

Jemes Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-29-2013

Appellant : Jemes

Respondent : The State of Madhya Pradesh

Judgement :

HIGH COURT OF MADHYA PRADESH : JABALPUR CRIMINAL APPEAL No.601/2011 1. Jemes, son of Shri Fox, Aged about 30 years, 2. Jonathan, son of Shri Williams, Aged about 29 years. Both residents of Kingdom of Lisotho (South Africa) .Appellants Versus. State of Madhya Pradesh, Through SHO, Kotwali, District Katni (MP) Respondent Shri Vasant Daniel, Advocate for the appellants. Shri Akshay Namdeo, PL for the respondent/State.

JUDGMENT

(29/01/2013) This appeal has been preferred against the judgment dated 1/3/2011 passed by the Additional Judge to the Court of Additional Sessions Judge, Katni (MP) in ST No.216/2009, whereby each one of the appellants was convicted and sentenced as under : Convicted under Section Sentenced to 420 read with 120B of the undergo imprisonment for 4 years and to IPC pay fine of Rs.25000/- and in default, to suffer imprisonment for 6 months. 465 read with 120B of undergo imprisonment for 2 years and to IPC pay fine of Rs.25000/- and in default, to suffer imprisonment for 6 months. 468 read with 120B read undergo imprisonment for 4 years and to with 471 read with 120B of pay fine of Rs.25000/- and in default, to IPC suffer imprisonment for 6 months. 475 read with 120B of undergo

imprisonment for 4 years and to IPC pay fine of Rs.25000/- and in default, to suffer imprisonment for 6 months. 489E read with 120B of pay fine of Rs.100/- and in default, to suffer IPC imprisonment for 1 day. with the direction that the jail sentences shall run concurrently. ::

2. :: CRIMINAL APPEAL No.601/2011 2. Allegations, as found established by learned trial Judge, may be summed up:- On 5th May, 2009, complainant Hasnat Kabir (PW1) received an e-mail to the effect that in a lucky draw, he had won prize money of 6,00,000 pound sterling on the basis of his e-mail ID. Thereafter, on one pretext or the other, communicated through telephone, e-mail and SMS, he was made to pay a total sum of Rs.4,76,000/- in as many as 19 installments for processing payment of his winnings. Ultimately, on 19/9/2009, pursuant to the corresponding information, appellants could be apprehended in the complainants house at Katni with incriminating material suggesting their involvement in the conspiracy to defraud him. However, other fraudsters, 12 in number, could not be arrested.

3. At the outset, learned counsel for the appellants submits that he has instructions not to challenge legality and propriety of the convictions in question but to make a prayer for reduction in the period of custodial sentences. Even otherwise, in the light of the testimony of complainant Hasnat (PW1) and corroborative pieces of oral and documentary evidence brought on record, the convictions deserve to be upheld as well merited.

4. Coming to the question of sentence, it may be observed that the appellants, being in custody since 19/9/2009, have already suffered imprisonment for a period of more than 3 years and 4 months. They are Citizens of the Kingdom of Lesotho (South Africa). Taking into consideration the social impact of the offences and other relevant aspects of the sentencing ::

3. :: CRIMINAL APPEAL No.601/2011 policy, I am of the view that the interests of justice would be met if the term of effective custodial sentence is reduced from 4 years to the period already undergone by the appellants.

5. In the result, the appeal is allowed in part. The impugned convictions and corresponding fine sentence with default stipulations are hereby affirmed. Sentence of imprisonment for the offence punishable under Section 465 read with 120B of the IPC is also maintained. However, the term of custodial sentences in respect of the offences under Sections 420, 468 read with 471 and 475 read with 120B of the IPC are reduced to the period already undergone.

6. As an obvious consequence, in case the appellants have deposited the entire amount of fine, they shall be released forthwith if not required in any other case. Appeal partly allowed. (R.C.MISHRA) JUDGE 29 01/2013

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