

Brij Basi Lal

Vs

State of Uttar Pradesh

Criminal Appeal No. 416 of 1981

(Baharul Islam, D. A. Desai JJ)

14.04.1981

JUDGMENT

DESAI, J. –

1. Special leave to appeal granted limited to the question of sentence only.
2. We heard Mr. A.P. Mohanty, for the appellant, and Mr. R.K. Bhatt for the State of U.P. The appellant is convicted for having committed offences under Sections 120-B, 420 and 471 of IPC. In respect of last-mentioned two offences he has been convicted on two separate and independent counts.
3. The appellant has been sentenced to suffer rigorous imprisonment for a period of one year for an offence under Section 120-B. He has been convicted for committing an offence under Section 420, IPC and has been sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs. 5000, in default to suffer further rigorous imprisonment for one year. For the same charge under a second count, identical punishment has been imposed upon him. He has also been convicted for committing an offence under Section 471, IPC and has been sentenced to rigorous imprisonment for two years and an identical sentence for the second count has also been imposed upon him. The learned Magistrate further directed that the sentence awarded to the appellant for an offence under Section 420, IPC on two different counts shall run consecutively whereas the other sentences shall run concurrently.
4. Unfortunately, the appellant has tried a very bold venture but he has miserably failed also, in that all the sugar bags which he tried to misappropriate for himself had been recovered and taken possession of by the prosecution. It is true that a criminal venture even if it fails, would not provide a mitigating circumstance having a bearing on the quantum of sentence. Even then one has to keep in view the gravity of the offence to assess the proper and adequate sentence. We consider the sentence of rigorous imprisonment for three years and fine of Rs. 5000, in default further rigorous imprisonment for one year for an offence under Section 420, IPC adequate but if the direction to run the sentence awarded on two different counts for two offences under Section 420, IPC to run consecutively, it would mean that the appellant will have to suffer substantive imprisonment for six years apart from the fact that double the fine will have to be paid. Now, those who indulge into criminal activity for grabbing undeserved advantage are not entitled to any consideration on the quantum of sentence of fine because thereby they are made to part with the ill-gotten wealth. We therefore modify the sentence to this limited extent only that substantive sentence awarded for two offences under Section 420 on two different counts shall run concurrently. With this modification, the appeal is dismissed.

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