State of Gujarat Vs. Ibrahim

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SooperKanoon Citation : sooperkanoon.com/736633

Court : Gujarat

Decided On : Jul-20-1987

Reported in : 1988CriLJ631; (1987)2GLR1280

Judge : D.C. Gheewala and; N.B. Patel, JJ.

Appellant : State of Gujarat

Respondent : ibrahim

Judgement :

D.C. Gheewala, J.

1. These three appeals can be disposed of by this common judgment as they are directed against the same order and they raise common questions of law and fact.

2. The accused Mohmad Akhtar Hussain alias Kadar Bhatti alias Ibrahim Ahmad Bhatti alias Iqbal alias Gulam, was prosecuted for violating the provisions of the Customs Act as well as Gold (Control) Act. He was sentenced to suffer seven years' rigorous imprisonment and pay a fine on 11-1-1984 for the offence punishable under the provisions of the Customs Act. He was also convicted for the offence punishable under the Gold (Control) Act on 6-1-1987 and awarded a sentence of four years' rigorous imprisonment and to pay a fine of Rs. 2 lacs, in default further rigorous imprisonment for six months. In all the cases he was also prosecuted for an offence punishable under Section 120-B of the I.P.C. However,

no separate sentences were awarded in any of the cases for the said offence.

3. The accused had preferred an appeal challenging the sentence of four years' rigorous imprisonment before the Sessions Judge which appeal was numbered as Appeal No. 14/87 and which was pending before the City Sessions Court at Ahmedabad. By an order dt. 29-6-1987, the said appeal was called for before this Court and it is now numbered as Criminal Appeal No. 444/87.

4. The questions that have been posed for our consideration are three-fold and they are as under:

1. As the offences are arising out of the same transaction the ordering of the sentences to run consecutively was not proper and the sentences should have been ordered to run concurrently.

2. As the accused was in custody from 11-1-84 to 6-1-87 when the second case was decided, that period also should be made available to the accused for the purposes of set off under the provisions of Section 428 of the Cr. P.C.

3. When a sentence for a long term of imprisonment has been awarded, the sentence of fine should not have been imposed.

5. It may be noted that initially for the offence of violation of the provisions of the Gold (Control) Act, seven years' R.I. sentence and a fine of Rs. 10 lacs was imposed. That fine of Rs. 10 lacs, in appeal before the Sessions Court, was reduced to a fine of Rs. 5 lacs and subsequent challenges to the said order before the High Court and the Supreme Court were negatived and the fine of Rs. 5 lacs was allowed to stand.

6. On 6-1-1987, the accused-appellant was also sentenced to four years' rigorous imprisonment on his plea of guilty whereby he was convicted for the violation of the provisions of the Customs Act. The learned Metropolitan Magistrate ordered that the sentence of four years' rigorous imprisonment shall run consecutively and not concurrently with the sentence imposed in the previous case.

7. Mr. A. J. Patel, learned Advocate, appearing for the accused-appellant draw our attention to numerous decisions. However, in extenso the discussion of these authorities is not needed but the authorities which were referred to by Mr. Patel propound a proposition that the discretion, if it is used by the trial Court whereby sentences have been ordered to run concurrently, the said discretion has been held by the superior Courts to have been properly exercised. To say that discretion used for ordering that the sentences should run concurrently has been properly exercised, would not tantamount to saying that where the sentences are ordered to run consecutively, there was an injudicious exercise of discretion. The law provides for the sentences to run consecutively and unless it is shown that the facts are so gross or so glaring that the ordering of the sentences to run consecutively is prima facie bad, it cannot be said that the exercise of the judicial discretion was improperly indulged in. It may be noted that ordering of sentences to run concurrently or consecutively will depend upon the facts of each case and in the instant case the facts are such that even if the learned Magistrate had ordered the sentences to run concurrently and if the same were challenged this High Court would have been tempted to order that they should run consecutively. The appellant along with others hatched a diabolical plot whereby gold worth Rs. 10 crores of foreign origin was sought to be imported in India and in lieu thereof or as a separate transaction silver worth Rs. 11 crores was sought to be illegally exported out of India. Both these transactions involving both these precious metals in the way in which they were sought to be imported and exported are highly injurious to the economy of this country and the offences of this nature, despite the fact that numerous efforts are being made to curb them, are increasing and would naturally tempt us, or tempt any Court exercising judicial discretion to award deterrent punishment. Under the circumstances, we feel that the order of the learned Metropolitan Magistrate providing the sentences to run consecutively is the only order which could have been passed in the instant case and it is a misnomer to say that the transactions are of the same nature. Mr. Patel was at his eloquent best while trying to urge that the transactions are of the same nature, and they are arising out of the same incident. The transactions were spread over a number of years. Each conspiracy was a different offence for attaining a different object. The foreign national of a hostile country operating under numerous aliases

had tried to harm the economy of this country with pronouncedly hostile intention and as such if the learned Magistrate has ordered the sentences to run consecutively, we would not be tempted to interfere therewith. All the decisions Mr. Patel referred to were involving offences of much minor character and in such cases the Courts may award concurrent sentences. However for economic offences of this nature and of such magnitude, the maximum sentence, even if awarded, will not be an adequate sentence, and hence, we approve and confirm the order passed by the learned Magistrate making the sentences to run consecutively.

