

V.C. Jain Vs. State

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Court : Allahabad

Decided On : Apr-11-1984

Reported in : 1984(17)ELT10(All)

Judge : M. Wahajuddin, J.

Acts : Central Excise Act - Sections 9 and 9E; Uttar Pradesh First Offenders Act - Sections 4; Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Criminal Misc. Application No. 1938 of 1984

Appellant : V.C. Jain

Respondent : State

Advocate for Def. : M. Katpi, Adv.

Advocate for Pet/Ap. : Mahendra Goel, Adv.

Disposition : Application rejected

Judgement :

M. Wahajuddin, J.

1. The applicant on being convicted under Section 9(i)(a), (b) (bb) of the Central Excises and Salt Act was released by the trial court under Section 4 of First Offenders Act on a personal bond and two sureties. The applicant did not prefer

any appeal against such conviction and sentence. The State preferred a revision No. 1160 of 1983 against the sentence and the revisional court vide its order and judgment dated 9-12-1983 set aside the order of the Magistrate granting probation and remanded the case to the trial court directing that court to pass sentence according to law having in mind the provision of Section 9E of the Central Excise Act. The applicant has come forward with a prayer for quashing the entire proceedings. I may at the very outset observe that when a remedy of appeal against the conviction was available and no appeal was preferred against the conviction which was not assailed as such this Court cannot entertain any arguments on the merits of conviction as such nor inherent powers can be exercised on that score on the grounds urged.

2. The next point urged is that the revisional court should have directed retrial or in any case it should have awarded a sentence itself instead of remanding the case to the Magistrate for awarding proper sentence in accordance with law. The revisional court could not have directed a retrial when any appeal assailing the conviction was not preferred nor the conviction was challenged. The revisional court was concerned with a limited question of sentence alone on account of State having filed a revision for alteration of the sentence, The revisional court, once revision is entertained, is vested with the jurisdiction to pass any orders concerning the sentence. In fact, the applicant has been by the impugned order placed on an advantageous position. After sentence is passed he can well avail the remedy of appeal or revision as the case may be. If the revisional court had itself imposed any sentence that opportunity before the Sessions Judge would not have been available, I do not find any illegality or irregularity in the order remanding the case to the trial court for awarding a proper sentence in accordance with law. There is also a direct authority of this Court, namely, *State of U.P. v. D.N. Shukla*, 1982 Alld. Criminal Reports page 15. In that case also the benefit under Section 4 of the U.P. First Offenders Probation Act was given by the trial court. The Sessions Judge disagreeing with the trial court on matter of sentence namely the benefit accorded under Section 4 of the U.P. First Offenders Act, made a reference in revision. It was held that it is proper to send back the case to the trial court which may award suitable sentence to the accused because then accused would have a right to appeal. The case was remanded back by this Court to the

Additional Sessions Judge. This authority is on all fours and I do not find any force in the argument that the revisional court was wrong in remanding the case to the trial court for the purposes of awarding suitable sentence.

3. The applicant should not have rushed to this Court unnecessarily under Section 482 Cr. P.C. I may observe that intervention under Section 482 Cr. P.C. is not favoured if the trial is at its fag end and it is also the view of the Supreme Court. The present case stands on a worst footing. The applicant did not avail of the remedy of appeal available to him against the order of conviction. When that is the position, and the revisional court has sent back the case to the trial court to award suitable sentence, the applicant can have no genuine grievance at this stage nor would the application under Section 482 Cr. P.C. be entertained on the merits of the conviction as such. The applicant will have his remedy after the trial court has complied with the orders of the remand and passed any sentence. I have not discussed the case on merits because I am of the view that no interference under Section 482 Cr. P.C. can be made when conviction was not challenged in spite of remedy of appeal being available. The application under Section 482 Cr. P.C. is, therefore, rejected.