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State Vs. Jagdish

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Court : Rajasthan

Decided On : Mar-15-1969

Reported in : AIR1970Raj110; 1970CriLJ731; 1969()WLN146

Judge : C.M. Lodha, J.

Acts : Probation of Offenders Act, 1958 - Sections 4(1) and 11(2); Indian Penal Code (IPC), 1860 - Sections 53; Code of Criminal Procedure (CrPC) , 1898 - Sections 435, 438, 439 and 562

Appeal No. : Criminal Ref. No. 144 of 1968

Appellant : State

Respondent : Jagdish

Judgement :
ORDER

C.M. Lodha, J.

1. This is a reference by the Sessions Judge, Pali.

2. The accused non-petitioner was convicted by the Munsiff-Magistrate, Pali for offences under Sections 338, 429, 279 and 337, I. P. C. and sentenced to rigorous imprisonment for four months, six months, two months and two months respectively. All the sentences were made to run concurrently. Having convicted

and sentenced the accused as mentioned above the learned Magistrate further gave benefit to the accused under Section 4(1) of the Probation of Offenders Act and instead of sending him to jail he directed that the accused be released on bail on his entering into a bond in a sum of Rs. 1000 and a surety in the like amount to appear and receive the sentence when called upon during one year and in the meantime to keep the peace and be of good behaviour. Aggrieved by the order of the learned Magistrate the State filed a revision in the Court of Sessions Judge, Pali, praying that, that part of the order of the learned Magistrate whereby he gave the benefit to the accused under the Probation of Offenders Act be set aside and the accused be sent to jail for serving out the sentence. The learned Sessions Judge has recommended that the order of the learned Magistrate be set aside and he may be directed to convict the accused or either sentence him at once to any punishment or in the alternative direct the release of the accused under Section 4(1) of the Probation of Offenders Act. According to the learned Sessions Judge the Magistrate was not competent to sentence the accused and simultaneously give him the benefit of the Probation of Offenders Act.

3. Since nobody has put in appearance in this Court the case has been put up in Chambers for orders. In the first place I think the order passed by the Magistrate giving the accused benefit under Section 4(1) of the Probation of Offenders Act is appealable under Section 11(2) of the said Act. It provides that,

'(2) Notwithstanding anything contained in the Code, where an order under Section3 or Section 4 is made by any Court trying the offender (other than a High Court), an appeal shall lie to the Court to which appeal ordinarily lie from the sentences of the former Court.'

4. From the language of this sub-section it is clear that the right to prefer an appeal from an order under Section 4 of the Act has been conferred both upon the prosecution as well as upon the accused. It appears that this point escaped the notice of the Public Prosecutor, and the counsel for the accused as well as the learned Sessions Judge. - In my opinion the order passed by the learned Magistrate was appealable and if the State felt aggrieved of it it should have filed an appeal. As the record has, however, been submitted to this Court on reference

and the illegality in the order of the Magistrate has been brought to the notice of this Court, I proceed to deal with the case instead of wasting further time by sending the case back to the Sessions Judge.

5. As regards the legality of the order passed by the Magistrate the language of Section 4(1) makes it clear that the sentence of imprisonment imposed upon the accused while he was being released on probation to keep the peace and be of good behaviour was illegal. Under Section 4(1) or the Probation of Offenders Act the sentence of punishment is postponed and something which is not a punishment is substituted therefore. In my opinion an order under Section 4(1) of the Probation of Offenders Act directing the release upon probation of good conduct cannot be said to be a punishment. It is not one of the various kinds of punishments described in Section 53 of the Indian Penal Code. An accused cannot be punished and at the same time released on his entering into a bond with or without sureties to appear and receive the sentence when called upon and in the meantime to keep the peace and be of good behaviour. The order of the Magistrate does not seem to be in conformity with the provisions of Section 4(1) of the Probation of Offenders Act. Since he has not only convicted the accused under Sections 338, 279, 429 and 337, I. P. C. but has also passed a sentence of two months' rigorous imprisonment under each count and has then added the order of releasing the accused. This is illegal in view of the wordings of Section 4(1) of the Probation of Offenders Act.

The learned Sessions Judge has recommended that the order of the Magistrate should be set aside and he should be directed to pass a proper order according to law. From the record of the trial court it appears that the accused has admitted that he was driving the truck rashly and negligently as a result of which it struck against the bullock cart and caused injuries to the bullock as well as to Pemla and Bhagiya. In the application filed by the accused for giving him the benefit of Probation of Offenders Act also it has been stated that he was trying to overtake the bullock cart when this accident took place. The learned Magistrate has also observed in his order that the accused is a young man though he has not mentioned his age and I too was not able to find out the age of the accused from the record. But the fact of the accused being a young man has not been

challenged in the ground of revision filed by the State before the Sessions Court, Besides the only objection taken in the grounds of revision to the order of the learned Magistrate relating the accused is that the order is illegal. But apart from the question of its illegality, the order of the learned Magistrate has not been attacked on merits either in the grounds of revision nor any argument appears to have been advanced before the learned Sessions Judge on the merits of the order. Thus there does not appear to be anything wrong with the discretion exercised by the learned Magistrate in giving the accused the benefit of the Probation of Offenders Act. In these circumstances the sentences awarded by the Magistrate deserve to be set aside, and this would make the order legal and proper.

6. I, therefore, allow this reference and set aside that part of the order of the learned Magistrate whereby he has sentenced the accused under Sections 338, 449, 279 and 337, Indian Penal Code to 6 months, 4 months, 2 months and two months' rigorous imprisonment respectively. The rest of the order is maintained.

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