

Bhanwara Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-06-1985

Reported in : 1986WLN(UC)110

Judge : Farooq Hasan, J.

Appeal No. : S.B. Criminal Revision No. 214 of 1949

Appellant : Bhanwara

Respondent : State of Rajasthan

Judgement :

Farooq Hasan, J.

1. This revision petition is presented against the judgment of Sessions Judge, Balotra dated July 12, 1979 upholding the conviction and sentence Under Section 4(1)(a) of the Rajasthan Prohibition Act and sentencing the petitioner to undergo six month's imprisonment and a fine of Rs. 200/- and in default to undergo one month's simple imprisonment awarded by the Additional Munsif and Judicial Magistrate First Class Barmer in Criminal case No. 209/77 dated September 26, 1978.

2. The charge against the accused-petitioner was that at the time when the Excise Inspector Shri Laxmichand searched the house of the accused-petitioner on

suspicion but nothing was found inside the house, but in the Bada occupied by the petitioner, one earthen pitcher containing wash was found. From that pitcher, two bottles of wash were taken and sent for chemical examination. The report of the Chemical Examiner was positive. Therefore, the petitioner was prosecuted and convicted as aforesaid after being charged and tried by the Additional Munsif and Judicial Magistrate, Banner. Appeal against this order of conviction was also filed but without any success.

3. In view of the concurrent findings of the two courts below, Mr. Singhvi, the learned Counsel appearing for the accused petitioner did not challenge the conviction of the accused-petitioner. He only submitted that looking to the age and status of the accused-petitioner, he should be given benefit of the Probation of Offenders Act. It was further submitted by the learned Counsel that there is nothing on the record to show that the accused petitioners has been previously convicted. He further submitted that the Rajasthan Prohibition Act, 1969 has been repealed and is now a dead law. The offence is said to have been committed in the year 1976. It will not be just and proper to send the accused in jail for undergoing the sentence. On these grounds also, the learned Counsel submitted that benefit of the Probation of Offenders Act should also be given to the accused-petitioner.

4. The learned Public Prosecutor on the other hand contended that it is not a fit case where the benefit of Probation of Offenders Act should be given to the accused-petitioner.

5. I have considered the respective contentions of the learned Counsel for the parties. This is correct to say that at the time when the offence is said to have been committed the accused-petitioner was 20 years of age. It is also correct to say that there is nothing on the record to show that the accused-petitioner has ever been convicted before this. As stated earlier the accused-petitioner was found in possession of one earthen pitcher containing wash which was subsequently found as alcohol by the chemical examiner. The Rajasthan Prohibition Act, 1969 has now been repealed. Under the Probation of Offenders Act as well as Under Section 360 of the Cr.PC, the trial court as well as the

appellate court should have considered the matter as to whether the accused petitioner can be given the benefit of the Probation of Offenders Act. But both the courts below have not considered this point at all. It has not been mentioned in these judgments as to why the accused-petitioner has not been given the benefit of probation. Under these circumstances, it will not be just and proper to resend the accused in jail for serving out the sentence. It will not be out of place to mention that the accused petitioner remained in jail for about 28 days and so I think it a fit case where benefit of the Probation of Offender Act should be given to the accused-Petitioner.

6. In the result, the revision of the accused Bhabwara is partly allowed, his conviction Under Section 4(1)(a) of the Rajasthan Prohibition Act is maintained but the sentences awarded to him are set aside and instead of sentencing him to any punishment it is hereby directed that he will be released on his entering into a bond of Rs. 2000/- with one surety in the like amount to the satisfaction of the Additional Munsif and Judicial Magistrate, Barmer, to appear before him and receive the sentence when ever called upon to do so during the period of two years and in the mean time the accused-petitioner shall keep the peace and be of good behaviour. The accused-petitioner is allowed two months' time to furnish the aforesaid bonds.