
(2016) 04 KAR CK 0084

KARNATAKA HIGH COURT

Case No: Criminal Revision Petition No. 1066 of 2009

Smt. Elvi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision: April 20, 2016

Citation: (2016) 3 AirKarR 303

Hon'ble Judges: A.V. Chandrashekara, J.

Bench: Single Bench

Advocate: Sri Dinesh Rao and R.B. Deshpande, Advocates, for the Appellant; Sri S. Rachaiah, HCGP, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.V. Chandrashekara, J.—Heard the learned counsel for the petitioner and learned HCGP.

2. Petitioner was the accused No. 2 in a case bearing C.C.No.1 107/1994 pending on the file of the Civil Judge (Jr. Dvn.) and JMFC at Sakleshpur. Her husband - Rangaswamy was the first accused in the said case. Both of them have faced trial for the offences punishable under Sections 419, 465, 466, 468, 471 and 420 of IPC. According to the prosecution, accused No. 1 took the SSLC marks card of CW-1 from CW-15 and accused No. 1 got an appointment to his wife - the petitioner herein. It is further alleged that both of them dishonestly induced CW-15, so as to give her original marks card to accused No. 1 and accused No. 1 thereon had used the same on behalf of the wife and obtained an employment to his wife as Second Divisional Assistant in the Health Department. They had not pleaded guilty for the charges levelled against them.

3. In order to bring home the guilt of the accused prosecution has examined in all 20 witnesses and has got marked 43 exhibits. Ultimately, both the accused came to be convicted for the offences punishable under Sections 419, 420, 465, 466, 468 and 471 of

IPC r/w. Section 34 of IPC. They had been sentenced to undergo sentence of imprisonment and fine as follows:

"The learned APP has submitted that considering the gravity of offence maximum punishment both imprisonment and fine may be imposed.

2. On behalf of accused No. 1 it is submitted that he has got family and he has to look after them, he was in J.C. for some time and prayed for lenient view while imposing the sentence.

3. On behalf of Accused No. 2 it is submitted that she is a lady and she was in J.C. for some time and if she is further sentenced her future life will be miserable and hence prayed for lenient view while awarding the sentence.

4. Section 360 of Cr.P.C. is not mandatory. All the offences are non-bailable. The accused are not entitled for the benefit of P.O. Act or u/S. 360 of Cr.P.C. as their age shown in the charge-sheet is 34 years. Further A-2 being a lady by using the forged document or using the marks card of another, in the name of another enjoyed the Govt, employment. And even A-2 had also lied in the open Court.

5. As per 2000 Cr IJ 1793 B SC : AIR 2000 SC 1470 the Court should impose such fine to her proved offence, which serve as deterrent for commission of like offences by others, socio economic status, prestige, rare caste or creed or accused or victim and irrelevant considerations in sentencing policy. Hence, different punishment shall be imposed to both the accused.

6. Hence, accused Nos. 1 and 2 are sentenced to undergo rigorous imprisonment for a period of 2 years for the offence punishable u/Ss. 419 r/w Section 34 of IPC.

7. Accused Nos. 1 and 2 are sentenced to undergo rigorous imprisonment for a period of 3 years for the offence punishable u/Ss. 420 r/w 34 of IPC.

8. Accused Nos. 1 and 2 are sentenced to undergo rigorous imprisonment for a period of 1 year for the offence punishable u/Ss. 465 r/w 34 of IPC.

9. Accused Nos. 1 and 2 are sentenced to undergo rigorous imprisonment for a period of 2 years for the offence punishable u/Ss. 466 r/w 34 of IPC.

10. Accused Nos. 1 and 2 are sentenced to undergo rigorous imprisonment for a period of 2 years for the offence punishable u/Ss. 468 r/w 34 of IPC.

11. Accused Nos. 1 and 2 are sentenced to undergo rigorous imprisonment for a period of 1 year for the offence punishable u/Ss. 471 r/w 34 of IPC.

12. All the sentences shall run consecutively. Hence, in all both the accused shall undergo rigorous imprisonment for a total period of 11 years. Accused No. 1 was in J.C.

for 5 days from 23.12.93 to 28.12.93 and A-2 was in J.C. for 6 days i.e. from 23.12.93 to 29.12.93. Those days the accused were in J.C. shall be set off.

13. Hence A-1 shall further undergo rigorous imprisonment for a period of 10 years 11 months 25 days and A-2 shall further undergo rigorous imprisonment for a period of 10 years 11 months 24 days from this date i.e. 31.7. 2001.

14. After the appeal period is over return the documents marked/

1. Ex.P-52, the register to Sri. V.P. Prathap, adv. and notary, Sakleshpur.

2. Ex.P.44, Admission register; Ex.P-12 J.C. Register to the Principal, Govt. Pre-University college, Sakleshpur.

15. Furnish copies of this Judgment to both the accused, forthwith."

4. Against the said judgment and conviction, both of them had filed separate appeals in Crl.A.Nos.56/2001 and 57/2001. Both the appeals filed in terms of Section 374 of Cr.P.C. came to be dismissed. But while dismissing the appeals sentence imposed on the accused was modified.

