Ramashraya Chakravarti

Vs

State of Madhya Pradesh

Criminal Appeal No. 154 of 1975

(P. K. Goswami, N. L. Untwalia JJ)

13.11.1975

JUDGMENT

GOSWAMI, J. -

1. To adjust the duration of imprisonment to the gravity of a particular offence is not always an easy task. Sentencing involves an element of guessing but often settles down to practice obtaining in a particular court with inevitable differences arising in the context of the times and events in the light of social imperatives. It is always a matter of judicial discretion subject to any mandatory minimum prescribed by law.

2. Hegel in his 'Philosophy of Right' Pithily put the difficulty as follows :

> Reason cannot determine, nor can the concept provide any principle whose application could decide whether justice requires for an offence (i) a corporal punishment of forty lashes or thirty-nine, or (ii) a fine of five dollars or four dollars ninety-three, four, etc., cents, or (iii) imprisonment of a year or three hundred and sixty-four, three, etc., days or a year and one, two, or three days. And yet injustice is done at once if there is one lash too many, or one dollar or one cent, one week in prison or one day, too many or too few.

3. The present appeal by special leave being limited to sentence we are to consider about the appropriate deserts for the appellant in this case.

4. The appellant was a Circle Organiser in the Tribal Welfare Department at Lohandiguda in the State of Madhya Pradesh. He was estrusted with the distribution of stipends to Adivasi students of the Tribal Welfare Department School. He misappropriated a sum of Rs. 500 meant for four students and also forged certain entries in the bills. He was convicted under Section 409 and Section 467, IPC by the Sessions Judge and sentenced for each head of charge to concurrent four years' rigorous imprisonment and also to a fine of Rs. 500, in default to rigorous imprisonment for six months. The High Court on appeal maintained the conviction but reduced the sentence to two years' rigorous imprisonment maintaining the fine.

5. From a perusal of the judgment of the High Court which is the only document in the proper book in addition to the special leave petition, it is not very clear about the offence of forgery committed by the accused. We would, however, say nothing more than that.

6. In judging the adequacy of a sentence the nature of the offence, the circumstances of its

commission, the age and character of the offender, injury to individuals or to society, effect of the punishment on the offender, eye to correction and reformation of the offender, are some amongst many other factors which would be ordinarily taken into consideration by courts. Trial Courts in this country already overburdened with work have hardly any time to set apart for sentencing reflection. This aspect is missed or deliberately ignored by the accused lest a possible plea for reduction of sentence may be considered as weakening his defence. In a good system of administration of criminal justice pre-sentence investigation may be of great sociological value. Throughout the world humanitarianism is permeating into penology and the courts are expected to discharge their appropriate roles.

7. The appellant is a young man of about 30 years. He is an educated person who was employed in government service. But for the forgery he could have been tried in the court of a first class magistrate for the offence under Section 409 IPC and in that case the maximum sentence of imprisonment would have been two years' rigorous imprisonment. On the face of the High Court's judgment, as noticed above, the part played by the appellant in the forgery is rather a little obscure. The appellant is sure to lose his employment under the Government. There is already indignity heaped upon him on account of conviction. He has no opportunity to commit such offences as a government servant in the future. Any sentence of imprisonment imposed upon him will be a deterrent to others similarly disposed in such unlawful pursuits. The appellant was refused bail in this Court and he is said to have served about nine months in prison.

8. While we do not minimise the seriousness of the offences, having regard to the circumstances mentioned above, we are of opinion that it will meet the ends of justice in this case if the order, which we do, that the appellant's sentence be reduced to one year's rigorous imprisonment only and in addition to a fine of Rs. 500 only, in default rigorous imprisonment for six months. The appeal is partly allowed with modification of the sentence as ordered.

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