

Emperor Vs. Gala Mana

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Court : Mumbai

Decided On : Apr-02-1924

Reported in : AIR1924Bom453; (1924)26BOMLR434

Judge : Norman Macleod, Kt., C.J. and ;Shah, J.

Appeal No. : Criminal Appeal No. 125 of 1924

Appellant : Emperor

Respondent : Gala Mana

Judgement :

Norman Macleod, Kt., C.J.

1. The accused in this case was committed for trial to the Sessions Court at Ahmedabad, charged with having committed theft of a purse containing Re. 1-2-0 from the pocket of the complainant, an offence punishable under Section 379, Indian Penal Code. A further charge was added under Section 75, Indian Penal Code, to which the accused pleaded guilty. Accordingly he was convicted and sentenced by the Additional Sessions Judge to rigorous imprisonment for five years under Sections 379 and 75, Indian Penal Code. We do not dispute that Section 75, Indian Penal Code, entitled the Judge to inflict so severe a sentence. But we think that the powers given to a Sessions Judge by that section must be exercised Criminal Appeal No. 125 of 1924, against conviction and sentence passed by N.V. Desai, Additional Sessions Judge of Ahmedabad, with a certain

amount of discretion. Speaking for myself, I have noticed in the past that sentences have been inflicted under Section 75, Indian Penal Code, by Sessions Judges which are often too severe considering the number of previous conviction recorded, and that while in Bombay an habitual offender is seldom committed to the Sessions Court until he has been convicted ten or twelve times, in the Districts Section 75 of the Indian Penal Code is brought into operation as soon as a prisoner has been found to have been convicted three or four times. I think that greater discretion should be exercised in making the penalty fit the crime, and that the practice of committing petty offenders to the Sessions Court after three or four convictions should cease. Even if such persons are committed there is no necessity for the Sessions Judge to inflict a vindictive sentence.

2. In this case the accused was first convicted under Section 379, Indian Penal Code, in 1904. He was again convicted under Section 457 in 1906, and again under Section 379 in 1900 when he was sentenced to a year's rigorous imprisonment. In 1912 he was convicted under Section 379 and sentenced to twenty-one months' rigorous imprisonment. Thereafter for more than eight years he was not brought within the cognizance of the Courts. But in August 1922 he was convicted under Section 379 and sentenced to a year's rigorous imprisonment. Now for having stolen a purse containing Re. 1-2-0 he is sentenced to five years' rigorous imprisonment. Even assuming that he is owing to his record a confirmed thief, still I do not think any useful purpose would be gained by sentencing him to five years' rigorous imprisonment. We reduce the sentence to one year's rigorous imprisonment.

Shah, J.

3. I agree.