to determine as to which of the two provisions of the Code could give us the clue to the forum of appeal envisaged in sub-section (2) of section 11 of the Act, the significance of the use of word "ordinarily" occurring in sub-section (2) of section 11 of the Act, deserves highlighting. The expression 'ordinarily' in my opinion has been used in contra distinction to the expression 'specially'.

(13) Provision of clause (a) or sub section (3) of section 374 of the Code confers on any person right of appeal to the Court of Session, if convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge, or Magistrate of the First class or the Second Class. Clause (b) of sub-section (3) also provides as a special case that when a person is sentenced under section 325 of the 'Code', then he can challenge the sentence by way of appeal in the Court of Session. Clause (c) of sub-section (3) provides for an appeal against an order made or a sentence passed under section 360 of the Code by any Magistrate, to the Court of Session.

(14) Clause (b) and (c) of sub-section (3) of section 374 to the extent they provide for an appeal against sentence fall in the category of special provisions providing for an appeal against the sentence, because appeal from sentence in terms of clauses (b) and (c) of sub-section (3) of section 374 of the Code is not always competent in view of the provisions of clauses (b), (c) and (d) of section 376 of the Code which are in the following terms:—

376. *No appeal in petty cases.*

Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:—

(b) Where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) Where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees."

(15) From the construction that I have put on the provisions of sub-section (3) of section 374 of the Code, it is clear that the said provision ordinarily envisages an appeal against conviction at the instance of the convicted persons to the Court of Session and not against the sentence, though a convict, while challenging his conviction can also urge the Court to reduce the sentence or pass some other order in lieu thereof.

(16) Section 377 of the Code on the other hand does not ordinarily provide for an appeal to the High Court at the instance of the State Government against inadequacy of the sentence imposed by the trial Court.

(17) To put it differently, it means that ordinarily an appeal at the instance of the State against the sentence awarded by the trial Court lay to the High Court, on the ground of inadequacy thereof.

(18) The learned counsel for the respondents, however, on the strength of Division Bench judgment of Karnataka High Court in *The State of Karnataka* v. *Chandrappa and another,* (2) urged that the provisions of section 374 of the 'Code' would alone help determining the forum to which the appeal in terms of section 11 (2) of the Act would lie, and in this regard drew pointed attention to the following observations of Nesargi, J. who prepared the opinion for the Bench.

> "The expression 'an appeal shall lie to the Courts to which appeals ordinarily lie from the sentences of the former court' in sub-section (2) of section 11 of the Act clearly means that a reference should be made to section 374 of the New Code to find out to which Court appeals ordinarily lie against sentences passed by a Judicial Magistrate, First Class, because the order in question has been passed by a Judicial Magistrate, First Class, Basavakalyan. To provide further clarification, we can with advantage refer to the settled law on the question while dealing with section 520 of the old Code *vis-a-vis* section 517 of the Old Code. Same would be the position when sub-section (2) of section 458 of the new Code is looked into *vis-a-vis* an order made by the Judicial Magistrate First class, under section 452 of the new Code. Therefore, the appeal contemplated under sub-section (2) of section 11 of the Act as against the order passed under section 3 or section 4 of the Act by a Judicial Magistrate, First Class, has to lie to the concerned Sessions Court. In this case, the Sessions Court is Bidar. As sub-section (2) of section 11 of the Act refers to only orders passed under the provisions of the Act and not to the conviction, it cannot apply to an appeal against a conviction or sentence. If a convicted accused intends to prefer an appeal against the sentence imposed on him he has to fall back on the provisions of section 374 of the new Code. We may in this connection, with advantage, refer to Baidyanath Prasad *vs.* Awadhesh Singh (3), Raj Kishore *vs.* Kalasi Sahu (4), State *v.* Jagdish (5), and Shivcharan *v.*

(2) 1981 Criminal Law Journal, 1349.
(3) AIR 1964 Pat. 358.
(4) AIR 1974 Crl. 193.
(5) AIR 1970 Raj. 110.

State (6), Cr. LJ 1630). The very same principle has been laid down in the aforementioned decisions, and we respectfully agree with their Lordships."

(19) A perusal of the above observations of Nesargi, J. would show that the learned Judge had tried to treat the provisions of section 520 of the old Code and section 458 of the new Code *vis-a-vis* an order made by the Judicial Magistrate 1st Class, under section 517 of the Old Code and under section 452 of the new Code respectively as *pari materia* with the provision of section 11 (2).

