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Court : Rajasthan

Decided On : Jul-08-1977

Reported in : 1977WLN(UC)577

Judge : V.P. Tyagi, C.J.

Appeal No. : S.B. Cr. Revision No. 112 of 1977

Appellant : Roopa

Respondent : The State of Rajasthan

Judgement :

V.P. Tyagi, C.J.

1. This revision has been filed by Roopa petitioner challenging his conviction under Section 379 I.P.C. whereunder he has been sentenced to one year's rigorous imprisonment & a fine of Rs. 2,000/- or in de fault to further undergo six months rigorous imprisonment by the Additional Sessions Judge, Bharatpur while upholding the conviction of the petitioner made by the Judicial Magistrate First Class, Bharatpur vide his judgment dated 30-8-1976.

2. It may be mentioned that the accused petitioner was convicted by the trial court for an offence under Section 379 and 411 I.P.C. but the learned Sessions Judge did not pass any order about the conviction of the petitioner under Section 411 I.P.C. which presumably appears to mean that the learned Judge did not think it

proper to uphold the conviction of the petitioner under Section 411 I.P.C.

3. The petitioner was sentenced to two years rigorous imprisonment and a fine of Rs. 2,000/- or in default to further undergo six months rigorous imprisonment by the trial court but looking to the circumstances of the case the substantive sentence was reduced to one year. The sentence of fine was however upheld by the appellate court.

4. The charge against the petitioner was that he had stolen 9 buffaloes belonging to the complainant from the jungle where they were being grazed by the complainant. These buffaloes were recovered after two days i.e. on (2nd July 1972) 2-7-72 from the possession of the petitioner. It appears that the complainant did not lodge the report to the police station for a pretty long time presumably because he was in search of his cattle. But that delay in lodging the first information report cannot be taken to be fatal in the circumstances of the case. The stolen catties were recovered at a distance of 42 miles from the place of accident from where the cattle were being taken towards the residence of the petitioner in U.P. However, at this stage the order of conviction cannot be challenged by the petitioner unless it is illegal or perverse. There does not seem to be any illegality in the order as the prosecution has established that the cattle were stolen and they were found in the possession of the petitioner two days after theft was committed.

5. Learned Counsel for the petitioner urged that the petitioner has already undergone the substantive sentence of 11 months 4 days as he has remained behind the bars on four occasions for the cumulative period of 11 month 4 days and, therefore, it will be in the interest of justice if his substantive sentence is reduced to one already undergone.

6. The request made by the learned Counsel for the petitioner appears to be reasonable and the learned Public Prosecutor has no objection if the substantive sentence is reduced to one already undergone.

7. As regards the sentence of fine, it was urged by the learned Counsel for the petitioner that the petitioner is a poor man and that the incident had taken place

about 5 years back and therefore, it will not be in the interest of justice to send him back to undergo the period of imprisonment awarded to him in lieu of the non-payment of fine. He, therefore, prays that the sentence of fine maybe set aside. In the present case I find that cattle numbering 9 were stolen by the petitioner and, therefore, it will not be in the interest of justice to give the benefit of setting aside the sentence of fine. However, looking to his financial condition, it is permitted it he so chose, that he may deposit the fine within a period of three months.

8. The petition is partly allowed. Substantive sentence of one year rigorous imprisonment is reduced to one already undergone The sentence of fine is maintained. It is accordingly decided.

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