

Chetti Vs. State of Madhya Pradesh

Chetti Vs. State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/502089

Court : Madhya Pradesh

Decided On : Sep-09-1958

Reported in : AIR1959MP291; 1959CriLJ989

Judge : T.P. Naik and ;P.K. Tare, JJ.

Acts : Central Provinces and Berar Probation of Offenders Act, 1936 - Sections 4;
[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 562

Appeal No. : Misc. Criminal Case No. 160 of 1958

Appellant : Chetti

Respondent : State of Madhya Pradesh

Advocate for Pet/Ap. : R.S. Dabir, Adv.

Disposition : Application dismissed

Judgement :

Tare, J.

1. This application for a certificate of fitness under Article 134(1)(c) of the Constitution of India has been filed by the accused, who was convicted of an offence under Section 376, Indian Penal Code on 7-9-1957 by Shri D. D. Shrivastava, Additional Sessions Judge, Damoh, and sentenced to undergo three

years' detention in the Borstal Institute, Narasimhapur. An appeal fi. e. Criminal Appeal No. 347 of 1957) filed by him was dismissed on 3-4-1958 by a Single Bench of this Court, presided over by V. R. Sen J.

2. On 16-5-1958, the applicant filed an application for being released on probation, claiming benefit of Section 4(b)(ii) of the C. P. and Berar Probation of Offenders Act No. I of 1936. It was registered as Miscellaneous Criminal Case No. 88 of 1958. The learned Judge by order dated 14-8-1958 dismissed the application, holding that the applicant could not claim benefit of the said section, as he had been convicted of an offence, which was punishable with imprisonment for life.

Relying on the cases. *Emperor v. Nga San Htwa*, ILR 5 Rang 276: (AIR 1927 Rang 205) (FB) In *Re Ezhuvan Vellappan*, AIR 1943 Mad 681, and *Public Prosecutor Madras v. Paneswara Rao*, AIR 1946 Mad 173, the learned Judge held that the phrase, 'punishable with death or imprisonment for life,' occurring in Section 4(b)(ii) of the Act has to be interpreted disjunctively and, therefore, the section could not be availed of by a person, who was convicted of an offence, which is punishable either with death or with imprisonment for life. Therefore, the learned Judge was of the opinion that the applicant, who had been convicted of an offence under Section 376, Indian Penal Code could not avail of the benefit of probation.

3. It is true that Section 562 of the Criminal Procedure Code, which is analogous to Section 4(b) of the C. P. and Berar Probation of Offenders Act I of 1936 had been interpreted conjunctively as suggested by the learned counsel for the applicant in the case of *Mohammad Eusoof v. Emperor*, ILR 3 Rang 538: (AIR 1926 Rang 51) by Doyle J., which was followed by Kinkhede A. J. C. in the case of *Tularam v. Emperor*, AIR 1927 Nag 53. But later on, a Full Bench of the Rangoon High Court in the case of ILR 5 Rang 276: (AIR 1927 Rang 205) rejected this earlier view, Doyle J., who was also a member of the Full Bench, remarked that his earlier view in the case of ILR 3 Rang 538: (AIR 1926 Rang 51) was wrong.

As the earlier Rangoon case was dissented from by the Full Bench, the same could not be an authority for the Proposition laid down therein. Kinkhede A J. C. in the case of AIR 1927 Nag 53, relied on the earlier Rangoon Case. Besides this, he

referred to another case namely Nagendranath v. Emperor, ILR 51 Cal 402: (AIR 1924 Cal 476). In the said Division Bench case of the Calcutta High Court, the point was not specifically decided. Moreover, it concerned grant of bail under Section 497 of the Criminal Procedure Code. It is true that by implication, the Calcutta High Court took the same view as the earlier Rangoon case. But as the point was not specifically decided, the case could not be an authority for the proposition enunciated by Kinkhede A. J. C.

Moreover, Grille A. J. C. (as he then was) in a later case Emperor v. Mst. Janki, 28 Nag LR 260; (AIR 1932 Nag 130), followed the Rangoon Full Bench and rejected the view of Kinkhede A. J. C., which was based on the overruled case of ILR 3 Rang 538: (AIR 1926 Rang 51). We feel that the view enunciated by Grille A. J. C. (as he then was), which is based on the Full Bench case of Rangoon High Court is the correct view. Therefore, we affirm the same.

4. It is significant to note that the other High Courts later on took the same view, as Grille A. J. C. in the case of 28 Nag LR 260 : (AIR 1932 Nag 130) (supra). To mention some of those cases, we may state that the Lahore High Court in the cases of Emperor v. Bahawali, AIR 1928 Lah 920 and Emperor v. Bakhsha, AIR 1934 Lah 131 and the Rangoon High Court in the case of A.H. Gandhi v. The King, AIR 1941 Rang 324, as also the Madras High Court in the cases of AIR 1943 Mad 681 and AIR 1946 Mad 173, took the same view. Recently Rajasthan High Court in the case of Sarkar v. Jalamsingh, AIR 1950 Raj 28, adopted the same view.

5. Section 562 of the Criminal Procedure Code and Section 4(b) of the C. P. and Berar Probation of Offenders Act I of 1936 are an exception to the general scheme of punishments awardable under the Indian Penal Code and the Criminal Procedure Code. The phrase 'not punishable with death or imprisonment for life' ought to be interpreted in its ordinary disjunctive sense, Its scope cannot be permitted to be expanded by giving a strained meaning, by reading it conjunctively. If that were permitted, the only offences to be excluded from the benefit of the provision of probation would be Sections 121, 302, 305, 307 (Part II) and 396, while in all grave and heinous offences punishable with imprisonment for

life, the section could be availed of by an accused. The intention of the legislature in enacting the provisions of probation was to deal with the first offenders guilty of not serious offences leniently.

The benefit of the provision of probation cannot, in our opinion, be extended under the guise of interpretation. In fact there is no scope for interpretation, as the wording is quite clear. There is no ambiguity. We see no reason to depart from the well-established view, propounded by Grille A. J. C. based on the Rangoon Full Bench case.

6. There is no substantial question of law involved in the present case. As such this is not a fit case for grant of a certificate under Article 134(1)(c) of the Constitution of India.

7. The application for a certificate fails and is rejected. The application for grant of bail also stands rejected.

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