8. The next question which was raised by Mr. Patel was that if the sentence of long term has been imposed, fine ordinarily should not be imposed. In a transaction involving crores of rupees, and that too in offences of economic nature, imposition of a heavy fine is a must and it cannot be laid down as a blanket proposition that a long term sentence should ordinarily persuade the Court not to impose a sentence of fine along with the sentence of imprisonment. The second contention of Mr. Patel also should, therefore, necessarily fail.

9. The last contention of Mr. Patel was that the appellant-accused was arrested somewhere in 1982. The first case came to an end on 11-1-1984 wherein he was awarded a sentence of seven years' rigorous imprisonment and the other case somehow or the other lingered around and could be put to an end only on 6-1-1987. Mr. Patel, therefore, urged that during the period between 114-84 and 6-1-87 the accused was an under trial prisoner so far as the second case was concerned and as such he should be given an advantage of set off under the provisions of Section 428 of the Cr. P. C. This contention is required to be mentioned only for the purpose of being rejected because a decision of the Supreme Court reported at : [1985]1SCR724 , Raghbir Singh v. State of Haryana is a complete answer to the contention of Mr. Patel and Section 428 speaks of set off only in case where the accused is under detention on account of the investigation or inquiry of the trial not having been completed. Once he was sentenced to imprisonment for an offence on 11-1-1984, he was under punitive detention for an offence which was committed by him and which was proved against him. The period before 11-1-1984 would, therefore, be the only period

during which he can be said to have been an undertrial prisoner but any period subsequent to 11-1-1984 would be not spent by him in Jail as an undertrial prisoner but only on account of he having been convicted by a Court of competent jurisdiction. The Supreme Court decision referred to above makes it abundantly clear, and hence, this contention also requires to be rejected.

10. That brings us to the appeal filed by the State for enhancement of the sentence imposed by the learned Metropolitan Magistrate which is for a period of four years' rigorous imprisonment whereas the maximum of seven years' rigorous imprisonment is provided for the said offence. Mr. Patel urged that once a judicial officer has exercised his discretion, and awarding of sentence is a matter of judicial discretion, then this Court would be chagrined to interfere therewith. Ordinarily this Court is of the opinion that imposition of a sentence for a particular term is a matter of judicial discretion with the trial Court. However, it does not necessarily mean that this Court, even if the said discretion has been exercised on injudicious principles, would find itself incapable of interfering therewith. The learned Metropolitan Magistrate in an otherwise well reasoned judgment has found out a reason for awarding less than the maximum sentence for an offence which ordinarily would merit nothing less than the maximum sentence and has fallen in an error and it is this that he has tried to strike a balance between the individual hardships of the accused with the enormous economic damage to the society at large which is the result of his criminal acts. These two could not have been placed in the same balance and the learned Metropolitan Magistrate tried, as per his own say, to find out a via media between these two sets of facts. The comparison, to say the least, was odious and was uncalled for. The individual hardships of the appellant and his family would be of no consequence at all in of fences of this nature and if the magnitude of the offence was such that the maximum sentence should have been awarded, then the learned Metropolitan Magistrate should not have made an ill-conceived attempt to find out a via media. We, therefore, feel that the appeal filed by the State requires to be allowed. The fact that the accused had pleaded guilty is of no consequence. It is not the case of plea-bargaining because the accused had pleaded guilty and yet he was given numerous opportunities to reconsider his decision. If the accused even thereafter had pleaded guilty, the fact that he was awarded a seven years' R.I. sentence in

the previous case would be no ground for the learned Metropolitan Magistrate to award less than the maximum sentence if the facts of the case warranted such a maximum sentence. The enormity of the crime called for nothing less than the maximum sentence, and hence, we feel that the appeals filed by the State as well as by the Department require to be allowed and they are allowed to the extent that instead of four years' rigorous imprisonment sentence, the accused is sentenced to rigorous imprisonment for a period of seven years. The sentence of fine and in default sentence of imprisonment is allowed to remain unchanged.

11. The net result of the above discussion is that Appeal No. 444/87 filed by the appellant directed against the order of learned Metropolitan Magistrate is hereby dismissed whereas Criminal Appeals Nos. 260/87 and 105/87 are allowed to the extent indicated above. Needless to add that the sentences shall run consecutively.