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Court : Karnataka

Decided On : Apr-02-1991

Reported in : 1992CriLJ158; ILR1991KAR3220; 1991(2)KarLJ8

Judge : B.N. Krishnan and ;B.P. Singh, JJ.

Appeal No. : Criminal Appeal No. 429 of 1987

Appellant : The State of Karnataka

Respondent : Annappa and Others

Advocate for Def. : Mr. K.N. Patil, Adv.

Advocate for Pet/Ap. : Mr. S.R. Bannurmath, ASPP

Judgement :

B.P. Singh, J.

1. The State has preferred this appeal against the sentence passed by the JMFC at Aland in C.C. No. 298 of 1984, dated 10th October 1986. The State is aggrieved by that part of the order whereby the learned Magistrate has only imposed a fine of Rs. 250/- against each of the respondents by way of punishment for commission of an offence punishable u/S. 4(i) of the Protection of Civil Rights Act, 1955 (hereinafter referred to as the 'Act'). The State contends that having regard to the provisions of S. 4 of the Act, there was no discretion left in the Court to award only

a sentence of fine without imposing the statutorily prescribed minimum substantive sentence.

2. Respondent-2 is the son of respondent-1. The charge against them is that on 5-8-1984 at about 12-30 p.m. at Tadkal village they failed to supply water and tea to C.Ws. 1 to 4 since they were members of Holeya community. The learned Magistrate after considering the evidence on record came to the conclusion that the charge against the respondents was made out for an offence u/S. 4(1) of the Act but held that a sentence of fine of Rs. 250/- would meet the ends of justice. It appears that the learned Magistrate did not notice the amendment to S. 4 of the Act by Act No. 106 of 1976 which came into effect from 19-11-1976.

3. The only question urged before us by the learned Additional State Public Prosecutor is that in view of the amended S. 4 of the Act, there is no discretion left in the Court to award a sentence of fine only, and that in view of the clear provisions of S. 4 of the Act the Court is obliged to pass a substantive sentence of imprisonment, not less than a term of one month, and also a sentence of fine not less than Rs. 100/-. On the other hand the learned counsel for the respondents contended that notwithstanding the amendment, the Court is still left with the discretion either to impose a substantive sentence of imprisonment or only a sentence of fine. He has not challenged the finding of guilt recorded against the respondents.

4. Section 4 of the Act as it stood prior to the amendment in the year 1976 prescribed that who ever on the ground of untouchability enforced against any person any disability with regard to the matters enumerated in clauses (i) to (xi) of S. 4 :

'shall be punishable with imprisonment which may extend to six months, or with fine which may extend to Rs. 500/-, or with both'.

Section 6 of Act 106 of 1976 brought about a significant amendment to S. 4 of the Act. So far as the punishment prescribed was concerned, the relevant part of S. 4 of the Act was amended to read as follows :-

'shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees'.

It will thus appear that prior to its amendment S. 4 of the Act did leave a discretion in the Court either to impose a substantive sentence or only to impose a fine or both. Significant changes were however brought about by the amendment. After the amendment, the section prescribes a statutory minimum period of sentence and also a statutory minimum quantum of fine, that is to say, the sentence of imprisonment shall not be less than one month and the fine shall not be less than Rs. 100/-. Learned counsel for the respondents fairly submitted that where a Court chooses to impose a substantive sentence of imprisonment, the sentence should not be less than one month which is the statutory minimum. Similarly, when the Court chooses to impose only a sentence of fine, the fine should not be less than Rs. 100/- which is the minimum prescribed. His contention is that notwithstanding the amendment to S. 4 of the Act, the Court still has a discretion either to impose a substantive sentence of imprisonment or to impose a sentence of fine only. He contends that the words 'and also' should be read as 'or'. He alternatively submitted that the word 'and' should be read as 'or'.

5. We find it difficult to uphold the submission of the learned counsel for the respondents. If the words 'and also' is read as 'or' it would amount to ignoring the use of the word 'also' which has been deliberately employed by the legislature while amending that part of S. 4. To our mind the use of the word 'also' emphasises the fact that the sentence of fine is in addition to the substantive minimum sentence prescribed. It is well settled that while interpreting a legislation the Court must give meaning to each and every word used by the legislature and not so as to render any of the words used by the legislature redundant. Alternatively, if the word 'and' is to be understood as 'or', the sentence will not be grammatically correct because in that event it would read as follows :-

'shall be punishable with imprisonment for a term of not less than one month and not more than six months or also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.'

