

Daler Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-02-1998

Reported in : 1999CriLJ1471; 1999(1)WLC274

Judge : Arun Madan, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 4 and 4(3); Indian Penal Code (IPC) - Sections 354, 364 and 456; Code of Criminal Procedure (CrPC) , 1974 - Sections 361

Appeal No. : Crl. Misc. Petn. No. 525 of 1998

Appellant : Daler Singh

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mehta, Public Prosecutor

Advocate for Pet/Ap. : M.L. Garg, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Arun Madan, J.

1. Upon hearing learned Counsel for the parties, following questions of law do arise for consideration of this Court:-

(1) As to whether once the accused having been extended the benefit of probation, regard being had to the provisions of Section 4 of the [Probation of Offenders Act, 1958](#) (for short 'the Act of 1958') and thereafter release on furnishing personal bond, to maintain peace and be of good behaviour for a period of three years w.e.f. the date of the said order i.e. 15-6-1996, for offence under Sections 456 and 354, I.P.C. whether it was open to the First Appellate Court to have reversed the findings of the trial Court on the question of sentence by convicting the petitioner for the said offence to undergo rigorous imprisonment for a period of six months and a fine of Rs. 2,000/- by setting aside the impugned order of the trial Court?

(2) Whether it was open for the First Appellate Court to have reversed the finding of the trial Court on the question of extending the benefit of probation for offence under Sections 354 and 364, I.P.C. without giving the opportunity of hearing to the petitioner?

2. From the perusal of the impugned order of the Appellate Court it is apparent that though the Court had heard the arguments advanced by the learned Counsel for the parties, yet it was mandatory for the Court also to have heard the petitioner in person or the Court could have appointed another counsel at State expense by giving a due notice to the appellant or his counsel and in appropriate case it is always open to the Court to appoint a lawyer at State expense to assist it as per the law laid down by the Apex Court in the matter of Bani Singh v. State of U.P. 1996 SCC (Cri) 848 : 1996 Cri LJ 3491, wherein the case of Ram Naresh Yadav has been discussed and overruled. It has been held that Criminal Appeal against the conviction cannot be dismissed in default or non-prosecution and the Appellate Court must dispose of the appeal after perusal of the record and scrutiny. It has further been held that it is incumbent for the Appellate Court to give notice to the appellant or his duly authorised counsel and in appropriate case to appoint a counsel at State expense to assist. In my view the Appellate Court has violated the ratio-decidendi of the aforesaid decision of the Apex Court and hence the

impugned order of the Appellate Court dated 30-7-1998, whereby the order extending the benefit of release of the petitioner on probation for a period of three years by furnishing personal bond as passed by trial Court and instead convicting the petitioner for offence under Sections 456 and 354, I.P.C. by sentencing him to undergo rigorous imprisonment for six months and to pay fine of Rs. 2,000/- on each count has been passed is not sustainable in law.

3. In my view the Appellate Court was not at all justified in having overlooked the statutory provisions of Section 4 of the Probation of Offenders Act as well as Section 361, Cr. P.C. and the safeguards available to the accused after having been convicted of substantive offences and thereafter having been held entitled to the benefit of probation being the first offender and not a previous convict and it is only in a very exceptional circumstance that the said order should be reversed by the Appellate Court. It is only in exceptional cases and in sparing circumstances that the order extending the benefit of probation for commission of substantive offences wherein the punishment imposed upon conviction does not extend maximum period of three years should be reversed and not otherwise.

4. It is further enjoined upon the Appellate Court that in view of the safeguard which are available to the accused under the Act that the Appellate Court may record the findings of reversion after holding the accused guilty of substantive offence and not otherwise. Further it is mandatory requirement of the Appellate Court in view of the ratio of the Apex Court in Bani Singh's case 1996 Cri LJ 3491 (supra), (i) that Criminal appeal against the conviction should not dismissed in default or non-prosecution and the Appellate Court must dispose of the Appeal after perusal of the record and scrutiny; (ii) to give notice to the appellant or his duly authorised counsel; and (iii) in appropriate case to appoint a lawyer at State expense to assist it.

5. In view of the violation of the aforesaid three stipulations as laid down by the Apex Court in the above referred decision, I am of the view that the impugned order passed by the Appellate Court dated 13th July, 1998 is not sustainable in the eyes of law.

6. In the result the Revision Petition is allowed. The order passed by the Appellate Court dated 30th July, 1998, is set aside and the order of the trial Court dated 15-6-1996 passed by Addl. Civil Judge-cum-Judicial Magistrate (S.D.) No. 2, Sri Ganganagar in Criminal Case No. 119/94 whereby the accused-petitioner after having been found guilty of offence under Sections 456 and 354, I.P.C. was extended the benefit of probation under Section 4(3) of the Act, by furnishing surety in the sum of Rs. 5,000/- and personal amount in the like amount and in default of payment of fine to undergo three months' rigorous imprisonment is restored. The petitioner be set at liberty forthwith, if not wanted in any other case.

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