

A. K. Mallu

Vs

Puranchandra Rao & Anr.

Criminal Appeals Nos. 65 and 243 of 1964

(M. Hidayatullah, G. K. Mitter, V. Bhargava JJ)

16.12.1966

JUDGMENT

HIDAYATULLAH, J. –

These are two appeals, one (Criminal Appeal No. 243 of 1964) by one Purna Chandra Rao who has been convicted under section 342, Indian Penal Code by the High Court of Andhra Pradesh but in lieu of the sentence the High Court released him under section 562(1-A) of the Criminal Procedure Code after due admonition, and the other (Criminal Appeal No. 65 of 1964) by one A. K. Mallu against the judgment of the Andhra Pradesh High Court releasing the respondent (who is the appellant in the other appeal) after admonition under section 562 (1-A) of the Code of Criminal Procedure. The two appeals have been respectively filed by the complainant who had lodged a complaint against him on which the conviction resulted, and by the accused. In so far as the appeal of the accused is concerned, we have recorded an order separately which shows that Mr. K. R. Chaudhary, Advocate of this Court appeared before us and told us that he would like to withdraw from the case. As the accused is not represented before us, there is no alternative but to dismiss his appeal in default.

As regards the other appeal, Mr. S. C. Aggarwal contends that section 562(1-A) is not applicable to an offence under section 342 of the Indian Penal Code. His reason are : that section 562(1-A) is concerned with offences concerning property and offences not so concerned cannot be subjected to treatment under that section. Section 562(1-A) regards as follows :-

"In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation cheating or any offence under the Indian Penal Code punishable with not more than two years imprisonment and no previous conviction is proved against him the Court before whom he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition."

Mr. Aggarwal contends that the Code has mentioned several offences by description such as theft, theft in building, dishonest misappropriation and cheating which are offences connected with property and, therefore, the words "any offence under the Indian Penal Code" which follow, must be given an interpretation confining them to those sections of the Penal Code where property is either directly or indirectly involved. In our opinion, this submission is not correct and Mr. Aggarwal is not right in regarding the section as he contends. The offences which are earlier mentioned in the

Section are punishable with imprisonment of more than two years and, therefore, it was necessary to mention them so as to include them in addition to offences under the Indian Penal Code punishable with not more than two year's imprisonment. The words "any offence under Indian Penal Code" therefore cannot be read ejusdem generis with the offences which are mentioned earlier. This clause stands by itself and indicates that all offences punishable with not more than two years' imprisonment are also capable of being dealt with under section 562(1-A). Offences against property are all included in Chapter 17 of the Indian Penal Code and if it was desired to limit the operation of section 562(1-A) to offences against property, it would have been the easiest thing to have mentioned the Seventeenth Chapter of the Code. For these reasons, we do not accept the argument.

As a result, both the appeals fail and are dismissed.

Appeals dismissed.

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