State of Karnataka Vs. Basappa

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Court : Karnataka

Decided On : Dec-06-1999

Reported in : 2000CriLJ2327; ILR2000KAR2361; 2000(6)KarLJ187

Judge : M.F. Saldanha and;N.S. Veerabhadraiah, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 28 and 377(1); Indian Penal Code (IPC), 1860 - Sections 409 and 477-A

Appeal No. : Criminal Appeal No. 742 of 1995

Appellant : State of Karnataka

Respondent : Basappa

Advocate for Def. : Sri D.S. Hosmath, Adv.

Advocate for Pet/Ap. : Sri B.C. Muddappa, Additional State Public Prosecutor

Judgement :

1. Through this appeal, the State of Karnataka has assailed the adequacy of sentence awarded to the respondent-accused who faced his trial in CC No. 57 of 1989 in the Court of the First Additional Judicial Magistrate First Class, Bagalkot for the offences punishable under Sections 409 and 477A of the IPC.

2. Briefly stated, the accused who was the Branch Post Master of Nainegali Branch Post Office between the period 27-6-1979 to 20-11-1984 was inter alia in

charge of the SB Accounts maintained by the Branch. The allegation against him was that on the scrutiny of the records, it was disclosed that an amount of Rs. 3,400/- had not been accounted for in the records of the Post Office. There is an elaborate procedure prescribed for the maintenance of the different records and the charge was that the entries were incorrect and that consequently, the offence under Section 477A of the IPC is also disclosed. Another relevant fact is that the accused more than fully reimbursed the entire amount that was found to be short and we refer to this particular aspect because it is of some relevance.

3. As inevitably happens, the trial dragged on right upto 11-2-1994 when it was finally concluded and the Trial Court convicted the accused for both the offences with which he stood charged. For the offence punishable under Section 409 of the IPC, he was sentenced to undergo SI till the raising of the Court and he was sentenced to pay a fine of Rs. 300/-, in default SI for 2 months. The accused was also convicted of the offence punishable under Section 477A of the IPC and sentenced to pay a fine of Rs. 200/-, in default SI for 2 months. It is equally relevant for us to record that the accused did not appeal against the conviction and sentences awarded to him and we refer to this aspect of the case because we will have to say something about it. The State of Karnataka, however has preferred the present appeal on the ground that admittedly the accused was working as a public servant and that he stands convicted for two serious offences both of which invite heavy punishment and that consequently, the imposition of such a lenient sentence is incorrect and that therefore, the case qualifies for an enhancement of sentence.

4. The learned Additional State Public Prosecutor drew our attention to the provisions of the IPC and to the sentences prescribed and he stated that the legislative's intent was that in a case of this type relating to loss of property and falsification of accounts that the law has prescribed heavy jail sentences apart from fine and he illustrated to us that Section 409 of the IPC even prescribes imprisonment for life in appropriate cases.

5. The learned Counsel submitted that the conviction cannot be questioned because it has not been appealed against and has become final and that therefore

this Court needs to apply its mind to the short question as to whether an accused who was convicted of such serious charges can be awarded the trivial sentences that we have indicated above and he submitted the punishment is hopelessly inadequate and that it is very much in the public interest that the sentence be enhanced. The learned Counsel also relied on the decision of the Supreme Court in the case of State of Karnataka v Surender Kotiankar, wherein the Supreme Court had disapproved of showing misplaced sympathy in cases of such serious nature. We are in respectful agreement with the principle enunciated by the Supreme Court, but there are several other relevant considerations which a Court is required to take cognizance of and it is on the basis of a total and complete consideration of all these factors that we will have to rule as to whether interference is warranted on the facts of the present case.

6. Mr. D.S. Hosmath, learned Counsel representing the accused submitted before us that this is not a case where the Trial Court has thoughtlessly or recklessly disposed of the trial by awarding a lenient sentence nor does the judgment of the Trial Court indicate that there has been any non-application of mind. The learned Counsel took us through the reasons set out by the Trial Court for awarding a lenient sentence and we will only recount 3 of the most important ones, the firstbeing that the accused has been through a trial that has lasted as long as 10 years, the 2nd being that he has reimbursed more than the full amount in order to make good whatever loss was caused to the department and has virtually atoned for what had happened and the third ground was that the accused has been able to somehow secure another job to support himself and his family and that in this background, it did not appear appropriate to the Trial Court at such a late stage to send the accused back to jail which would inevitably mean the loss of his job and source of livelihood. He submitted that in this background, it was in more or less similar circumstances that the Supreme Court approved of a similar punishment in a case punishable under Section 409 of the IPC. The learned Counsel relied on the decision of the Supreme Court in Jaydev Shrichand Danani v State of Gujarat.

