

Keshav Sitaram Sali

Vs

State of Maharashtra

Criminal Appeal No. 70 of 1976

(E.S. Venkataramiah R.B. Misra JJ)

06.01.1983

JUDGMENT

VENKATARAMIAH, J. –

1. The charge against the appellant who was an employee of the Railways was that on September 12, 1972 at Paldhi Railway Station he had abetted the commission of an offence of theft of coal from a railway goods wagon, which was committed by Bhikan Murad who was arraigned as accused 1 in the case before the Special Judicial Magistrate First Class (Railways), Bhusawal. The learned Magistrate acquitted the appellant of that charge and against the judgment of acquittal passed by the learned Magistrate, the State Government filed an appeal before the High Court of Bombay. The High Court allowed the appeal and convicted the appellant of an offence punishable under Section 379 read with Section 109, IPC. It imposed a sentence of fine of Rs. 500 on the appellant and in default of payment of fine to suffer rigorous imprisonment for two months. The subject matter of theft was a quantity of coal valued at Rs. 8. After the judgment was delivered by the High Court we are informed that the appellant has been taken back to duty by the Railways and he is even now in service. Shri S. V. Tambwekar, learned counsel for the appellant at the hearing of this appeal confined his argument to the question whether the appellant should be dealt with either under Section 360 of the Code of Criminal Procedure or Sections 3 and 4 of the Probation of Offenders Act, 1958. We have heard Shri Ganpule learned counsel for the State on the above question.

2. Having regard to the special circumstances of this case and the character and antecedents of the appellant we are of the view that this was an eminently fit case in which the High Court should have extended the benefit of either Section 360 of the Code of Criminal Procedure or Sections 3 and 4 of the Probation of Offenders Act to the appellant instead of imposing a sentence of fine on him. We, therefore, set aside the sentence imposed upon the appellant and remit the case to the trial court [Court of the Special Judicial Magistrate, First Class (Railways)], Bhusawal to pass an appropriate order under either of the two provisions referred to above. The fine which has already been paid by the appellant shall be refunded to him. The appellant shall appear before the Magistrate on any date during the second week of February, 1983 to enable the trial court to pass orders as directed above.

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