Mohamed Aziz Mohamed Nasir

Vs

State of Maharashtra

Criminal Appeal No. 129 of 1971

(M.H. Beg, P.N. Bhagwati, R.S. Sarkaria JJ)

04.09.1975

JUDGMENT

BHAGWATI, J. -

1. The appellant and one Mohd. Yusuf Gulam Mohd were charged for an offence under Section 379 read with Section 34 of the Indian Penal Code for snatching two sarees from one Govind while he was carrying them from the shop of his master to that of a washer and dyer. The learned Presidency Magistrate, who tried the case, accepted the prosecution evidence and found the appellant and Mohd. Yusuf Gulam Mohd. guilty of the offence under Section 379 read with Section 34 and sentenced each of them to suffer rigorous imprisonment for six months. It does not appear from the judgment of the learned Presidency Magistrate that, though the appellant was only seventeen years and three months old at the date of the offence and the offence was not punishable with imprisonment for life, the attention of the learned Presidency Magistrate was invited to the provisions of Section 6 of the Probation of Offenders Act, 1958. The appellant preferred an appeal against the order of conviction and sentence to the High Court of Bombay but the appeal was unsuccessful. The High Court took the same view of the evidence as the learned Presidency Magistrate and confirmed the conviction of the appellant under Section 379 read with Section 34. So far as the question of sentence was concerned, a submission was made on behalf of the appellant that since he was a young boy of about seventeen years and three months and this was his first offence, leniency should be shown to him. But the High Court observed that age alone was not sufficient to invoke the mercy of the court and the appellant had not done anything since the date of he offence to deserve the mercy of the court and it did not, therefore, see any reason to interfere with the sentence of imprisonment passed against the appellant. It appears that once again the provisions of Section 6 of the Probation of Offenders Act, 1958 were not specifically brought to the notice of the High Court and the sentence of imprisonment was maintained by the High Court without applying its mind to those provisions. Hence the appellant preferred a petition for special leave to this Court and on that petition, this Court grated special leave limited to the question "whether the provisions of the Probation of Offenders Act should have been applied in the case".

2. We are concerned in this appeal with Section 6 of the Probation of Offenders Act, 1958 for it is only under that section that the appellant claims the benefit of the provisions contained in the act. Sub-section (1) of Section 6, on a plan grammatical reading of its language, provides that when any person under twenty-one years 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 impose any sentence of 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 under Section 3 or Section 4 and if the court chooses to pass

any sentence of imprisonment on the offender, it shall record its reasons for doing so. Sub-section (2) of Section 6 then goes on to say that for the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to in sub-section (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. Section 6 thus lays down an injunction, as distinct from a discretion under Section 3 or Section 4, not to impose a sentence of imprisonment on a person who is under twenty-one years age and is found guilty of having committed an offence punishable with imprisonment other than that for life, unless for reasons to be recorded by it, it is satisfied that it would not be desirable to deal with him under Section 3 or Section 4. This inhibition on the power of the Court to impose a sentence of imprisonment applies not only at the stage of trial Court but also at the stage of 'High Court or any other Court when the case comes before it on appeal or in revision". Vide Section 11, sub-section (1) of the act. It is, therefore, obvious that even though the point relating to the applicability of Section 6 was not raised before the learned Presidency Magistrate or the High Court, this Court is bound to take notice of the provisions of that section and give its benefit of juvenile delinquents, reflecting the anxiety of the legislature to protect them from contact or association with hardened criminals in jails and retrieve them from a life of crime and rehabilitate them as responsible and useful members of society.

3. Here, we find that whatever date be taken as the relevant date for determining the applicability of Section 6 - whether the date of the offence or the date of the judgment of the learned Presidency Magistrate or the date of the judgment of the High Court - the appellant was below twenty-one years age. The offence of which he is found guilty is an offence under Section 379 read with Section 34 and it is clearly an offence punishable with imprisonment but not with imprisonment for life. The conditions requisite for the applicability of Section 6 are, therefore, plainly satisfied and under Section 6, sub=section (1) it is not competent to the court to impose any sentence of imprisonment on the appellant, unless the court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the appellant, it would not be desirable to deal with him under Section 3 or Section 4. It is true that sub-section (2) of Section 6 requires that for the purpose of satisfying itself whether it would not be desirable to deal with the appellant under Section 3 or Section 4, the court is required to call for a report from the Probation Officer and consider the report, if any, but we do not think it necessary in the present case to call for any report from the Probation Officer nor to remand the case to the learned Presidency Magistrate for passing an appropriate order after calling for a report from the Probation Officer and considering it. We have on record the antecedent history giving the background of the appellant. The appellant was at one time a well known child film actor and he actually won several awards for acting in films. It appears that at some subsequent stage he fell in bad company and took to evil ways. The offence for which he is convicted is, no doubt, an offence of theft which cannot be lightly ignored, but it is comparatively of a minor character, in that only two sarees were snatched away from the hands of Govind, perhaps under the stress of economic necessity. Moreover, this is a first offence of the appellant. We are, therefore, not at all satisfied that it would not be desirable to deal with the appellant under Section 3 or Section 4 and consequently, the sentence of imprisonment passed on the appellant must be set aside.

4. We accordingly set aside the sentence of imprisonment passed on the appellant and direct that he be released on his entering into a bond with one surety in the sum of Rs. 500 to appear in the Court of the Presidency Magistrate to receive sentence, whether called upon to do so within a period of six months and during that period to keep the peace and be of good behaviour. The learned Presidency Magistrate is directed to take the necessary bond from the appellant and the necessary surety bond

from a surety to his satisfaction. The appellant will continue on bail till such time as these directions are carried out, after which the bail bond will stand cancelled.

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