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Gulab Singh Vs. State

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Court : Rajasthan Jodhpur

Decided On : Jan-20-2015

Appellant : Gulab Singh

Respondent : State

Judgement :

{1} IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR <><><> :

ORDER
: Gulab Singh versus The State of Raj.

S.B.Criminal Revision Petition No.154 of 1997 under Section 397/401 Cr.P.C.against the judgment dated 24.01.1997 passed by the learned Additional Sessions Judge, No.3, Udaipur in Criminal Appeal No.49/1996 (3/1996) affirming the judgment dated 14.12.1995 passed by the learned Civil Judge (JD) cum Judicial Magistrate, Mavli in Criminal Case No.528/1992 whereby the petitioner was convicted and sentenced for the offence under Section 16/54 of the Rajasthan Excise Act.

<><><> Date of Order ::: January 20, 2015 Present Hon'ble Mr.Justice Banwari Lal Sharma Mr.Doongar Singh, for the petitioner.

Mr.Rajesh Bhati, Public Prosecutor.

By the Court: The petitioner has preferred this revision petition against the judgment dated 24.01.1997 passed by the learned Additional Sessions Judge, No.3, Udaipur in Criminal Appeal No.49/1996 (3/1996) affirming the judgment dated 14.12.1995 passed by the learned Civil Judge (JD) cum Judicial Magistrate, Mavli in Criminal Case No.528/1992 whereby the petitioner was {2} convicted for the offence under Section 16/54 of the Rajasthan Excise Act and was sentenced for a period of six months with fine of Rs.500/- in default whereof to further undergo 15 days' simple imprisonment.

The brief facts of the case are that on 01.11.1988, at about 11.20 a.m., Shri Shanti Tiparba, Excise Inspector, received information that the petitioner-accused was running workable still for making of illicit liquor at his residence.

On receiving this information, the Excise Inspector, proceeded under Section 47 of the Rajasthan Excise Act and searched the residence with constable Badhavlal and other police party with motbirs Shiv Singh and Chaman Singh.

On searching, workable still for producing liquor was found and that after seizing the articles and illicit liquor, the petitioner-accused was arrested.

The illicit liquor ( ) was sent for chemical examination and upon receipt of report (Ex.P/4) and after completion of investigation, charge-sheet under section 16/54 of the Rajasthan Excise Act was filed before the learned court {3} below.

Thereafter charge under section 16/54 of the Rajasthan Excise Act was framed against the petitioner-accused which he denied and claimed trial.

To substantiate the charge, the prosecution examined as many as six witnesses.

Thereafter, the petitioner was examined under Section 313 Cr.P.C.in which he stated the prosecution evidence as false and produced Hamer Singh as DW-1 in defence.

After hearing the learned counsel for the parties, the learned trial court convicted the petitioner for the offence under Section 16/54 of the Rajasthan Excise Act and was sentenced as above vide judgment and order dated 14.12.1995.

Being aggrieved of the aforesaid judgment and order dated 14.12.1995, the petitioner-accused preferred appeal before the learned appellate court, which was dismissed vide judgment dated 24.01.1997.

{4} Again dissatisfied with the aforesaid judgments and order, the petitioner-accused has preferred this revision petition, which was admitted for hearing vide order dated 02.04.1997 and the record of both the courts below was called for.

I have heard Mr.Doongar Singh, learned counsel for the petitioner and Mr.Rajesh Bhati, learned Public Prosecutor.

The learned counsel for the petitioner did not press the conviction but submitted that the petitioner- accused is an 80 years old person and that the matter is more than 25 years old, therefore, his sentence may be reduced to already undergone.

Per contra, learned Public Prosecutor supported the impugned judgment of conviction and order of sentence and submitted that there were three cases of similar nature against the petitioner-accused and thus he is a habitual offender.

It was also submitted that {5} under the provisions of Section 16/54 of the Rajasthan Excise Act, minimum sentence has been prescribed and the court cannot reduce the minimum sentence prescribed.

I have considered the submissions made by the learned counsel for the parties and perused the record.

From the perusal of record and careful scrutiny of evidence, the petitioner was found manufacturing illicit liquor on a working still in his house.

The liquor so manufactured was being stored in bottles.

The mode of manufacture of the liquor and the manner of its storage clearly indicate that the liquor manufactured by the petitioner could have proved harmful to the health of consumers thereof.

The quality of liquor manufactured by the petitioner may, therefore, well remind a person of its likely fatal consequences also, which results from consumption of

such liquor, day-in and day-out.

The act committed by the petitioner, therefore, clearly attracted the provisions of Section {6} 54(d) of the Act.

Thus, he was rightly convicted by the learned trial court and affirmed by the learned appellate court.

Now, the question remains as to whether the sentence can be reduced.

Section 54 of the Act clearly provides that if a person is found in possession of a workable still for the manufacture of any excisable article or is found to be guilty of selling or possessing for sale any excisable article in contravention of the provisions of this Act or of any rule or order made or of any licence, permit or pass granted thereunder, he shall be punished with the minimum sentence of imprisonment for six months with fine.

The proviso to Section 54 thus creates a bar to the discretion of the court to be lenient in awarding punishment less than the minimum prescribed by the statute.

It may further be noted that the provisions made in the proviso do not give any discretion to the court to impose a punishment less than the minimum {7} prescribed thereunder even for any reasons whatsoever.

The object of prescribing minimum sentence for the offence under Section 54(d).which has been found proved against the petitioner in the present case, is not far away to find.

It admits no controveRs.that liquor which is an intoxicant is injurious to public health, morality and wealth of people.

The purpose of the Act is to control and restrict not only illegal trade in liquor but also restrict the consumption of intoxicating liquor particularly those which are manufactured in non-hygienic conditions.

This object of the Act makes the manufacture of illicit liquor in non-hygienic conditions a grave crime against the public at large.

It is, therefore, for such reasons that the legislature appears to have prescribed a minimum sentence of six months and for offences falling under the purview of the proviso to Section 54 of the Act.

Thus, the statute has prescribed a minimum sentence.

It does not provide for any exceptions and {8} does not vest the court with any discretion to award a sentence below the prescribed minimum under any special circumstances.

Further, the measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim.

Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals.

Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.

The courts must not only keep in view the right of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

It is the nature and gravity of the crime but not the criminal, which are germane for considering of appropriate punishment in a criminal trial.

The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been {9} committed not only against the individual victim but also against the society to which the criminal and victim belong.

The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminal.

In the instant case, the offence for which the petitioner was convicted lies within the domain of anti- social offences against the society at large and, therefore, cannot be lightly viewed at.

In view of the above, I am unable to treat the petitioner leniently by either reducing his sentence to already undergone.

The revision petition is, therefore, dismissed.

[Banwari Lal Sharma].,J.

/skm/

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