5. As against the said judgment passed by the First Appellate Court separate criminal revision petition came to be filed in Crl.R.P.No. 1134/2009 by the husband and the said revision petition is allowed and husband who was the accused No. 1 is acquitted of all the offences alleged against him. What is held in the said case is that insofar as accused No. 1 is concerned, the prosecution has not proved beyond reasonable doubt that he obtained marks card from CW-15 relating to CW-1 and handed over the same to his wife, so as to get employment to his wife on the basis of the forged document. It is also held that the accused was not the beneficiary under the said document.

6. Sri. Dinesh Rao, learned counsel for the petitioner has fairly submitted that he would not like to argue much on the question of conviction of the present petitioner and he would like to submit only on the question of sentence. He has requested to take a lenient view since the petitioner is a lady, aged 53 years and she has to look after her aged mother who is entirely depending on her. He has submitted that the case was registered in the year 1993 and trial ended in year 2001 and that the first appeal was disposed of on 2009 and that she has undergone sufficient mental trauma because of the criminal proceedings. It is also submitted that this petitioner was in judicial custody for a period of 10 days, which fact is not seriously disputed by the learned HCGP. He has requested this Court to take a lenient view.

7. Sri. Rachaiah, learned HCGP has submitted that this is not a fit case to take a lenient view since petitioner was a beneficiary by getting a Government employment that too on the basis of the forged marks card. He has opposed in reducing of sentence on the ground that if reduction of sentence is made, it would be harmful to the society and also

similarly placed persons would commit such offences. He has argued that the offences so committed by this petitioner cannot be considered as a minor punishment in any manner. He has requested this Court to confirm the sentence, so that persons having similar intention would be deterred.

8. Learned counsel for the petitioner has relied upon a decision of the Hon"ble Apex Court rendered in the case of Ram Prakash Singh v. State of Bihar, (1998) 1 SCC 173, to contend that more than 23 years have been passed since the registration of the case and that she has undergone mental trauma and her husband who was a co-accused is already acquitted by a considered judgment passed by this Court in a Criminal revision petition. He has requested this Court that instead of sentencing her to imprisonment, ends of justice could be met if reasonable amount is imposed as fine. There is a lot of force in the said submission.

9. As per the facts found in Ram Prakash Singh"s case accused (herein had faced trial for the offence punishable under Sections 420/511, 420/120-B, 468 and 477-A and under Sections 5(1)(d), 5(3-A) and 5(2) of the Prevention of Corruption Act, 1947 and Section 104 of the Insurance Act. He was a Development Officer in LIC and had introduced false and fake insurance proposals to LIC with a view to earn promotion on the basis of inflated business and the sentence was to run concurrently.

10. Ultimately, Hon"ble Apex Court has held that occurrence took place in the year 1974 and charge-sheet was filed in the year 1977. More than twenty years had passed. Because of conviction, the appellant was likely to loose his job and other retiral benefits, if any. He was aged about 44 years when the trial court convicted him and he might have retired on superannuation or likely to be superannuated. Bearing in mind the passage of time, the Hon"ble Apex Court, in order to meet the ends of justice, altered the sentence of imprisonment by reducing it to 6 months from two years.

11. In fact the appellant therein was an accused of offences punishable under the Prevention of Corruption Act, which is a serious offence. Insofar as present case is concerned, petitioner has also been removed from the office and she had attended the trial Court for almost 8 years and she had attended the Appellate Criminal so. 21 years have already passed since the registration of the criminal case. It is also submitted that she is also aged and she has an aged mother who is completely depending on her. The first accused who is none other than the husband of this petitioner had also faced trial. It is he who got the SSLC marks from CW-15 pretending to get a job to her daughter CW-1 and ultimately got job to his wife. He has already been acquitted by this Court in Cri.R.P.No.1 134/2009. Perused the connected file relating to Cri.R.P.No. 1134/2009 disposed of on 03.07.2012 by this Court. In fact, this Court held that it cannot be said that the prosecution has established beyond reasonable doubt that it was the husband of this petitioner who took the marks cards from CW-15. Taking all this into consideration and in the light of the decision in Ram Prakash Singh"s case a lenient view is to be adopted in the present case.

12. Ends of justice would be met if sentence of imprisonment is set aside and in its place reasonable amount is imposed as fine. Petitioner was in custody from 23.12.1993 to 28.12.1993 i.e., for a period of 6 days. Therefore, the judgment pronounced on 31.07.2001. She was taken to custody and she was in judicial custody from 03.08.2001 i.e., for a period of 4 days. She was in judicial custody for a total period of 10 days. Therefore, she is not liable for any more sentence of imprisonment. Insofar as sentence of fine is concerned, imposing fine of Rs.3,000/- each for the offences punishable under Sections 419,465,466,468, 471 and 420 of IPC would meet the ends of justice. Thus, she is liable to pay in all a sum of Rs. 18,000/-. Hence, following order is passed: -

ORDER

Revision petition is allowed.

Judicial custody of 10 days undergone by the petitioner is treated as sentence of imprisonment. She need not undergo any more sentence of imprisonment.

Insofar as fine to be imposed on the petitioner is concerned, she is liable to pay in all a sum of Rs. 18,000/- (Rupees Eighteen Thousand Only) i.e., at the rate of Rs.3,000/- per count. In default of sentence of imprisonment she shall undergo simple imprisonment for three months.

Two months time is granted to the petitioner to pay the fine amount, lest learned Judge would be at liberty to collect the same in terms of Section 421 of Cr.P.C.