

Mool Chand Vs. State

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Court : Delhi

Decided On : Nov-10-1989

Reported in : 1990CriLJ682; 40(1990)DLT326; 1990(18)DRJ50

Judge : P.K. Bhari, J.

Acts : [Constitution of India](#) - Article 21; [Indian Penal Code \(IPC\), 1860](#) - Sections 193

Appeal No. : Criminal Revision Appeal No. 104 of 1988

Appellant : Mool Chand

Respondent : State

Advocate for Pet/Ap. : M.K. Vashisht, Adv

Judgement :

P.K. Bahri, J.

(1) This criminal revision has been brought against judgment dated February 10, 1988, of an Additional Sessions Judge, Delhi, by which he while dismissing the appeal brought against judgment and order dated November 7, 1987, of the Metropolitan Magistrate, Delhi, convicting the petitioner for offences punishable under Sections 193, 205, 420, 468 and 471 of the Indian Penal Code and sentencing him to .undergo two years rigorous imprisonment for offence under

Section 193, three years for offence under Section 205 and two years rigorous imprisonment each for the other offences with the direction that the sentences shall run consecutively and directions were given by the appellate court that the sentences should run concurrently.

(2) The petitioner has also undergone sentence of more than 1' years In this revision petition, he has prayed that the sentence may be modified to the period already undergone.

(3) I find that there has taken place a grave illegality in the trial of the case inasmuch as the petitioner, who was in custody all through the trial, was not provided with any counsel at the State expense and he had also not engaged any counsel of his own. The petitioner appears to b.e a very poor person because he could not even offer the bail in the sum of Rs. 2,000.00 (two thousand).

(4) In Suk Das and Anr. v. U. T. of Arunachal Pradesh, : 1986 CriLJ1084 , the Supreme Court has laid down that if the trial takes place without offering a counsel at the State expense to an accused who is in custody, the same amounts to violation of the fundamental right of the accused under Article 21 of the constitution and the trial would be considered vitiated. However, the effect of such an order would be that fresh trial has to take place. In the present case it would not be in the interests of the petitioner to direct retrial because he would not be able to furnish any bail even of the small amount and he would have to face another protracted trial. The petitioner has made a prayer only for modifying the sentence for the period already undergone which in the circumstances of the case appears to be reasonable.

(5) I, hence, dismiss the criminal revision with the modification in the sentence that the petitioner is sentenced to the period already undergone for all the offences for which he was held guilty. The petitioner be released forthwith if not required to be detained in any other case.