

State Vs. theyyan

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Court : Kerala

Decided On : Aug-10-1959

Reported in : AIR1960Ker147; 1960CriLJ592

Judge : K. Sankaran, C.J. and; Anna Chandy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 325; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 439

Appeal No. : Criminal Ref. No. 3 of 1959

Appellant : State

Respondent : theyyan

Advocate for Def. : T.C. Raghavan, Adv.

Advocate for Pet/Ap. : Public Prosecutor

Disposition : Reference accepted

Judgement :

Sankaeen, C.J.

1. This is a reference made by the District Magistrate of Palghat pointing out the illegality committed by the Second Class Magistrate at the station, in awarding the sentence to the accused in C. C. No, 1462/1958, who was tried and convicted for

the offence under Section 325 I. P. C. After finding the accused guilty at the offence under that section, the learned Magistrate awarded only a nominal sentence of fine of Rs. 30/- with the direction that in default of payment of fine, the accused should undergo rigorous imprisonment for a period of 30 days. The learned District Magistrate points out that the failure of the Second Class Magistrate to award a substantive sentence of imprisonment is a flagrant violation of the mandatory provision contained in Section 325 of the Penal Code and that the illegality committed by the Magistrate requires rectification.

2. In view of the clear and convincing evidence adduced by the prosecution, it cannot be said that the learned Magistrate went wrong in reaching the conclusion that the accused is guilty of the offence charged against him. The accused is seen to have caused a series of injuries on Pw. 1 by beating him with a stick on the head and on the hand. The wound certificate, Ext. P-4, contains a description of these injuries. Two of the injuries had resulted in a fracture of the bone. Thus, it is clear that the accused is guilty of having voluntarily caused grievous hurt to Pw. 1 and that the accused was properly convicted under Section 325 of the Penal Code. An accused, convicted under that section, 'shall be punished with imprisonment of either description for a term which may extend to 7 years and shall also be liable to fine'.

In view of the mandatory provision contained, in the section, the Court is bound to award a sentence of imprisonment to the accused convicted under the section. A sentence of fine in addition to the term of imprisonment may also be awarded. But the Court has no option to dispense with the sentence of imprisonment and to award the sentence of fine only. To do so would be a flagrant violation of the mandate contained in the section. In view of the mandate contained in the section, the discretion of the Court is limited to a decision on the question of the quantum of the sentence to be awarded. In the present case, the learned Sub-Magistrate was acting illegally in awarding a sentence of fine only to the accused, without awarding a sentence of imprisonment. This illegality has to be set right by this court in the exercise, of its revisional jurisdiction under Section 439 of the Code of Criminal Procedure.

3. On behalf of the accused, it is urged that this court may not exercise its revisional Jurisdiction under Section 439 of the Code of Criminal Procedure in awarding a sentence of imprisonment to the accused in this case. Reliance was also placed on the decisions in Ramchander Rai v. Ram Belas Tewari AIR 1933 Pat 179(1), Bishesher v. Rex AIR 1949 All 213 and in State v. Kangan Suba. AIR 1953 Punj 201, to show that under similar circumstances, the respective: High Courts declined to interfere in revision for setting right the illegality committed by Magistrates, in not awarding the proper sentence, as required by the section under which the accused persons; were convicted in' all these cases, it was definitely found that the Magistrates had committed an illegality in the-award of sentence.

All the same, the learned Judges of the High Courts took the view that in the circumstances of those cases, no interference was called for by way of the exercise of the revisional jurisdiction under Section 439 of the Code of Criminal procedure. With all respect, we have to differ from that view. No doubt, interference in revision under Section 439 is a matter of discretion vested in the High Court. It is obvious that tho discretion contemplated by the section is a judicial discretion. Where the High Court is satisfied that the Subordinate Court has committed an illegality, the proper course to be adopted by the High Court is to interfere and set right the illegality. To decline to interfere by the exercise of revisional jurisdiction in respect of such a matter will be to condone the illegality and to perpetuate the same. Where the commission of an illegality of the kind mentioned above, is brought to the notice of the High Court within a reasonable time, we think the High Court is bound to interfere and to rectify the mistake, committed by the Subordinate Court and to award the proper sentence sanctioned by law.

The decisions in Emperor v. Palian Ahamadulla, 1935 Mad WN 474, Abdul Mejith Sahib v. Emperor, 1937 Mad WN 575 and Emperor v. Vcnkatasubbayya '1942 Mad WN 377 (1): (AIR 1942 Mad 550) are in support of this view. In agreement' with this view, we think that it is only proper for this Court to revise the sentence awarded in this case by the learned Magistrate and to bring it in conformity with the express direction contained in Section 325 of the Indian Penal Code. The

enhancement of the sentence by the addition of, a sentence of rigorous imprisonment for a term of 6 months would meet the ends of justice in this case.

4. In the result, the reference is accepted and in addition to the sentence of fine imposed on the accused by the learned Sub-Magistrate, the accused is sentenced to undergo rigorous imprisonment for a period of 6 months.

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