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Court : Rajasthan

Decided On : Mar-19-1991

Reported in : 1991(1)WLN333

Judge : Y.R. Meena, J.

Appeal No. : S.B. Cr. Rev. Petition No. 128 of 1987

Appellant : Sanwata

Respondent : State of Rajasthan

Judgement :

Y.R. Meena, J.

1. This revision petition is directed against the judgment of learned Additional Sessions Judge, Ncem-ka-thana, whereby the conviction of accused-petitioner is upheld Under Section 325 of IPC, but reduced the sentence to six months R.I. and fine of Rs. 400/- in default of payment of fine under go two months R.I. The conviction Under Section 447 IPC was also confirmed and sentence for two months was sustained.

2. The learned Counsel for the accused-petitioner has not pressed the revision petition on merits. He submitted that out of four accused, three of them were allowed the benefit of probation. The offence was committed on 8.7.1979. Thus,

accused has faced criminal proceedings for about eleven years. The total sentence accused has to undergo six months. Out of six months two months accused remained in jail. This is the first offence of the accused, therefore, no purpose will be served in sending him in jail after lapse of eleven years specially, in view of the provisions of Section 360 of Cr. P.C. On the other hand, the learned Public Prosecutor is relied upon the judgments at courts below.

3. I heard the learned Counsel for the accused-petitioner and perused the material on record, as learned Counsel for the petitioner has not pressed the revision petition on merits, therefore, there is no need to repeat the facts. The basic facts are not in dispute that Birbal, Chainiya, Krishna and accused Sanwata are convicted Under Section 325 read with Section 34 and 447 IPC for the offence committed on 8.7.1979. The benefit of probation was extended to Birbal, Chainiya and Krishna by the courts below and the benefit of probation was not allowed to accused only as he was about 40 years of age. The accused has faced criminal proceedings for about eleven years. This is the first offence of the accused. Considering the provisions of Section 360 read with Section 361 of Cr. P.C. In my view it will not be appropriate to send the accused-petitioner in jail at this stage, instead of giving him an opportunity to reform and rehabilitate himself in the society.

4. In the result, the conviction Under Sections 325 and 447 IPC is upheld. The sentence is reduced to the period already undergone by the accused. Fine of Rs. 400/- (Rupees four hundred) is sustained. The accused-petitioner is directed to pay the fine within two months from the date of this order. In default of payment of fine undergo one month simple imprisonment.

5. The revision petition is partly allowed.