7. We shall first deal with the submission canvassed by the learned Additional State Public Prosecutor wherein he strongly submitted that the Courts must have a firm and fair standard while sentencing and that misplaced sympathy is required to

be frowned upon. In this context, what we need to take note of is that like all criminal cases it is necessary to pay special attention to the peculiar facts and circumstances of that particular case. The investigation has not revealed that the accused was habitually helping himself to the Departmental funds nor does it reveal that he was found with any assets disproportionate to his known source of income. The simple charge against him was that the entries did not reflect the amount of Rs. 3,400/- and the accused's explanation was, being a new and inexperienced person he has committed an error which defence was not accepted by the Trial Court and he was held responsible for the loss and was therefore convicted. The complexion of this case is entirely different from the normal cases that come up under Sections 409 and 477A of the IPC, wherein substantial amounts of money are involved and fraud and dishonesty are evident. This case is distinguishable because the offence is virtually a case of a technical breach arising out of shortage and in this background, a Court is required to carefully assess the complexion of the case and where it answers to the description that we have set out, it does qualify for maximum leniency. The concept of misplaced sympathy would come in where leniency is shown in a case where it deserves deterrent action and not in cases of the present type. We need to emphasise that compassion or 'Karuna' in the right instances is an essential ingredient of the doctrine of sentencing.

8. We need to say something with regard to the grievance of the State that the sentence awarded is hopelessly inadequate. The learned defence Counsel is right when he points out to us that it is an essential ingredient of the principles that govern the doctrine of sentencing that a Court must take into account everything that has happened to the accused since the time that the offence was detected because all adversities that have taken place during this period are what the accused had to bear because of the alleged offence. The accused was a public servant. The moment the offence was detected he was placed under arrest andsuspension is automatic, which means that the employee is reduced to subsistence allowance. It is equally traumatic because of the allied fall out insofar as there are very adverse consequences at the place of work and in society. The reason why we take note of this is because where for any reason, the trial becomes abnormally long drawn-out the accused who is under suspension not

only gets a very small income but is precluded under the law from working elsewhere even if he is capable of doing so. In this case, it is true that the accused was not detained in custody but the restriction on his employment for a period of 10 years is something over which he had no control and the Court has to take note of it.

9. Criminal jurisprudence has also taken notice of the traumatic effects to an accused person who is subjected to a prolonged trial or litigation. Quite apart from the uncertainty, the pendency of a criminal proceeding involving serious charges which could possibly result in abnormally heavy jail sentences and fine is the other factor which the Courts have relied upon for purposes of reducing the quantum of sentence that would normally have been awarded and we only refer to one of the serious situations wherein the Supreme Court has now conclusively ruled that in a case of capital punishment where there is a long time gap between the period when the sentence is awarded and the sentence has to be carried out that this factor alone is sufficient for the Court to commute the sentence to one of life imprisonment. The Trial Court was therefore fully justified in taking into consideration the duration of the trial which in this case was spread over for 10 years and in notionally taking cognizance of the fact that the accused has in fact gone through a traumatic period right through this decade. The present pathetic condition of the accused who was present before us is eloquently illustrative of the suffering endured during this period.

10. Two other factors which the Trial Court has taken into account and which we need to say something about is the fact that as a result of this incident and the conviction by the Court that the accused has lost his job. In Service Law, the Courts have coined the phrase particularly where small employees are concerned that the loss of a job is synonymous with 'economic death'. We are happy that the Trial Court has taken serious note of this factor and has not mechanically awarded a heavy sentence merely because on a reading of the IPC such sentences are provided for. Additionally, it is equally relevant, as pointed out by the learned Trial Judge that the consequences of the incarcerating the accused who was released under bail in the year 1984 once again after a decade when the judgment was pronounced on 11-2-1994, is contra indicated. The valid reason for this was

because it was pointed out to the learned Judge that the accused has been able to secure some source of livelihood and is working as a driver and if he were to be jailed for any length of time that he would have lost this job also. We do feel that these are all relevant aspects which a Criminal Court is required to take into consideration while imposing a sentence and it is well-settled law that it is the duty of the Court to apply its mind to these areas.

11. The last and the strongest ground on which we refuse interference is because it is now well-settled law that where the Trial Court exercises judicial discretion, that unless it is demonstrated that a grave error has resulted while exercising the discretion, unless it is demonstrated that the discretion has been perversely exercised or that it has been exercised in such a manner that a grave miscarriage of justice has occurred, the appeal Court will address itself to only one question viz., as to whether the discretion has been correctly and validly exercised. On a careful consideration of all the relevant factors, the answer to the three queries set out by us is in the negative, and it is very clear to us from the judgment of the Trial Court that the discretion while sentencing has been correctly exercised by that Court. In this view of the matter after a very careful consideration of the facts of the case and more importantly the law on the point, we hold that this is not a case that calls for interference. We have set out elaborate reasons in this judgment in order to demonstrate that every case has to be decided on the special facts of that case and that it does not create a precedent for other ones.

12. The appeal accordingly fails and stands dismissed.