(20) Section 520 of the old Code and section 458 of the new Code therefore deserve noticing.

These are in the following terms:—

"520. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just.

458. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt within such manner as may be prescribed.

(2) An appeal shall lie against any such order to the Court to which appeals ordinarily lie from convictions by the Magistrate."

(21) Even a cursory look at the provisions of section 520 of the old Code and 458 of the new Code would show that these provisions are not *pari-materia* with the provisions of sub-section (2) of section 11 of the Act.

(22) In section 520 of the old Code, the expression "Court subordinate thereto" used would therein guide the search for the forum

(6) AIR 1973 Raj. 167.

of appeal, confirmation, reference or revision by determining as to whether the Court which passed the order under sections 517, 518 or 519 was a Court subordinate thereto.

(23) In the case of sub-section (2) of section 458 of the Code the forum of appeal is to be located by looking for a Court to which appeals ordinarily lie from conviction recorded by the Magistrate. But hunt for locating the forum of appeal in terms of sub-section (2) of section 11 is to be directed by the fact as to whether the forum that we are choosing is one to which the appeal ordinarily lie from sentences passed by the trial Court and not to the Court to which either it is subordinate as envisaged in section 520 of the old Code or to which ordinarily appeal from convictions recorded by such trial Magistrate lay, as envisaged in section 458 of the new Code.

(24) An identical question cropped up before a Division Bench of the Gujrat High Court also in *State of Gujrat* vs. *Purani Jagatpawandas Guru Bhakti Jiwandas* (supra). With respect I entirely concur with the following observations of Ahmadi, J, who delivered the opinion for the Bench:—

> "It seems clear to us, therefore, that an appeal under sub-section (2) of section 11 will lie to the Court to which an appeal ordinarily lies from the 'sentence' awarded by the Court trying the offender, in the present case, the Chief Judicial Magistrate, Nadiad. We have already pointed out earlier that the right of appeal conferred by sub-section (2) of section 11 of the Act is not limited to the accused but enrues to the State also. Now, after the introduction of section 377(1) in the Code, ordinarily an appeal by the State against the order of sentence imposed by the Chief Judicial Magistrate would lie to this Court. Under section 11 (2) of the Act, for the limited purpose of determining the forum to which an appeal lies, the order passed by the trial Court under section 3 or section 4 of the Act must be construed as an order of sentence. Against an order of sentence, so far as the State is concerned, an appeal ordinarily lies under the newly inserted section 377 (1) of the Code to this Court and to no other Court. Therefore, reading sub-section (2) of section 11 of the Act, with section 377 (1) of the Code in the context

of an appeal by the State, we are of the view that such an appeal would lie to the High Court. The contrary view expressed in the two decisions cited earlier does not lay down the correct law."

(25) For the reasons aforementioned, our answer to the question posed in the beginning of the judgment is in the affirmative and we hold that the appeal in this case at the instance of the State Government of Chandigarh U. T. against the order under section 4 of the Act passed by the trial Magistrate lay only to this Court.

(26) In view of the above opinion, the registry is directed to entertain this appeal along with other such appeals.

H. S. B.

Before S. S. Sodhi, J.

MOTI RAM,—*Petitioner.*

versus

THE COLLECTOR AGRARIAN, SANGRUR AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2721 *of* 1976

April 27, 1983.

Punjab Land Reforms Act (X *of* 1973)—*Section* 5—*'Adult son' mentioned in section* 5—*Whether includes Chela of a Mahant—Such Chela—Whether entitled to separate area as an 'adult son'.*

Held, that the expression 'son' has not been assigned any special meaning under the Punjab Land Reforms Act, 1973 and has, therefore, to be understood in its ordinary usual sense of the meaning, the male child of a parent. The Chela as the 'spiritual son' of the Mahant does not thereby become the child and the Mahant its parent, according to the meaning of 'son' as is commonly understood. It would be putting a construction quite contrary of its true meaning, if for the purpose of this Act, a Chela is said to be the child and the Mahant his parent. The description of a Chela as the 'spiritual son' of the Mahant cannot be taken to bring him within the ambit of the word 'son' so as to entitle him to a separate unit of permissible area under Section 5 of the Act.

(Para 3)