

Mohammadi Vs. the State

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Court : Allahabad

Decided On : Aug-06-1956

Reported in : 1957CriLJ275

Judge : Desai, J.

Appellant : Mohammadi

Respondent : The State

Judgement :

ORDER

Desai, J.

1. The applicant has challenged his conviction on the sole ground that he was not charged as a previous convict in compliance with the provisions of Section 221 (7), Cr. P. C.

2. All that is laid down in Section 221 (7) of the Code is that:

If the accused having been previously convicted of any offence, is liable by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous

conviction shall be stated in the charge.

The applicant was tried for an offence of 380, I. P. C. which is punishable with an imprisonment for seven years. He was tried before a Magistrate who could inflict an imprisonment extending to two years only. Under Section 75 of the Penal Code,

whoever having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Penal Code with imprisonment for a term of three years or upwards is guilty of an offence punishable under either of those Chapters with like imprisonment, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

Thus for the first conviction a person may be sentenced under Section 380, I. P. C. to imprisonment extending to seven years and for a subsequent offence he can be punished with transportation for life or imprisonment extending to ten years. There is no minimum imprisonment prescribed for a previous convict. A previous convict can be given imprisonment for a term of one year or even less. Section 75, I. P. C, comes into application only when a person is sought to be punished with imprisonment exceeding the maximum imprisonment provided for the offence. So long as the maximum punishment provided for the offence is not to be exceeded there is no need to resort to its provisions and any reference to them would be irrelevant. The Magistrate in this case did not intend to punish the applicant with imprisonment exceeding seven years. The imprisonment that he intended to inflict could be inflicted under Section 380, I. P. C. even for the first offence; there was, therefore, no sense in invoking the provisions of Section 75 and there was no necessity at all of mentioning the previous conviction in the charge. Facts about previous convictions have to be mentioned in the charge only when it is intended to punish the accused with imprisonment exceeding the maximum punishment provided for the offence by invoking the provisions of Section 75, I. P. C. If a Magistrate does not want to use the powers of (sic), that is, does not intend to inflict punishment more than the maximum provided for the offence, he is not required to state the particulars of the previous conviction in the charge. There

was, therefore, no irregularity committed by the trial Court.

3. For the purpose of the sentence the learned Magistrate could take the, previous conviction into consideration even though it was not mentioned in the charge. Actually it was for the applicant to prove that he was not a previous convict and deserved to be treated as a first offender,

4. There is no substance in this application and it is dismissed.

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