

SUPREME COURT OF INDIA

Vaithi @ Vaithianathan

Vs.

State of T.Nadu

Crl.A.No.1870-1871 of 2010

(Cyriac Joseph and T.S.Thakur,JJ.,)

14.11.2011

ORDER

T.S.Thakur,J.,

1. Criminal Appeals No.1870-1871 of 2010 disposed of by an order of this Court dated 27th September, 2010 arose out of an order passed by the Trial Court in CC No.259 and 260 of 2002 convicting the appellant of an offence of theft of electricity and sentencing him to undergo rigorous imprisonment for a period of one month and a fine of Rs.500/-. In default of payment of the fine, the appellant was directed to undergo simple imprisonment for a further period of 15 days in both the cases.

The sentences were ordered to run concurrently.

2. At the hearing of the appeals, it was argued on behalf of the appellant that the appellant had already undergone eight months of imprisonment and yet continued to be in jail even when the sentence awarded to him was only for a period of one month. It was in that backdrop that this Court directed an enquiry into the matter by the High Court and called for a report on the subject.

3. From the report received pursuant to the above direction, it appears that the appellant had undergone a sentence of 13 days only and that the allegation that he had been in jail for eight months was factually incorrect. The report sets out the dates on which the appellant was taken into custody and released on bail.

4. When the matter came up on 16th September, 2011, this Court felt that appellant had made a factually wrong statement that he had undergone eight months' imprisonment. A copy of the report was accordingly directed to be furnished to the counsel for the appellant for filing his response to the same. In compliance with the said direction, the learned counsel for the appellant has filed his reply from which it appears that the statement regarding the period already undergone by him was made on the basis of a communication sent by the Superintendent of Central Prison, Cuddalore to the Inspector Police Kuthallam, Police

Station, Nagapattinam District. A copy of the said communication, it appears was furnished to the learned counsel for the appellant by the Supreme Court Legal Services Committee. The said letter was placed by the learned counsel alongwith the SLP paper book in support of his plea that the appellant was not required to surrender as he had already undergone imprisonment from 26th July, 2004 till 7th May, 2005. The SLP was on that basis numbered and listed before this Court.

5. Learned counsel for the appellant submitted that the statement made before this Court suggesting that the appellant had already undergone eight months' imprisonment, was entirely based on the communication mentioned above. In support he relied upon an English translation of the relevant portion of the letter in question which reads as under:

"Pursuant to the order, the above convict underwent imprisonment from 26.7.2004. Subsequently as per the order made in C.A No.72/04, 73/04 Dt.29.4.2005, he has been released on bail and basing on the bail bond No.1145 Dt.5.5.05 he has been released from this prison on 7.5.2005."

6. It was further submitted that although the statement was found to be factually incorrect by the High Court in terms of the enquiry report submitted by it, the error was referable entirely to the communication which was taken by the counsel as a credible official document. There was at any rate no intention of misleading this Court or obtaining an order by misrepresentation of facts.

7. The appeal in question was filed through the Supreme Court Legal Services Committee. Learned counsel appearing on behalf of the appellant was also engaged by the Committee only. The requisite documents for filing of the appeal also appear to have been furnished to the counsel by the office of the Committee. The communication to which we have referred above was one of the documents that was furnished to the counsel for the appellant and formed part of the SLP paper book. The original of the communication is in Tamil. The correctness of the English translation was verified by this Court with the help of a Tamil knowing member of the Bar and found to be accurate. Relevant paragraph from the communication which we have extracted above does create an impression that the appellant was taken into custody on 26th July, 2004 and released only on 7th May, 2005. This period works out clearly `eight months'. Learned counsel for the appellant was, therefore, misled into making a statement that the appellant had undergone eight months' imprisonment on a bonafide assumption which was on further enquiry not found to be factually correct. In the circumstances we do not consider it necessary to issue any further direction in the matter based on the report received from the High Court.

8. The only other question is whether we ought to recall the order passed by us in the appeal upholding the conviction of the appellant and reducing the sentence awarded to him to the period already undergone. As noticed above, the appellant has undergone 13 days' sentence as against one month's imprisonment awarded to him. Having regard to the circumstances of this case and keeping in view the fact that the offence in question was committed nearly 10 years back the period already undergone by the appellant should, in our opinion, suffice.

9. In the light of what we have stated above, while we accept the report received from the High Court, we close these proceedings without any further directions in the matter.