

Lalmani Singh Vs. State of Bihar

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Court : Jharkhand

Decided On : Apr-18-2007

Reported in : [2007(4)JCR381(Jhr)]

Judge : D.G.R. Patnaik, J.

Appellant : Lalmani Singh

Respondent : State of Bihar

Judgement :

ORDER

D.G.R. Patnaik, J.

1. This revision application is directed against the judgment dated 5.8.1998 passed by the learned 2nd Additional Sessions Judge, Dhanbad in Criminal Appeal No. 150 of 1996, whereby the appeal preferred by the petitioner against the judgment of his conviction and sentence dated 30.9.1996 passed by the learned Judicial Magistrate (Railway), Dhanbad in R.P. Case No. 55 of 1993 was dismissed whereby the petitioner was convicted for the offence under Section 3(a) of the R.P. (U.P.) Act and sentenced to undergo RI for two years.

2. Heard learned Counsel for the petitioner and learned Counsel for the State.

3. At the outset, learned Counsel for the petitioner submits that though the appeal has been filed by the petitioner against the judgment of his conviction also, but considering the facts and circumstances, he confines his prayer to the order of sentence as imposed by the trial Court. Learned Counsel submits that the petitioner was though awarded sentence of two years for the aforesaid offence, but the same was passed without considering the age of the petitioner and also without considering the fact that it was the first offence against the petitioner without there being any criminal antecedent to his discredit. It is further submitted that the learned trial Court ought to have considered that the petitioner was in fact a railway employee and the offence was petty in nature in view of the petty value of articles seized.

4. It appears from the facts and circumstances of the case as also from the evidence on record indicated in the impugned order of the learned trial Court that some articles claimed to be railway properties, was seized from the house of the petitioner by the R.P.F. personnel and on the petitioner's failure to offer any reasonable explanation for the possession of the railway properties, a proceeding was initiated against him and he was put on trial on being charged with for the offence under Section 3(a) of the R.P. (U.P.) Act. At the, trial, nine witnesses including the informant as well as other witnesses in whose presence the purported railway properties were seized, were examined by the prosecution. The trial Court had placed reliance on the testimony of the witnesses and recorded its finding of guilt against the petitioner in respect of the charge for the aforesaid offence.

5. It appears however, that on the question as to whether petitioner is entitled to benefit under the provisions of Probation of Offenders Act, the trial Court on considering the issue in the light of the submission made on behalf of the petitioner, had refused to extend the aforesaid benefit on the ground that the offence was serious. Apparently, no special ground has been assigned by the trial Court for refusing to extend the privilege to the petitioner under the Probation of Offenders Act or under Section 360 of the Code of Criminal Procedure. It is apparent that the learned trial Court had failed to comply with the mandatory provisions of Section 361, Cr PC. In this view of the matter, the order of sentence,

as passed by the trial Court, cannot be sustained.

6. Considering the entire facts and circumstances, though the judgment of conviction as recorded by the trial Court against the petitioner for the offence under Section 3(a) R.P. (U.P.) Act is sustained, the order of sentence is hereby set aside. Since the petitioner has already suffered detention for more than two months and considering the petty nature of offence as also the present age and condition of the petitioner, it will not be proper to remand the case to the trial Court for considering the matter on the point of sentence in the light of the provisions of Section 361, Cr PC. The period of detention already undergone by the petitioner is sufficient sentence. The petitioner is on bail, he is absolved from the liability of his bail bond.

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