

State of U.P.

Vs

Nand Kishore Misra

Criminal Appeal No.278 of 1990

(Kuldip Singh, K. Ramaswamy JJ)

14.11.1990

JUDGMENT

1. The respondent was prosecuted under Ss. 279, 337, 378, 427, and 304A, I.P.C. While convicting the respondent under the above Sections the Magistrate released him on probation under S. 4 of the U.P. First Offenders Probation Act, 1958 (hereinafter called the Act). Aggrieved by the said order, the State of U.P. filed an appeal before the High Court under S. 377, Criminal Procedure Code. The High Court on the interpretation of S. 377, Criminal Procedure Code and S. 11(2) of the Act came to the conclusion that no appeal was competent before the High Court. While dismissing the appeal, the High Court observed as. under:

"From a perusal of S. 11(2) it is clear that as soon as the Court released an accused under S. 3 or S. 4 an appeal shall lie to the Court to which the appeals ordinarily lie and, therefore, the provision of S. 377, Cr.P.C. would not apply. In the instant case the State filed an appeal and by this appeal the State has challenged the order by which the trial Court has granted the benefit of the First Offenders Probation Act to the respondent. On the other hand, S. 377, Cr.P.C. provides remedy to the State to prefer appeals against the order of conviction by the trial Court only on the ground of inadequacy of sentence. S. 378, Cr.P.C. provides; that an appeal can be filed against the order of acquittal. In the instant case the order releasing the respondent under S. 4 of the First Offenders Probation Act was passed by the Magistrate and, therefore, ordinarily in accordance with S. 11(2) of the Probation of Offenders Act, 1958 the appeal would lie to the Court of Sessions and not to this Court."

2. The State of U.P. has further come up in appeal to this Court via special leave petition.

3. Section 377(1) of the Criminal Procedure Code is as under:

"377. Appeal by the State Government against sentence.- (1) Save as otherwise provided in sub-sec. (2) the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy."

4. Section 11 (2) of the Act runs as under:

" 11(2) Notwithstanding anything contained in the Code, where an order under S. 3 or S.4 is made by any Court trying the offender (other than a High Court) an appeal shall lie to the Court to which appeals ordinarily lie from the sentence of the former Court."

5. The plain language of S. 377(1) makes it clear that the State Government can file an appeal to the High Court sentence on the ground of its inadequacy". In a case where the conviction is recorded by the trial Court but instead of awarding sentence of imprisonment the convict is released on probation under the provisions of the relevant special law then it is a case where no sentence at all has been awarded and as such the provisions of S. 377(1) are not attracted. The respondent has been released on probation under S. 4 of the Act. The Act itself lays down the procedure for appeal against an order passed by the trial Court under S. 3 or 4 of the Act- S. 11(2) reproduced above specifically provides that an appeal against an order under S. 3 or 4 of the Act shall lie to the Court to which the appeals ordinarily lie from the sentence of the trial Court which obviously means the next superior Court in the hierarchy. Ordinarily appeals lie from the sentences awarded by the Magistrate to the Court of Sessions. The High Court was, therefore, justified in holding that the appeal filed by the State of U.P. before the High Court was not competent.

6. We agree with the reasoning and the findings reached by the High Court. There is no merit in this appeal and the same is, therefore, dismissed.

Appeal dismissed.

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