

Basant Kumar Vs. State of Chhattisgarh

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Court : Chhattisgarh

Decided On : Jan-08-2008

Reported in : 2008CriLJ1704; 2008(2)MPHT41(CG)

Judge : Dhirendra Mishra, J.

Appellant : Basant Kumar

Respondent : State of Chhattisgarh

Judgement :

ORDER

Dhirendra Mishra, J.

1. Rakesh Pandey, Advocate for the Applicant

2. Mr. S. Yadav, Dy. Govt. Advocate for the State.

3. Heard.

4. This criminal revision is directed against the judgment dated 14-11-2007 passed in Criminal Appeal No. 27/07 whereby learned Sessions Judge, Janjgir-Champa has upheld the judgment dated 29-8-2007 passed in Criminal Case No. 554/07 whereby the applicant has been convicted under Section 419 read with Section 120B of the Indian Penal Code (for short 'IPC') and Section 4 of C.G. Recognized Examinations Act, 1937 (for short 'the Act') and sentenced to undergo R.I. for 1

year and to pay a fine of Rs. 500/-, in default of payment of fine to undergo R.I. for 1 month on each count.

5. The only ground urged by the applicant in this revision petition is that the applicant was less than 21 years of age at the time of incident and Section 6 of the Probation of Offenders Act, 1958 (for short 'Act, 1958') imposes restrictions on imprisonment of offenders under 21 years of age and where the Court has reasons for imposing the sentence of imprisonment upon an accused person less than 21 years of age, the Court is required to record reasons for doing the same and that can only be done after calling for a report from the Probation Officer and after considering the report. However, in the instant case no report was requisitioned by the Trial Court from the Probation Officer and the applicant was not extended benefit of Section 3 or 4 of the Act, 1958 and as such, the same is in violation of the mandatory provisions of Section 6 of the Act, 1958. Reliance is placed in the matter of Manoj Kumar and Anr. v. State of M.P. reported in 2000(2) JLJ 52.

On the other hand, learned Counsel for the State has supported the impugned judgment.

6. It is not in dispute that the age of the applicant was 19 years on 7-3-2007 when co-accused Tridev Ratre, a juvenile offender appeared in Mathematics paper of Class 10th Examination in place of the applicant. The Supervisor of the examination namely Jayanti Rathore reported the matter to the Examination In-charge Smt. Shakuntala Sahu, who reported the matter to the police and ultimately the charge-sheet was filed against the present applicant in the Court of Judicial Magistrate 1st Class, Janjgir-Champa, whereas, charge-sheet against co-accused Tridev Ratre was filed before the Juvenile Justice Board.

7. Section 6 of the Act, 1958 reads as under:

6. Restrictions on imprisonment of offenders under twenty-one years of age.- (1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to

imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it should not be desirable to deal with him under Section 3 or Section 4, and if the Court passes any sentence of imprisonment of the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to in Sub-section (1) the Court shall call for a report from the Probation Officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

8. From perusal of Section 6 of the Act, 1958, it is evident that a duty has been cast upon the Criminal Courts trying offenders below the age of twenty-one years that if such accused persons are found guilty of having committed an offence punishable with imprisonment, which is not punishable by life imprisonment, such offenders are not to be sentenced for imprisonment unless the Court is satisfied that the circumstances including the nature of offence and the character of offender is such that imprisonment sentence should be imposed. It has further been made obligatory upon the Criminal Courts that the Court shall call a report from the Probation Officer and only after considering the report and other information available to it regarding the character and physical and mental condition of the offender, the offender shall be dealt with under Section 3 or 4 of the Act, 1958.

9. From perusal of the judgment of the Trial Court as also from the judgment in appeal, it is observed that the Trial Court has not recorded any reason for sentencing the applicant with the jail sentence. The offence under Section 419 of IPC or Section 4 of the Act is not punishable with the life imprisonment. The provisions of Section 6 of the Act, 1958 are mandatory and thus, it is clear that learned Courts below have not complied with the mandatory provisions of Section 6 of the Act, 1958.

10. The law requires that the Court should record reasons having regard to the circumstances of the case and the nature of offence and character of offender for

refusing benefit under the Act, 1958. There is no evidence available on record against the applicant regarding the character.

11. Taking into consideration the overall circumstances of the case and relying upon the judgment in the matter of Manoj Kumar (supra), I am of the considered opinion of that the applicant deserves to be dealt with under the provisions of Section 4 of the Act, 1958.

12. In the result, the revision is partly allowed and while maintaining the conviction of the applicant under Section 419 read with Section 120B of the IPC and Section 4 of the Act, the sentence awarded to him under those sections are hereby set aside. The applicant shall furnish personal bond with one surety in the sum of Rs. 10,000/- to the satisfaction of the Trial Court for a period of one year to appear and receive sentence within the said period and in the meantime to keep the peace and be of good behaviour.

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