

# BOMBAY HIGH COURT

Emperor

Vs

Peter D'Souza

(M Chagla, C.J. Bavdekar and Gajendragadkar, JJ.)

12.04.1948

## JUDGMENT

### **M.C. Chagla, C.J.**

1. The case referred to us to this full bench raises a very short question of construction of Section 43 of the Abkari Act. Section 43 of the Act before it was amended contained the penal provision in the following term: "Shall, on conviction, be punished for each such offence with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both." The amendment altered the penal provision to read as follows: "Shall, on conviction, be punishable for the first offence with imprisonment for a term which may extend to six months and with fine which may extend to Rs. 1,000: Provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than Rs. 500."

2. Now, it is contended by the Government Pleader that, inasmuch as the word "or" has been replaced by "and" the sentence for the first offence has been made cumulative. In other words, it is obligatory upon the Court to impose upon the accused both the sentence of imprisonment and the sentence of fine. Although the Legislature has altered "or" to "and", it is also significant that it has altered the expression "punished" for the expression "punishable." Therefore, on a conviction, the accused is not necessarily to be punished with the imprisonment of six months and with a fine; but he is punishable, or liable to be punished, with imprisonment of six months and with fine which may extend to Rs. 1,000. Therefore, "punishable" imports discretion, and it is left to the discretion of the Court to impose a sentence of imprisonment or a sentence of fine or both. "Imprisonment and fine" in this context must and does mean "imprisonment and or fine."

3. The Government Pleader emphasises the fact that in the subsequent clause, which lays down the minimum sentence to be imposed, the expression "and" again occurs, and according to him the object of the Legislature was that the minimum sentences to be inflicted should be both that of imprisonment and of fine. As regards imprisonment, the minimum should be three months,

and as regards fine the minimum should be Rs. 500. But in the latter clause the phrase used is "such imprisonment shall not be less than three months and fine shall not be less than Rs. 500." Therefore, in order to construe "such imprisonment and fine" we have got to refer to the preceding clause, and as I have pointed out in the preceding clause the sentence is left to the discretion of the Court, whether to inflict imprisonment, or to inflict fine or both.

4. If it is at all necessary, we may look at the analogous provision with regard to punishment to be found in Section 302 of the Indian Penal Code. There the sentence for murder is death or transportation for life. The expression used is "shall be punished with death, or transportation for life." That makes it obligatory upon the Court, when a man has been convicted of murder, to punish him with death or transportation for life; and then the sentence that follows is "and shall also be liable to fine." That "makes a fine discretionary", because it is left to the discretion of the Court whether to inflict a fine or not. Fine is not cumulative with death or with transportation for life.

5. Similarly, here, the imprisonment of six months and the fine of Rs. 1,000 are not cumulative sentences, but sentences to be inflicted according to the discretion of the Court.

6. The Government Pleader argues that if this be the construction, the amendment of the Act has brought about no change whatsoever. That is not correct, because, whereas before the Court had full discretion to impose any sentence of imprisonment or to inflict any fine, now the discretion is cut down in the case of imprisonment to three months and in the case of fine to Rs. 500, unless the Court for special reasons; to be recorded in the judgment takes a different view.

7. Therefore, in our opinion, it is not obligatory upon the Court to inflict both the sentence of imprisonment and the sentence of fine.

