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Court : Rajasthan

Decided On : Feb-16-1995

Reported in : 1995(1)WLN598

Judge : Rajendra Saxena, J.

Appeal No. : S.B. Criminal Revision Petition No. 48 of 1995

Appellant : Jatan Singh

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Shri. N.K.Bohra

Judgement :

Rajendra Saxena, J.

1. This revision petition has been preferred against the judgment dated 4.1.1995, passed by learned Sessions Judge, Hanumangarh, whereby he dismissed the petitioner's appeal and affirmed the conviction and sentence, recorded by learned Judicial Magistrate, No. 1, Hanumangarh by his judgment dated 23.3.1993 convicting him for offence under Section 25(1B)(a) of the Arms Act and sentencing him to one year's rigorous imprisonment and a fine of Rs. 100/-, in default whereof to further undergo simple imprisonment for fifteen days.

2. Briefly stated, the relevant facts of the case are that on 04.06.1985, the petitioner was found in possession of one country made 12 bore pistol which do not have any marking, for which he did not possess any licence. The S.H.O., Police Station, Tibi, after investigation and procuring sanction for prosecution from the District Magistrate submitted the challan in the court of learned Judicial Magistrate, No. 1, Hanumangarh Junction. The petitioner denied indictment. After trial, the learned Judicial Magistrate by his judgment dated 23.3.93 found him guilty for offence under Section 25(1B)(a) of the Arms Act and convicted and sentenced the petitioner in the manner indicated above. Learned Sessions Judge also dismissed his appeal. Hence, this revision petition.

3. I have heard Shri N.K.Bohra, learned Counsel for the petitioner and Shri R.S.Rathore, learned Public Prosecutor and perused record of the lower courts.

4. Shri Neel Kamal Bohra has rightly not challenged the conviction of the petitioner. His only contention is that the petitioner is not a previous convict nor he has a bad antecedent about his conduct and character; that at the time of alleged offence he was about 25yrs. of age and, that the learned lower courts without assigning any valid reason, have declined to grant benefit of probation to the petitioner. According to him, the petitioner has already been under detention for more than one and a half months and, as such, he should be released on probation.

5. Shri Rathore, learned Public Prosecutor has vehemently opposed this and contended that the petitioner should not be released on probation.

6. I have given my thoughtful consideration to the rival contentions. The Arms Act, 1959 does not exclude the application of provisions of Section 360, Cr.P.C. as well as those of provisions under Probation of Offenders Act, 1958. In Jugta Ram v. State of Rajasthan 1981 Raj. Cr. Cases 01, it has been held that unless any Act excludes the applicability of Section 360, Cr.P.C. or the provisions of Probation of Offenders Act, the mere fact that a minimum sentence has been prescribed for any offence, is not sufficient to refuse beneficiary probation. It was further observed that its application, however, depends on the facts of each case as to whether such benefit should be extended to the accused or not. This is trite law

that mere prescribing of minimum sentence for a particular offence does not create any bar for extending the benefit of probation, either under Section 360, Cr.P.C. or under the Probation of Offenders Act in a particular case. A similar view has been taken in *Pidar Singh v. State of Raj.* 1992 Cr.L.R. 329.

7. Now advertent to the facts of the instant case, there is nothing on record to show that the petitioner was a previous convict or that his conduct has been bad or questionable. The alleged incident took place on 30.5.85. Since then, the petitioner has undergone mental agony and incurred financial strain during the trial as also during appeal. He has already been under detention for a period of about 1 1/2 months. Therefore, keeping in view the facts and circumstances of this case as also the age, character and antecedents of the petitioner and the circumstances in which the offence was committed as also the nature of offence committed by him, I feel that it is a fit case wherein the petitioner should be released on probation of good conduct.

8. Accordingly, this revision petition is partly allowed and while maintaining his conviction recorded by learned Magistrate, it is directed that instead of sentencing him at once to any punishment, he be released on probation of good conduct, on his entering into personal bond in the sum of Rs. 5000/- with one sound and solvent security in the like amount, to the satisfaction of learned trial court, to appear and receive sentence when called upon during a period of two years from today and, in the meantime to keep peace and be of good behaviour. He shall also give an undertaking that during the said period he shall not commit an offence punishable under the Arms Act. The seized country made pistol stands confiscated to the State.