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Court : Karnataka

Decided On : Feb-14-1984

Reported in : [1984]56STC79(Kar)

Judge : M.S. Patil, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360, 360(3) and 361

Appeal No. : Criminal Revn. Petn. Nos. 836 to 844 of 1982 and 512 of 1983

Appellant : The State of Karnataka

Respondent : Babu

Advocate for Pet/Ap. : T.J. Chouta, High Court Govt. Pleader

Judgement :

ORDER

1. These revisions arise out of the orders passed by the JMFC., Harihar, in C.C. Nos. 302/81, 305/81, 369/81, 312/81, 311/81, 310/81, 306/81, 304/81, 303/81, and 307/81, respectively whereby the learned Magistrate convicted the respondents, who were accused in different cases, for contravention of S. 12B(1) punishable under S. 29(1)(g), Karnataka Sales Tax Act, 1957, hereinafter referred to as the Act, and released them on admonition in exercise of the powers conferred under sub-section (3) of S. 360, Criminal P.C.

2. Since the question of law raised is common to all of them, they are heard simultaneously and are disposed of by the common order.

3. The learned Magistrate has proceeded to convict the accused on their pleading guilty and having regard to the fact that they were all first offenders has thought it proper to release them on admonition.

4. Mr. T. J. Chouta, learned High Court Government pleader appearing for the State, submitted that the provisions of sub-section (3) of S. 360, Cr.P.C., were not applicable to such cases of economical offences and the provisions in sub-section (3) of S. 360 were restricted to particular offences mentioned therein and are not applicable to the offences committed under other laws and as such the orders passed by the learned Magistrate releasing the accused on admonition are wholly illegal and, therefore, deserved to be set aside.

5. Although the accused in all these cases are served, they have not appeared.

6. One of the contentions advanced by Mr. Chouta is that where the accused is found guilty and convicted for the offence under S. 29(1)(g) of the Act, there is no escape from imposing a minimum sentence of fine of Rs. 250/- and the learned Magistrate was, therefore, not justified in releasing the accused on admonition merely because they were first offenders.

7. Sub-section (3) of S. 360, Cr.P.C., reads as follows :

'In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code punishable with not more than two years imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.'

Although from a reading of the provisions contained in sub-section (3) of S. 360, Cr.P.C., it would appear on the first flush that the provisions would be applicable only in cases of such offences as enumerated in first part of sub-section (3) of S. 360 like theft, theft in building, dishonest misappropriation, cheating or any other offences under the Penal Code punishable with not more than two years imprisonment; but on a close reading of the provisions, it would appear that the intention of the Legislature was not to so restrict the application of the provisions contained therein. Wide discretion has been given to the Court in the matter of releasing the accused on admonition instead of sentencing him to any punishment. The provisions are applicable even in case of offences punishable with fine only or where the offences committed are trivial in nature. The expression 'or any offence punishable with fine only' used therein is wide enough to include the offences under other laws, other than the offences under the Penal Code specifically mentioned, which are punishable with fine only. No provision either from the Criminal P.C. or the Sales Tax Act has been brought to my notice when by the application of the provisions contained in sub-section (3) of S. 360 has been excluded. Maybe, the provisions contained in sub-section (3) of S. 360 have not been happily worded and, as stated earlier, on a first flush, it would appear that the provisions would be applicable only to such of the offences punishable under the I.P.C. But, that is not the intention of the Legislature. If such was the intention of the Legislature, there would not have been any difficulty to make specific provision excluding such of the offences coming under other laws, particularly when the Legislature had taken care while enacting the provisions in S. 361, Cr.P.C. making it obligatory on the Court in all cases to give reasons for not invoking the provisions contained in S. 360. Cr.P.C. Therefore, it is difficult to concede the submission made by Mr. Chouta that the provisions of sub-section (3) of S. 360 Cr.P.C., were not applicable to the offences under the Karnataka Sales Tax Act.

8. It appears, the learned Magistrate, having regard to the fact that the accused were first offenders, has thought it proper to invoke the provisions of S. 360(3), Cr.P.C., as the law requires, and he has accordingly proceeded to release them on admonition, instead of sentencing them to any punishment. The question of imposing minimum sentence of fine as provided under S. 29(1)(g) arises only in case where the Court, after considering the facts of a particular case. Character

and antecedents of the accused, and other aspects as provided in sub-section (3) of S. 360, comes to the conclusion that the accused cannot be dealt with under S. 360 and where the Court considers that it is a fit case to deal with the accused under this section and releases on admonition, the question of sentencing does not arise. Therefore, it appears, the Magistrate has not committed any error in releasing the accused on admonition, having regard to the fact that they were the first offenders.

In the result and for the reasons stated above, the revisions fail and they are accordingly dismissed.

9. Revisions dismissed.

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