

Sivasamy Vs. Sub Inspector, Kinathur Kadavu, Coimbatore

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Court : Chennai

Decided On : Dec-05-1990

Reported in : 1992CriLJ2041

Judge : Janarthanam, J.

Appeal No. : Crl. Misc. Petn. No. 8066/88

Appellant : Sivasamy

Respondent : Sub Inspector, Kinathur Kadavu, Coimbatore

Advocate for Def. : Mr. A. Shanmigham, Addl. P.P.

Advocate for Pet/Ap. : Mr. S.S. Vasudevan, Adv.

Judgement :

ORDER

1. The Sub-Inspector of Police, Kinathukadavu, Pollachi taluk the respondent herein registered a case in Crime No. 208/87 for the alleged offences u/Ss. 457 and 380, IPC against the petitioner-accused on the ground that on 30-11-1987/1-12-1987 at 1 a.m. he entered into the residence of one Mappillai Gounder and committed theft of 15 Kgms. of rice valued about Rs. 75/-.

2. After completing the formalities of the investigation, he laid the final report under S. 173(2), Crl. P.C. before the Judicial Magistrate, Pollachi which was taken on file

as C.C. No. 44 of 1988.

3. Records were stated to have been furnished to the accused. The accused did not engage any Counsel of his choice and he was stated to have pleaded guilty of the offences with which he had been charged.

4. Consequently, learned Magistrate found him guilty u/Ss. 457 and 380, IPC convicted him thereunder and sentenced him to rigorous imprisonment for three months for each of the offences with a direction that the sentences are to run concurrently. Aggrieved by the said order, the petitioner came forward with the present action, by invoking the inherent jurisdiction of this Court to set aside the order so passed.

5. Learned Counsel appearing for the petitioner would contend that on the salutary effect of the provisions as adumbrated u/Ss. 360 and 361, Crl. P.C. coupled with S. 6 of the Probation of Offenders Act, 1958 (for short 'the Act'), it is mandatory on the part of the Magistrate to consider the question of the accused being released under probation of good conduct instead of straightway sentencing him to imprisonment. He would further contend that a perusal of the order of the Magistrate would reveal complete absence of application of mind on this aspect of the matter and therefore it is that the order so passed by learned Magistrate is liable to be set aside.

6. Learned Additional Public Prosecutor would however repel such submissions.

7. For appreciating the arguments of learned Counsel for the petitioner, few facts are necessary. The petitioner-accused is admittedly 19 years old at the time of conviction and not having any sort of a blemished career, in the sense of himself having been convicted for any such offence previously. That apart, he is a poverty-stricken man. In the backdrop and setting of the situation of the placement of the petitioner, in the society, I may approach his case in the light of the provisions of Ss. 360 and 361, Crl. P.C. and S. 6 of the Act.

8. Section 360, Crl. P.C. provides that when any person under twenty-one years of age is convicted of an offence not punishable with death or imprisonment for life,

and no previous conviction is proved against him, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period as specified.

9. Section 361, Crl. P.C. makes provision for recording of special reasons in the judgment for the non-application of the provisions of S. 360, Crl. P.C.

10. Section 6 of the Act contains provisions regarding restrictions on imprisonment of offenders under twenty-one years of age. It runs as follows :

'6. Restrictions on imprisonment of offenders under twenty-one years of age. - (1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life) the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him u/S. 3 or S. 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal u/S. 3 or S. 4 with an offender referred to in sub-sec. (1), the Court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

11. It is clear from these provisions, as stated above, that it is mandatory on the part of learned Magistrate to record his reasons in the judgment for his not releasing the offender accused on probation of good conduct under the benevolent provisions of the Act. As already referred to, learned Magistrate had not pinned down anything in his judgment on these aspects of the manner. Taking into account the age, antecedent and character of the petitioner-accused and the

circumstances under which he resorted to commit the petty theft of 15 Kgms. of rice, he is eminently suited to be released on probation of good conduct.

12. The question then would arise as to whether S. 3 or S. 4 of the Act would get attracted to this case. The offences in respect of which he was found guilty, namely, Ss. 380 and 457, IPC are liable to be sentenced to imprisonment for a period exceeding two years and, therefore, the application of S. 3 is not permissible.

13. The only section which could be resorted to is S. 4 of the Act and the offences u/Ss. 380 and 457, IPC not being offences punishable with death or imprisonment for life, certainly benevolent of the provisions of the section can be invoked for his being released on probation of good conduct.

14. The order passed by learned Magistrate can be set aside on the ground that he had not considered all these aspects of the matter and the same can be remitted to the very same Magistrate for fresh consideration. This sort of a ritualistic exercise will cause so much of agony and lot of inconvenience to the petitioner. The best thing, in such circumstances that could be done is that the petitioner can straightway be released on probation of good conduct by invoking the benevolent provisions of S. 4 of the Act.

15. In this view of the matter, the conviction of the petitioner u/Ss. 457 and 380, IPC is confirmed and the sentences imposed on him by the Court below for the said offences are set aside and instead he is ordered to be released on probation of good conduct on his executing a bond in a sum of Rs. 500/- (Rupees five hundred only) to keep the peace and be of good behaviour for a period of one year and to appear and receive the sentences when called upon to do so during such period.

16. The petition is allowed to the extent indicated above.

17. It is also made clear that on the face of the provisions as adumbrated in S. 12 of the Act, the release of the petitioner u/S. 4 of the Act shall not suffer disqualification attaching to any conviction of an offence.

18. Petition partly allowed.

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