

Jaydev Shrichand Danani

Vs

State of Gujarat

Criminal Appeal No. 825 of 1981

(M. M. Punchhi, S. C. Agrawal JJ)

08.04.1992

JUDGMENT

1. One of the convictions of the appellant is under Section 409, I.P.C. where under he has been sentenced by the High Court to simple imprisonment of 15 days and to pay a fine of Rs. 1500 / - in default whereof 6 months simple imprisonment. The High Court had convicted the appellant on setting aside the judgment and order of the Special Judge who had acquitted him. The High Court at that juncture granted the appellant 5 weeks' time to surrender. In the meantime, the appellant approached this court and was granted exemption from surrender.

2. Learned counsel for the appellant has only prayed for reduction of sentence so that the appellant is not incarcerated at such distance of time. The offence took place, way back in July 1969. No purpose would be served now in incarcerating the appellant at this stage. Yet the law must have its course. Section 409, I.P.C. leaves no choice with the Court, but to award some imprisonment besides imposition of fine. We are not apprised as to whether the appellant has suffered any incarceration during the stage of investigation. If he has, then the custody so suffered, which is reckonable, shall be taken to be the imprisonment already undergone for the offence committed and we reduce the period of imprisonment to that period while sustaining that of fine. But in case the appellant has not suffered any imprisonment so far, then we reduce his sentence till the rising of the Court while sustaining that of fine. To fulfil either purpose, we direct the Special Judge, District Banaskantha, Palanpur to summon the appellant and to verify these facts and should it be necessary, to keep him imprisoned till the rising of the Court as ordered as the second alternative. With these directions this appeal is disposed of.

Order accordingly.

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