

Rakesh Kumar Saini Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-04-2001

Reported in : 2002CriLJ1215

Judge : J.C. Gupta, J.

Acts : Indian Penal Code (IPC) - Sections 506; Code of Criminal Procedure (CrPC) 1974 - Sections 235(2) and 248(2)

Appeal No. : Criminal Revn. No. 1675 of 2001

Appellant : Rakesh Kumar Saini

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : A.S. Diwekar and ;R.K. Asthana, Advs.

Judgement :

ORDER

J.C. Gupta, J.

1. In the peculiar set of facts and circumstances of the case and with the consent of parties' counsel this revision is disposed of finally at the admission stage itself. The applicant was tried for an offence punishable under Section 506, I.P.C. and by

the judgment and order dated 8-12-99 the learned Magistrate convicted and sentenced the applicant to one year R.I. and to pay a fine of Rs. 500/- under Section 506, I.P.C. Against the said order applicant filed appeal which has been disposed of by the impugned order dated 22-6-2001 maintaining the conviction of applicant under Section 506, I.P.C. but reducing the sentence to six months R.I. but simultaneously enhancing fine to Rs. 1,500/-

2. So far as conviction of applicant under Section 506, I.P.C. is concerned both the Courts below have recorded finding of guilt on evaluation of evidence brought on record. Learned counsel for the applicant could not bring to the notice of this Court any defect in the said finding of Courts below. The order of conviction of applicant under Section 506, I.P.C. thus calls for no interference.

3. So far as question of sentence is concerned it is submitted by applicant's counsel that the case in question proceeded as a warrant case under Chapter XIX-II and therefore, it was incumbent upon the trial Court to have made compliance of the provisions of Sub-section (2) of Section 248, Cr.P.C. which inter alia contemplates that the Magistrate shall give an opportunity of hearing to the accused on the question of sentence. Since in the present case no such opportunity was afforded to the applicant in revision, he was deprived of this valuable right conferred upon him by law makers. After going through the judgment of the trial Court as well as Appellate Court, this Court finds force in the above submission of the learned counsel. After the enforcement of new Cr.P.C. of 1973 a new provision in the shape of Section 235(2), Cr.P.C. in relation to Session trials and Section 248(2), Cr.P.C. in relation to trial of warrant cases under Chapter XIX has been introduced. New Code of Criminal Procedure recognises the theory that punishment should be awarded with reformatory angle. Similar view was expressed by the Apex Court in the case of Mohd. Giasuddin v. State AIR 1977 SC 1926.

4. In the case of Santa Singh v. State of Punjab AIR 1976 SC 2386 and Alauddin Mian v. State of Bihar 1989 All WC 911 : (AIR 1989 SC 1456) the Apex Court has laid emphasis for strict compliance of the provisions of Section 235(2), Cr.P.C. or Section 248(2), Cr.P.C. as the case may be. It was held in those decisions that the

said provisions are mandatory and serve dual purpose that is it satisfies the rule of natural justice by affording to the accused an opportunity of being heard on the question of sentence and at the same time helps the Court to choose the sentence being awarded in the case. It was further emphasised that since the provision is mandatory, it has not to be treated as a mere formality. The opportunity must be real and effective. Hearing as contemplated under the said provision is not confined merely to the hearing of oral submissions but it extends to giving an opportunity to the accused and the prosecution to place before the Court facts and material relating to the various factors bearing on the question of sentence. The object behind this provision is to give an opportunity to the accused to place on record evidence/material regarding his antecedents, social and economic background, mitigating and extenuating circumstances etc. It is also well settled that sentencing an accused is a sensitive exercise of discretion and not a mechanical and routine prescription acting on hunch. Many factors are to be considered and weighed while choosing appropriate sentence particularly in cases where no minimum sentence is prescribed and the Court has to choose appropriate sentence from a wide range of period of sentence.

5. In the present case a perusal of the judgment of the trial Court itself indicates that the Court after recording the order of conviction on the same day simply heard accused orally on the question of sentence. He was not given any opportunity of placing evidence/material having a bearing on the question of sentence as contemplated under the mandatory provision contained in Section 248(2), Cr.P.C. This non-compliance of the mandatory provision has certainly prejudiced the applicant-accused in the matter of hearing on the question of sentence. Had that opportunity been afforded to the applicant, the Court would have been in a better position to select an appropriate and proper sentence for meeting the ends of justice.

6. Learned counsel for the applicant submitted before the Court that the incident is of the year 1994 and it was of a very trivial nature. There is nothing on record to indicate that any harm was caused by the applicant in the revision to the complainant of this case in pursuance of the letter of threatening alleged to have been sent by the applicant. There is also nothing on record to show that applicant

has any criminal history or bad antecedents.

7. Having regard to the facts and circumstances of the case and the antecedents of the applicant, this Court finds that sentence of imprisonment was not at all called for.

8. For the reasons assigned above, this revision is allowed in part. Conviction of the applicant in revision under Section 506, I.P.C. is upheld. While, the sentence of imprisonment is set aside but fine of Rs. 1500/-is maintained. He is allowed one month's time to deposit the same. The applicant shall be released forthwith unless required to be detained in connection with any other case.

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