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Arshad Mehmood Vs. the State

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Court : Jammu and Kashmir

Decided On : Nov-14-1991

Reported in : 1992CriLJ2693

Judge : K.K. Gupta, J.

Acts : Foreigners Act - Section 14; ;Public Safety Act; ;Code of Criminal Procedure (CrPC) , 1974 - Section 397; ;Ranbir Code of Criminal Procedure (CrPC) - Section 3

Appeal No. : Cr. Appeal No. 3 of 1990

Appellant : Arshad Mehmood

Respondent : The State

Advocate for Def. : S.K. Anand, Adv.

Advocate for Pet/Ap. : B.M. Bhardwaj, Adv.

Judgement :

K.K. Gupta, J.

1. This appeal is directed against the judgment of Special Judge under Enemy Agents Ordinance, Jammu dated Nov. 30, 1989 convicting the accused appellant Under Section 14 Foreigners Act and Section 3 Passport, Entry to India, Act and

sentencing him to undergo rigorous imprisonment for 3 1/2 years and a fine of Rs. 200/- and rigorous imprisonment for three months respectively. Both the sentences have been ordered to run concurrently. It was further directed that the sentence shall start on July 4, 1990 i.e. after expiry of period of detention of the accused under Public Safety Act.

2. Arshad Mehmood, appellant, is a Pak national and during the intervening night of 19/20 May 1988 in ambush laid down by B.S.F. personnel he was apprehended on this side of Indian territory near Indo-Pak border. One pocket diary containing certain important names and telephone numbers of Pak Intelligence personnel and Pak currency notes of rupees three were recovered from him. B.S.F. authorities handed over the accused to police station Arhia which registered a case and ultimately challenged him Under Sections 3-R.A.O.; 14 Foreginers Act and 3(3) Passport, Entry to India Act, Learned Special Judge after recording evidence of the witnesses acquitted him of the charge under Enemy Agents Ordinance but convicted and sentenced him as aforesaid.

3. I have heard the learned counsel for the parties. Mr. Bhardwaj learned counsel appearing for the appellant is not now aggrieved of the impugned Judgment excepting a portion of the order that the sentence to commence from 4-7-1990. According to him such order is quite illegal and the sentence is required to start from the date it was awarded with set off as permissible under law. Mr. Anand learned Government Advocate has, however contended that the appellant was detained under Public Safety Act for a certain period and the Judge has thus rightly ordered for commencement of the punishment from expirty of that period of detention.

4. Section 397, Cr. P.C. deals with Sentence of offender already sentenced for any other offence. In accordance with this provision when a person already undergoing sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiry of imprisonment to which he has been previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. Appellant accused was detained under

Public Safety Act for a certain period and said period was to expire on 3-7-1990. Learned Special Judge has mentioned in this order that the sentences imposed on him should start only after expiry of the said period of detention. Detention under Public Safety Act is not a sentence under any penal law. That is only a preventive measure to restrain a person from acting prejudicial to the security of the State or for maintaining public order. Under Section 397, Cr. P.C. sentence could be postponed only in a case where the accused is undergoing sentence of imprisonment. The order of the Special Judge is thus not covered under the provisions of Section 397, Cr. P.C. There is no other provision under Criminal Procedure Code permitting the magistrate or the Judge to postpone the sentence or to allow it to commence from a particular date. The order of the learned Special Judge in this respect is thus illegal and same is set aside. The sentence in the case shall commence from the date of judgment. So far set off is concerned same shall be allowed in accordance with law and the rules. This appeal is disposed of accordingly.

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