

State of U.P. Vs. Salezar

State of U.P. Vs. Salezar

SooperKanoon Citation : sooperkanoon.com/464621

Court : Allahabad

Decided On : Jul-11-1983

Reported in : 1984CriLJ315

Judge : T.S. Misra and ;Kamleshwar Nath, JJ.

Appellant : State of U.P.

Respondent : Salezar

Judgement :

T.S. Misra, J.

1. This appeal by the State is directed against the order dated 29-4-1977 passed by Sri L. P. Misra, V Addl. Sessions Judge, Lucknow. The facts giving rise to the instant appeal in brief are these: The respondent Salezar an employee of Loco-Workshop Char-bagh. Northern Railway, Lucknow, was caught red-handed on 24-9-1969 at about 4.40 p. m. at the gate No.-4 of the Loco Workshop concealing' 33 pieces of brass metal which were railway property. The weight of the brass metal was about 3 kilograms. A recovery memo was prepared before the witnesses and the accused-respondent Salezar was challenged under Section 3 of the Railway Property, (Unlawful Possession) Act. The trial Court after examining the witnesses and considering the evidence on record and the surrounding circumstances convicted the respondent and sentenced him to one year's R. I., vide order dated 23-9-1076. The present respondent Salezar impugned that order before the

Sessions Judge, Lucknow by filing Criminal Appeal No. 102 of 1976 which came up for hearing before the learned V Addl. Sessions Judge, Lucknow who after hearing the appellant and the respondent concurred with the trial Court both on the question of conviction and sentence. It appears from the impugned judgment of the learned V Addl. Sessions Judge that a request was made before him to reduce the period of sentence from one year's R. I. to the period already undergone by the accused who had been in jail in connection with that case for one month and ten days or so. The appellate Court below, declined to do so observing that it was not a fit case for reduction of sentence. It, however, gave benefit of Section 4 of the Probation of Offenders Act, 1958, hence while dismissing the appeal the appellate Court below ordered that instead of serving out the sentence given by the learned Magistrate the accused shall be released on his entering into a bond of Rs, 1000/- with two sureties in the like amount to appear and receive sentence within a period of one year from 'today' when called upon and during the period he will keep peace and be of good behaviour. The accused was permitted to file the personal bond as well as the surety bonds within a week from the order. It was also made clear that if the bonds were not submitted the accused will be taken into custody. Against this decision the State has filed the instant appeal under Section 377 of the Code of Criminal Procedure alleging that the appellate Court below has not assigned any good or valid reason for the release of the respondent under the provisions of the Probation of Offenders Act, 1958 and also pleading as ground that the reduction of sentence by the appellate Court below is against the provisions of the Railway Property (Unlawful Possession) Act.

2. The learned Counsel for the State submitted at the outset that the provisions of the Probation of Offenders Act. 1958 would not be applicable to a case covered by the Railway Property. (Unlawful Possession) Act and that at any rate there was no such adequate circumstances much less reason to extend the benefit of that Act to the respondent. In ground No. 5 it has been stated that in any case the modified order of sentence by the lower appellate Court is inadequate and is liable to be set aside.

3. The appeal has admittedly been filed under Section 377 of the Code of Criminal Procedure, 1973 which provides that the State Government may, in any case of

conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present in appeal to the High Court against the sentence on the ground of its inadequacy. Section 377 Cr. P. C, therefore, gives a right to the State Government to be an appeal against the sentence on the ground of its inadequacy. It has therefore, to be seen whether the instant appeal has been filed by the State Government against the sentence on the ground of its inadequacy and if it is not so the appeal would not be maintainable. As pointed out herein above the trial Court had convicted the accused-respondent under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 and had sentenced him to undergo R. I. of one year. Both the conviction and the sentence were maintained by the appellate Court below. Even the plea for reduction of sentence was specifically refused by the appellate Court below. The appellate Court below, however, gave benefit of Section 4 of the Probation of Offenders Act. The learned Counsel for the State submitted that by giving benefit of Section 4 of the Probation of Offenders Act, 1958 the appellate Court below has modified the sentence and the effect of the order is to reduce the sentence; hence where the minimum sentence prescribed is one year the Court below by giving him benefit of Section 4 of the said Act has illegally reduced the sentence, though on the other hand there was specific refusal by the Court below. We are not impressed by the argument. A bare perusal of the judgment of the appellate Court below makes it quite manifest that the appellate Court below has maintained both the order of conviction and sentence passed by the trial Court. It is not the case of the State before us that the accused should have been awarded a sentence of more than one year. The State is aggrieved by that part of the judgment and order of the appellate Court below whereby benefit of Section 4 of the Probation of Offenders Act, 1958 was given. Such an order is revisable under Sub-section (4) of Section 11 of the Probation of Offenders Act. Obviously the appeal filed under Section 377 Cr. P. C. is not maintainable. It lies only on the ground of inadequacy of sentence, In these circumstances, without going into the other question as to whether the provisions of the Probation of Offenders Act, 1958 would be applicable or not we are of the opinion that the appeal filed by the State under Section 377 Cr. P.C., 15 not maintainable on the facts and circumstances of the case.

4. In the result, the appeal is dismissed.

Kamleshwar Nath, J.

5. While concurring with the views of my brother Mr. Justice T. S. Misra, I would like to add as follows: Section 377(1) Cr. P. C., applies only to those appeals to the High Court which are filed against the sentence passed 'in any case of conviction on a trial held by any Court other than a High Court'. Conviction on a trial held by a Court is different from conviction by an appellate Court. In contrast to this provision in Section 377(1) Cr. P. C., regarding appeal for enhancement of sentence, are the provisions of Section 378(1) Cr. P. C. where provision has been made for appeal from 'an original or appellate order of acquittal passed by any Court other than a high Court,' On a comparative examination of these two statutory provisions, it would appear that Section 377(i) Cr. P. C., does not contemplate an appeal against conviction and order passed by an appellate Court as contradistinguished from that in a trial.

6. The appeal is therefore, not maintainable and is liable to be dismissed- on this ground as well. It is accordingly dismissed.

ORDER OF THE COURT

7. The appeal is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com