In our view, therefore, the alternative argument addressed by the learned counsel for the respondents cannot be accepted.

6. If the legislature wanted to only prescribe a minimum substantive sentence without affecting the discretion of the Court to impose a sentence of fine only, it was not necessary for the legislature to employ the words which it has done while effecting amendment to that section. If we were to accept the submission of the respondents, the amendment has really served no purpose because it has left to the Court the discretion to impose a sentence of fine alone, without imposing a substantive sentence of imprisonment. Since the word 'also' was brought in by way of amendment, it cannot be ignored and must be given meaning. The prescription of a statutory minimum sentence of imprisonment with no exceptions whatsoever, also tends support to the construction that a mere imposition of fine is not contemplated by the section. We are, therefore, of the view that by reason of the amendment, the Court is left with no discretion to pass only a substantive sentence of imprisonment or only a sentence of fine. In view of the clear words employed by the legislature and emphasised by the use of the word 'also' we have no doubt that the Court is obliged not only to impose the statutory minimum sentence of imprisonment but also in addition to impose a fine of not less than Rs. 100/- which is the statutory minimum prescribed. In every case, therefore, where it is found that a person is guilty of an offence punishable u/S. 4, the Court is obliged to pass the statutory minimum sentence of imprisonment in addition to statutory minimum sentence of fine. The legislature in its wisdom thought it necessary as a matter of policy to impose a deterrent punishment, since the punishment earlier prescribed did not produce the desired result in dealing with the social evil. The view that we have taken is in accord with the view taken by the Madras High Court in the case reported in State v. Ponnuvel, 1984 Cri LJ 1075 which is a case dealing with the provisions of the Protection of Civil Rights Act, the Act with which we are concerned in the instant case.

7. Learned counsel for the respondents has placed great reliance upon a Full Bench decision of the Bombay High Court reported in Emperor v. Peter D'Souza, AIR 1949 Bombay 41 : (1949) 50 Cri LJ 137 (FB). In that case the High Court took the view that although by an amendment to the Bombay Abkari Act the legislature

had altered 'or' to 'and', it was also significant that it had altered the expression 'punished' for the expression 'punishable'. Therefore, it came to the conclusion that on conviction, the accused was not necessarily to be punished with the imprisonment of six months and with a fine; but he was punishable, or liable to be punished, with imprisonment of six months and with fine which may extend to Rs. 1000/-. Therefore, 'punishable' imported discretion, and it was left to the discretion of the Court to impose a sentence of imprisonment or a sentence of fine or both. 'Imprisonment and fine' in this context must and did mean 'imprisonment and/or fine'.

It will be observed that in S. 43 of the Abkari Act the word 'also' was not employed, and to our mind the use of the word 'also' which must mean in addition to, makes all the difference. Moreover, under the Abkari Act with which the Full Bench was concerned there was discretion in the Court not to pass the minimum substantive sentence and to impose any lesser sentence for reasons to be recorded in the judgment. In the instant case, no such discretion is left with the Court. The Full Bench judgment of the Bombay High Court, therefore, is of no assistance to the respondents.

8. It is well settled that where the statute prescribes a minimum sentence without any exception, and does not vest the Court with any discretion to award a sentence below the prescribed minimum, the Court is obliged to impose a sentence which is not less than the statutory minimum. It has no discretion in such cases to pass a lesser sentence. One may usefully refer to the judgment of the Supreme Court reported in State of A.P. v. S. R. Rangadamappa, : 1982 CriLJ2364 .

9. In the instant case, the learned Magistrate has imposed the sentence of fine of Rs. 250/- each without imposing the minimum statutory sentence of imprisonment. In our view, the sentence passed by the learned Magistrate is illegal because under the amended S. 4, the Court is not only to pass a substantive sentence of imprisonment not less than the statutory minimum, but it is also obliged to impose a sentence of fine not below the statutory minimum i.e., it must pass a sentence of imprisonment and also of fine, and in both cases, the sentence should not be

below the statutory minimum. There is no discretion in the Court to pass a lesser sentence.

10. In the view that we have taken, therefore, the sentence passed against the respondents has to be modified. We accordingly allow this appeal and sentence the respondents to one month's rigorous imprisonment and a fine of Rs. 100/- each under Section 4(1) of The Protection of Civil Rights Act, 1955 and accordingly modify the sentence of fine of Rs. 250/- to each of the respondents imposed by the learned Magistrate.

11. Appeal allowed.