

Poora Vs. the State of Rajasthan

Poora Vs. the State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/759217

Court : Rajasthan

Decided On : Nov-14-1990

Reported in : 1990(2)WLN348

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Revision No. 134 of 1990

Appellant : Poora

Respondent : The State of Rajasthan

Judgement :

B.R. Arora, J.

1. The petitioner Poora was tried and convicted by the learned Chief Judicial Magistrate, Barmer, Under Section 4/9 of the Opium Act, but instead of sentencing the petitioner Poora, the learned Magistrate granted the benefit of probation to him under the Probation of Offenders Act, 1958. Dissatisfied with the order passed by the learned Chief Judicial Magistrate, Barmer, releasing the petitioner on probation for a period of one year, the State preferred an appeal before the learned Additional Sessions Judge, Barmer. The learned Additional Sessions Judge, Barmer, allowed the State's appeal, set-aside the order of grant of probation and remanded to case to the Chief Judicial Magistrate to pass an appropriate order of sentence. The conviction Under Section 9 of the Opium Act was, however,

maintained by the learned Additional Sessions Judge.

2. I have heard the learned Counsel for the petitioner and the learned Public Prosecutor.

3. The learned Counsel for the petitioner has contended before me that the matter relates to the year 1984 and the case of the accused-petitioner is covered by the Old Opium Act, which was triable by the Magistrate and the trial Court was justified in granting the benefit of probation to the petitioner. In support of his case, the counsel for the petitioner has relied-upon the judgment of this Court, rendered in *Ajeet Singh v. The State of Rajasthan* 1985 RLN (UC) 38. The learned Public Prosecutor, on the other hand, supported the judgment passed by the learned Additional Sessions Judge.

4. I have considered the rival submissions made by the learned Counsel for the petitioner and the learned Public Prosecutor. The matter relates to the year 1984 and at that time the petitioner was 55 years of age and now we are in the year 1990. The petitioner has remained in jail for more than a week. In this view of the Matter, I think it proper to grant benefit of probation to the petitioner.

5. In the result, this revision petition is partly allowed. The conviction of the petitioner Under Section 419 of the Opium Act is maintained, but instead of sentencing him atone to any imprisonment, I hereby direct that the petitioner may be released on probation of good conduct, provided he furnishes a personal bond in the amount of Rs. 5000/- (Rupees Five Thousand Only) with one surety in the like amount to the satisfaction of the Chief Judicial Magistrate, Barmer, to keep peace and be of good behavior for a period of one year. The petitioner is allowed one month's time to submit the personal and surety bonds, failing which the petitioner may be arrested and be produced before the Chief Judicial Magistrate for passing appropriate sentence.