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(1950) 11 MP CK 0001

Madhya Pradesh High Court (Gwalior Bench)

Case No: None

Bhagwandas Babulal

APPELLANT

Vs

The State

RESPONDENT

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Date of Decision: Nov. 22, 1950

Acts Referred:

- Penal Code, 1860 (IPC) - Section 379, 403, 408, 95

Citation: (1954) CriLJ 337

Hon'ble Judges: Shinde, J

Bench: Single Bench

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Judgement

@JUDGMENTTAG-ORDER

Shinde, J.

This is an application u/s 561A, Criminal p. C. The applicants filed a petition in revision in this Court, which was rejected on 31-7-1950 as no good ground was shown to interfere with the decision of the lower Court. They have now submitted this application u/s 561A for the consideration of sentence.

2. On 31-7-1950 when the application in revision came up for admission it was argued on behalf of the applicants that the offence was of a trivial nature and hence the applicants were entitled to get the benefit of Section 95, Indian Penal Code and that the railway Magistrate was wrong in trying the case summarily u/s 260, Criminal P. C. Both these grounds were held by me to be inadequate to interfere with the decision of the lower Court. It was, however, not argued on that occasion that the applicants deserve the benefit of Section 562, Criminal P. C. Hence when the present application was submitted I issued notice as I thought, prima facie, it was a fit case in which benefit of Section 562, Criminal P. C. could be given.

3. The learned Deputy Government Advocate has raised a preliminary objection that this Court has no power to review its judgment as the final order has already been

passed. Reliance has been placed on Section 369, Criminal P. C. It is no doubt true that once a judgment has been signed no Court can alter or review it except to correct a clerical error. But Section 369 begins with following words: "Save as otherwise provided by this Code." Section 561A starts with the words: "Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court" etc, The opening words of both the sections reproduced above make it abundantly clear that Section 561A is not governed by Section 369, Criminal P. C. If the High Court, to secure the ends of justice, thinks it necessary it can review its judgment. The learned Deputy Government Advocate cited - "Subramanm Kandar v. Ramaswami Kandar AIR 1949 Mad 154 (A), in support of his contention. This decision has no application to the present case. In that case a revision petition was dismissed for default of appearance. It was held that it could not be restored. That is not the position in the present case. In - "Mathuradas v. Emperor AIR 1927 Lah 139 (B), Broadway J. observed as follows:

As I read these two sections this Court has power to reconsider the question of sentence when the ends of justice require it.

In this case the revision petition was actually heard on merits and the conviction u/s 408, Penal Code was altered to that u/s 403. But the sentence was maintained. Subsequently Mathuradas preferred a petition u/s 561A, Criminal P. O. for the reconsideration of the sentence. The learned Judge entertained the application and reduced the sentence. This case was followed by the Oudh Chief Court in the case of - AIR 1928 402 (Oudh) The preliminary objection, therefore, cannot be sustained.

4. The applicants were convicted u/s 379, Penal Code and Bhagwandas was sentenced to a fine of Rs. 2/- and Babulal and Bhagola were sentenced to a fine of Re. 1/- each. The railway Magistrate found that the accused stole three sugar cane sticks and chewed them. All the three accused are quite young and have not been previously convicted of any offence. The offence of which the applicants have been convicted is also of a very trivial nature. On account of this conviction the applicants, who were working in the loco workshop of the G. I. P. Railway, have been dismissed. If the sentence were to stand it will entail a great hardship to the accused. In the determination of the measure of punishment motive forms an important element. In the present case it is clear that the motive was not to cause wrongful gain to the accused nor was it so much to cause wrongful loss to the owner of the sugar-cane as to satiate the craving of the palate. As the motive was not so base, the act of the accused does not call for severe punishment. Taking all these things into consideration I find it a fit case to give the benefit of Sub-section (1A) of Section 562, Criminal P. C.

5. I accordingly set aside the order of sentence and release the applicants after administering due admonition. Fine if paid, be refunded.