

State Vs. Tekan Singh

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Court : Delhi

Decided On : Mar-19-1987

Reported in : 32(1987)DLT34a; 1987RLR412

Judge : M.K. Chawla, J.

Acts : [Limitation Act, 1963](#) - Article 115; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 377

Appeal No. : Criminal Appeal No. 65 of 1985

Appellant : State

Respondent : Tekan Singh

Advocate for Pet/Ap. : B.T. Singh,; D.C. Mathur and; J.P. Singh, Advs

Judgement :

M.K. Chawla, J.

(1) A batch of 23 criminal appeal arising out of the conviction of accused persons under Section 7 of the Essential Commodities Act are being disposed of on the short ground that these appeals are either barred by time and/or are not maintainable. For that purpose, there is no need for this Court to go into the facts of each case.

(2) Article 115 of the Limitation Act provides the period of 60 day's for filing an appeal to the High Court, from a sentence other than the sentence of death, or any other sentence or order not being an order of acquittal. The limitation starts running on the date of sentence/ order of the trial court.

(3) The learned counsel for the appellant concedes that out of 23 appeals before this Court, 19 appeals have been filed beyond the period of limitation, even if the time spent in obtaining the certified copies of the impugned judgments is excluded. However, his submission is that the office of the Delhi Administration remained under a bonafide mistake that the limitation of 90 days would be applicable in such like cases. On that score, his submission is that the delay in filing the appeals be condoned and the same be heard and decided on merits'. This is hardly an excuse for claiming condensation; firstly because the State cannot be considered to be unaware of this provision, and secondly, they have not filed applications explaining each day's delay in filing the appeals beyond the period of limitation. Under similar circumstances, in case reported as State of Himachal Pradesh vs. Shyama Nand I.L.R. (1976) H.P. 89 the delay was not condoned. While rejecting the appeals, it was observed as under:-

'IT is .Article 115(b)(I) which is relevant for the purpose of this appeal. Limitation is 60 days for an appeal from any other sentence or any order not being an order of acquittal. This Act had come into force with effect from 5th October, 1963. therefore, it cannot be said that the Advocate-General was not aware of the provisions of law which provided for 60 days for an appeal against any order of sentence or any order not being an order of acquittal. No doubt that for the first time an appeal was provided for under section 377 Of the Code of 1973, but the provision laying down the period of 60 days for an appeal against any order not being an order of acquittal was there since 1963.'

The Judgment further lays down that the mistake of the State does not appear to be a bona fide one, rather, it is a case of negligence and inaction on their part. This Judgment fairly and squarely applies to the facts of the present case. On this short ground, 19 appeals are thrown on board.

(4) It is the admitted case of the parties that in the remaining 4 appeals, the convicts were released after due admonition that in future, they will abide by the terms and conditions of the license and will properly maintain the accounts of their fair price shops.

(5) The submission of the learned counsel for the respondent is that against an order of admonition, no appeal is maintainable. Inasmuch as this is not a sentence in the eye of law. On this aspect also, the stand of respondent-accused is on a firmer footing. Section 377 of the Criminal Procedure Code, lays down that the State Government may, in any case of conviction on trial held by any court other than the High Court, direct the public Prosecutor to present appeal to the High Court against the sentence on the ground of its inadequacy. Section 53 of the Indian Penal Code talks of punishments. This provision reads asunder:-

'53.Punishments.-The punishments to which offenders are liable under the provisions of this Code are,- First.-Death; a (Secondly.-Imprisonment for life;) (* * * * *) Fourthly.-Imprisonment, which is of two descriptions, namely,- (1) Rigorous, that is, with hard labour; (2) Simple; Fifthly-Forfeiture of property; Sixthly.-Fine.'

(6) The bare reading of this Section would go to show that the order of admonition or the release of the accused on probation under Section 4 of the Probation of Offenders Act are not covered in the definition of 'Punishments'.

(7) The dictionary meaning of 'admonition' is to warn or to reprove mildly. The concluding part of Section 3 of the Probation of Offenders Act provides that, 'the court may, instead of sentencing an offender of any punishment or releasing him on probation of good conduct u/s. 4, release him after due admonition. When a person is released on probation of good conduct or after due admonition under this section, he is convicted but he is not sentenced. Section 53 of the Indian Penal Code provides for different kinds of punishments. Admonition or release on probation of good conduct is not considered as a punishment and, therefore, it is excluded from this Section. The Rajasthan High Court had the occasion to deal with this provision in case reported as State vs Jagdish, . During the course of the judgment on this aspect, it was observed as under :-

'UNDER Section 4(1) of the Probation of Offenders Act, the sentence of punishment is postponed and something which is not a punishment is substituted therefor. In my opinion, an order u/s 4(1) of the Probation of Offenders Act directing the release upon probation of good conduct cannot be said to be a punishment. It is not one of the various kinds of punishment described in Section 53 of the Indian Penal Code. In view of these circumstances, if the order of admonition is not considered as a punishment, then, no appeal by the State u/s 377 is maintainable.'

This judgment set at rest, the controversy, if any, to the maintainability of the appeals.

(8) This aspect can also be looked into from another angle. Even if it be assumed for the sake of arguments that an order of admonition or the release of accused person on probation is considered, by implication, as one of the punishments, then the accused having already suffered the sentence or the probation period having ended, I do not think it is a case in which discretion to entertain the appeals should be exercised in favor of the State. With these observations, all the appeals stand dismissed.

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