

iqbal Ibrahim Shaikh Vs. State

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Court : Gujarat

Decided On : Mar-17-1983

Reported in : (1983)2GLR929

Judge : A.P. Ravani, J.

Appellant : iqbal Ibrahim Shaikh

Respondent : State

Judgement :

A.P. Ravani, J.

1. Can our society claim any moral or ethical right to be harsh towards citizens who are forced to commit petty offences on account of compelling necessities of life This question has surfaced in this petition.

2. The petitioner-accused has been convicted for an offence of theft under Section 379 of the Indian Penal Code by the learned Metro-politan Magistrate, Court No. 2, Ahmedabad, in Criminal Case No. 1229 of 1982 decided on December 10, 1982 and sentenced to undergo R.I. for two months and to pay a fine of Rs. 100/- and in default of payment of fine to undergo further R.I. for one month. The accused preferred Criminal Revision Application No. 336 of 1982 in the court of City Sessions Judge, Ahmedabad. The learned City Sessions Judge confirmed the order of conviction and sentence passed by the trial court by his order dated

February 21, 1983. Against the orders of the lower courts the petitioner-accused has preferred the present petition.

3. The petitioner has been convicted and sentenced for the offence of theft on the allegation that when the complainant was travelling in a municipal bus on May 31, 1982, his pocket was picked by the accused and the accused had stolen Rs. 414/- . The trial court believed the prosecution version and passed an order of conviction and sentence as stated above and the learned City Sessions Judge has maintained the same.

4. The counsel for the petitioner-accused has made submissions only with regard to the quantum of punishment and has pointed out that the trial court has not discussed anything in its judgment as regards the quantum of punishment to be imposed upon the petitioner-accused. The trial court has merely recorded one line to the effect that the accused has been heard with regard to sentence. No discussion whatsoever is made on this point. The learned City Sessions Judge has discussed this aspect in paragraph 12 of his judgment and what appears to have weighed with the learned City Sessions Judge is that many incidents of pick-pocketing take place but unfortunately all of them are not brought to book and mostly poor and middle-class people are travelling in buses and they become the victims of pick-pocketing. There is no evidence on record to support this general statement. Glib talks in high society circles or on a card or tea table of a club or a hotel, or a story circulated and published as an item of news in some newspapers or a journal, can never take the place of evidence in a criminal trial. It is a trite know-ledge that no circumstance against the accused can be taken into consideration unless the same is proved and brought on record of the case and again the accused is given opportunity to explain the same in his statement to be recorded under Section 313 of the Criminal Procedure Code. It may be assumed for a moment that the circumstance that has weighed with the learned City Sessions Judge, namely, the rising trend in the incidents of pick-pocketing, is correct and it does exist as a phenomenon to be taken into consideration, what about the provisions of Section 248(2) of the Criminal Procedure Code which enjoins a duty upon the court to hear the accused on the question of sentence The individual circumstances of the accused and the special circumstances of the

case, if there be any, are required to be taken into consideration before passing an order of sentence against him. The social and family background of the accused, his antecedents, the circumstances on account of which he might have been led to commit the offence, whether it is his first offence, and whether there are any other extenuating circumstances, are all the relevant factors to be taken into consideration by court. Any of these circumstances may persuade a court to take a lighter and sympathetic view while passing an order of sentence. If what is stated by the learned City Sessions Judge is correct, the other side of the picture is equally true. Nobody takes up the career of pick-pocketing by volition. It is out of the compulsions of the living conditions in the society that people are forced to indulge in such type of unlawful activities. Our society does not provide to all its citizens an opportunity to educate themselves and to live in humane conditions. The society is not in a position to give them employment and to live a respectable life. A society that cannot provide to millions of its citizens a bare minimum of livelihood has no moral or ethical right to frown at its less fortunate and hapless citizens and be harsh towards them. If some people who are living in miseries for generations together turn to wayward life and indulge in the offences of pick-pocketing and as a result, if there is a continuous rising trend in the incidents of pick-pocketing, is it not a matter which should lead us to pose a question-have we not gone wrong in arranging our priorities and in choosing the particular path of socio-economic development Even in the 33rd year of planning, if there is a rising trend in the number of incidents of pick-pocketing, does it not call for introspection Any way, it is surely not a matter for being harsh towards the unfortunate and hapless people. According to the existing socio-legal set up, persons, when found guilty of such offences like that of pick-pocketing cannot be left unpunished; but a measure of sympathy has got to be shown to them. If they are treated with sympathy and with humane approach, may be, their waywardness in life may come to an end sometime in future and they may turn out to be good citizens of the society.

5. In this case the petitioner-accused has filed an affidavit and has narrated the following circumstances which should be taken into consideration for awarding lesser sentence:

1. He is aged about 24 years.
2. He has married very recently.
3. He has to maintain his old mother also.
4. There is no other earning member in the family.
5. He has a driving licence for auto-rickshaw and he wishes to follow lawful avocation in life.
6. Having regard to all the facts and circumstances of the case, it would be, just and proper if the accused is directed to pay a fine of Rs. 100/- in addition to the fine of Rs. 100/- already imposed by the lower court and to undergo sentence of imprisonment till rising of the court. In the result, the order of sentence passed by the lower courts is substituted as under:

The accused is ordered to undergo sentence till rising of the court. The accused is directed to pay a fine of Rs. 100/- in addition to the fine of Rs. 100/- already imposed by the lower court, i. e., in all the accused is directed to pay a fine of Rs. 200/- and in default to undergo R.I. for three days. Time to pay fine is granted till Monday the 21st March, 1983.

7. Rule is made absolute to the aforesaid extent.