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Naresh Kumar Vs. State

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Court : Delhi

Decided On : May-22-2001

Reported in : 91(2001)DLT614; 2001(59)DRJ250

Judge : R.S. Sodhi, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 360; Essential Commodities Act, 1955 - Sections 7; Probation of Offenders Act, 1958

Appeal No. : Crl. Appeal No. 335 of 2001

Appellant : Naresh Kumar

Respondent : State

Advocate for Def. : U.L. Watwani, Adv.

Advocate for Pet/Ap. : Ashok Soni, Adv

Judgement :
ORDER

Notice. Learned Counsel for the State accepts notice.

Admit.

1. Criminal Appeal No. 335/2001 is directed against the judgment and order of the learned Additional Sessions Judge in SC No. 124/98 whereby the learned

Additional Sessions Judge held the appellant guilty under Section 7 of the Essential Commodities Act by judgment dated 27.4.2001 and by a separate order of the same date was pleased to impose a sentence of three months with fine of Rs. 1,000/- and in default of payment of fine to undergo further simple imprisonment for 15 days.

2. Learned Counsel for the appellant does not challenge the order of conviction on merits. He, however, submits that in the facts of the present case, the appellant ought to have been given the benefit of probation under Section 360, Cr.P.C. and/or the Probation of Offenders Act. He submits that the offence was committed on 3rd October, 1996 for violating notification, which prohibited storing of edible oil beyond a particular measure. However, this notification was withdrawn on 10th November, 1997. He submits that the offence, if at all, now is of technical nature and does not warrant imprisonment.

3. He draws my attention to the judgment of the Orissa High Court in T.Susila Patra and Anr. v. State, 1987 (1) Cri 654, decided on 22nd January, 1987, where the Court, relying upon an earlier judgment of the Punjab and Haryana High Court in Joginder Sing v. State of Punjab, , held that in an offence triable under the Essential Commodities Act, although the minimum sentence is prescribed, yet there is no bar to giving benefit under Section 360, Cr.P.C. or the Probation of Offenders Act. Learned Counsel for the State submits that in view of the nature and sentence of the offence committed, it is a fit case where Court can exercise its power and give the accused the benefit under Section 360, Cr.P.C.

4. Having heard learned Counsel for the parties and in view of the judgment cited and in the facts and circumstances of the present case, the appellant has suffered the agony of trial lasting for about five years. Besides that, the offence appears to be of a technical nature. There is no allegation that the appellant is previous convict. Keeping in view the circumstances and the fact that the offence of which the appellant has been convicted is not punishable with life imprisonment, he deserved the benefit of probation under Section 4 of the Probation of Offenders Act, 1958.

5. In this circumstance, while maintaining the conviction of the appellant, the sentence of imprisonment and fine as awarded to him is set aside. Having regard to the circumstances of the case including the nature of the offence and the character of the offender-appellant, it is considered expedient to release him on probation of good conduct. It is, thereforee, directed that the appellant be released for a period of one year on his entering into a personal bond in the sum of Rs. 10,000/- (Rupees ten thousand) with one surety in the like amount to appear and receive sentence as and when called upon during such period and, in the meantime, the appellant shall keep peace and be of good behavior. The requisite bond to be furnished by the appellant and the surety to the satisfaction of the Trial Court/CMM. The fine, if already, paid, is ordered to be refunded to the appellant.

6. With this modification, the order under challenge is upheld. The petition stands disposed of.

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7. Petition disposed of.

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