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Court : Delhi

Decided On : Dec-20-1979

Reported in : ILR1980Delhi90

Judge : J.D. Jain, J.

Acts : Railway Property (Unlawful Possession) Act, 1966 - Sections 3

Appeal No. : Criminal Revision Appeal No. 98 of 1978

Appellant : Dalip Singh

Respondent : State

Advocate for Pet/Ap. : Vinod Dutta and; B.D. Batra, Advs

Judgement :

J.D. Jain, J.

(1) The petitioner was convicted of an offence under Section 3 of Railway Property (Unlawful Possession) Act by Shri 1. C. Tewari, Metropolitan Magistrate vide his judgment dated 19th March, 1977 and was sentenced to a fine of Rs. 500 in default he was awarded simple imprisonment for two months. He preferred an appeal against his conviction and sentence but the same was dismissed by Shri Joginder Nath Additional Sessions .Pudge, Delhi vide his judgment da,ted 17th September, 1977. So he came up in revision to this Court but the same was

admitted by Yogeshwar Dayal J with regard to the sentence only.

(2) The allegation against the petitioner precisely is that on 21st November, 1974 when he was in the employment of Railways as a daily wager, he was found carrying away one old motor-tyre at about 4.30 A.M. by Assistant Sub-Inspector Tirath Ram of Railway Protection Force near the Platform in front of Lost Property Office at Delhi Kishan Ganj, Railway Station. The petitioner was apprehended by him on suspicion and on investigation it transpired that the said tyre had been stolen from a heap of old tyres stacked in front of the Lost Property Office after having been unloaded from a wagon which had arrived from Nagpur. It bore lot No. 675E[74 and it was further found that one tyre at Seriall No. 7 of the said lot was missing. So he was charged and convicted of the said offence.

(3) The submission made by the counsel for petitioner concisefy is that he being first offender and being below 21 years of age on the date of commission of the said offence should have been released on probation of good conduct as envisaged in Section 360 of the Code of Criminal Procedure[Section 6 of the Probation of Offenders Act. He has convassed rather vehemently that instant was the fittest case where release of the petitioner on probation of good conduct with the evowed object of reforming and rehabilitating him should have been considered expedient by the Courts below but the learned Magistrate did not exercise the discretion vasting him in this behalf even though he noticed the tender age of the petitioner and he did not award the sentence of imprisonment on that account.

(4) As observed by the learned Magistrate, the date of birth of the petitioner as mentioned in his school leaving certificate is 22nd January, 1956. Evidently he was below 21 years of age when he committed theft of the tyre in question. It is also to be noted that the stolen tyre Ex. 21 was old one. So it can be safely assumed that its value was quite meagre. In other words it can be said to be a case of petty theft. Hence, the learned Magistrate and for that reason even the appellate Court should have applied its mind with regard to expediency of releasing him on probation of good conduct, a.s envisaged in Section 360 of the Code of Criminal Procedure/Section 6 of the Probation of Offenders Act.

(5) The object of punishment is two-fold, prevention of offences and secondly the reformation of the offenders. Punishment would be a greater evil. It instead of reforming the offender, it is likely to harden the offender to repeatition of the crime with the possibility of irreparable injury to him. So the aforesaid provisions of law are intended to enable the Court to deal leniently with first offender who are not guilty of serious offence and thus to carry out the object of reformation by giving the accused persons a chance of rehabilitating himself as a good member of the society. No doubt the Courts should not allow themselves to be misled into applying this Section by misplaced leniency and sympathy. At the same time the power is to be exercised in those cases where offenders without being persons of depraved character, may have succumbed to sudden temptation or uncontrollable impulse or have done a thoughtless rather than a criminal act. The Section under scores that the regard be had to be age, character and antecedents of the offender and the circumstances in which the offence was committed while considering the expediency of releasing him on probation of good conduct. It is also to be noticed that Section 361 which has been recently introduced in the Code in 1973, makes it mandatory for the Court to record in its judgment the Special reasons for not dealing with the offender in accordance with the provisions contained in Section 360 of the Code/Probation of Offenders Act, where he could have been so dealt with. Section 361 thus casts a duty upon the Court to apply the provisions of Section 360 wherever it is possible to do so and to state the special reasons if it does not do so. The expression 'special reason's' naturally cannotes reason's which compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to his age, character, antecedents and the circumstances in which the offence was committed. Evidently the object of Section 361 is to ensure reformation and rehabilitation of offenders to the extent possible by giving a fair opportunity to them in this respect. Thus deterrent punishment is no longer considered as the foremost object of administration of criminal justice. Looking from this angle there is considerable merit in the submission made by the counsel for the petitioner when regard is had to his age, antecedents and other relevant circumstances. The report of the Probation Officer which was called by this Court shows that he is gainfully employed at preseat as a water-man at Saharanpur Railway Station and

is able to eke out livelihood for himself, his wife and a small baby. In case punishment of fine is allowed to stand it is bound to have adverse repereossioas on his employment and he may be indirectly forced to enter the life of crime again. Needless to say that for this offence of petty nature he has already suffered a lot by undergoing protected litigation. Hence, he deserves to be released on probation of good conduct.

(6) Consequently, I accept this revision petition to the extent that instead of paying fine imposed on him by the trial Court he shall be released on probation of good conduct on his entering into a bond in the sum of Rs. 2,000 with one surety in the like amount to appear and receive sentence when called upon during a period of two years and in the mean time to keep peace and be of good behavior, to the satisfaction of the trial Court.

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