DELHI ADMINISTRATION (NOW N.C.T. OF DELHI) A

v.

MANOHAR LAL

AUGUST 29, 2002

[DORAISWAMY RAJU AND SHIVARAJ V. PATIL, JJ.] B

Code of Criminal Procedure, 1973—Section 433 (d)—Commutation of sentence—Power of—Trial court convicted and sentenced offender under Prevention of Food Adulteration Act, 1954—First Appellate Court confirmed the same—High Court commuted the sentence and issued mandatory directions to Government—Correctness of—Held, High Court cannot assume powers when statute specifically entrusts it to the appropriate Government—Prevention of Food Adulteration Act, 1954. C

Precedent—Not to be applied mechanically—Courts to find out the ratio, ascertain the law and then apply it appropriately to the cases before them. D

Respondent was convicted and sentenced for an offence under Prevention of Food Adulteration Act, 1954. First Appellate Court upheld the conviction and refused to grant benefit of commutation of sentence to respondent. Respondent challenged the order of sentence but not E **conviction. High Court relying on *Santosh Kumar's case and the statement of counsel for the State conceding that the case in hand was similar to *Santosh Kumar's case granted benefit of commutation of sentence under Section 433(d) Cr.P.C. and directed the respondent to deposit Rs. 20,000 as fine in trial court and inform Government of such deposit.** F

In appeal to this Court, State contended that High Court could not order for commutation of sentence, once conviction of respondent was upheld and no jurisdictional or other error of any kind was also found in the sentence imposed and that the offence of food adulteration is a social G **evil and when legislature has mandated a minimum sentence for a given violation, it would not be proper for ordering commutation resulting in circumvention of legislative intention.**

Disposing of the appeal, the Court

H

A **HELD: 1.1 High Court was merely swayed by considerations of judicial comity and propriety and failed to see that merely because this Court has issued directions in some other cases, to deal with the fact situation in those other cases, in the purported exercise of its undoubted inherent and plenary powers to do complete justice, keeping aside even technicalities, High Court, exercising statutory powers under the Criminal** B **Laws of land, could not afford to assume to itself the powers or jurisdiction to do the same or similar things. High Court and all other courts in the country were no doubt ordained to follow and apply the law declared by this Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and ascertain the law, if** C **any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately to the cases before them.**

[5-F-H; 6-A]

1.2. In **Santosh Kumar's* and ***N. Sukumaran Nair's* cases no law has been declared nor any principle or question of law has been decided or D **laid down and this Court gave certain directions to dispose of the matter in the special circumstances noticed by it and the need felt. The same could not have been mechanically adopted as a general formula to dispose of, as a matter of routine, all cases coming before any or all the courts as an universal and invariable solution in all such future cases also. Thus, High Court had no justifying reason to disturb the conclusion of First Appellate** E **Court. [6-A-C]**

****Santosh Kumar* v. *Municipal Corporation and Anr.*, [2000] 9 SCC 151 = 2000 Crl. L.J. 2777 and ***N. Sukumaran Nair* v. *Food Inspector, Mavelikara,* [1997] 9 SCC 101, referred to.**

F **2.1. In the instant case, High Court commuted the sentence and issued a mandatory direction to Government with no discretion or liberty left with it to exercise powers under Section 433 (d) Cr.P.C., the same being part of the residuary sovereign power of the State, except to 'formalise the same', on payment of fine amount specified by Court. This is nothing** G **but assuming powers where there are none for High Court and where the statute concerned specifically entrusts it to only the appropriate Government. [6-G-H]**

****State of Punjab* v. *Kesar Singh,* [1996] 5 SCC 495, relied on.**

H **2.2. Even the appropriate Government may not, as a matter of**

routine course, indulge in exercise of such powers at its sweet will, pleasure and whim or fancy. The powers conferred upon the appropriate Government under Section 433 Cr.P.C. have to be exercised in accordance with rules and established principles—reasonably and rationally, keeping in view the reasons germane and relevant for purpose of law under which conviction and sentence has been imposed, commiserative facts necessitating commutation, and interests of society and public interest. The exercise of any power vested by statute in a public authority is to be always viewed as in trust, coupled with a duty to exercise the same in larger public and societal interest, too. When, legislature concerned has chosen to mandate for the imposition of a minimum sentence in a given situation, responsibility of the appropriate Government becomes all the more greater and power under Section 433, Cr.P.C. may have to be exercised with great circumspection. Otherwise, legislative will might become a mere dead-letter at the whim of the executive. [7-A-C]

2.3. This judgment shall not be construed to take away the benefit, if any, already given to an accused, purporting to follow the earlier decisions. In the instant case, accused has remitted sum of Rs. 20,000. Treating this and such cases where already orders have been passed by Courts, at least, the appropriate Government would do well to grant relief to accused concerned. If, in any case, it is considered by Government, in its discretion, not advisable to do so, it is always open to Government concerned to either move the very Court or Appellate/Revisional forum to modify orders so as to leave the matter to the sole discretion of appropriate Government, to be exercised in accordance with law. [7-D-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 863 of 2002.

From the Judgment and Order dated 24.4.2001 of the Delhi High Court in Crl. R.P.No.188 of 2001.

Harish N. Salve. Solicitor General, Ranji Kumar, Arun K. Singh, (NP), Ms. Usha Mann, Siddharth Choudhary, D.S. Mahra and Ms. Binu Tamta for the appearing parties.

The Judgment of the Court was delivered

D. RAJU, J. Leave granted.

The respondent has been convicted for an offence under Section 16

A read with Section 7 for the violation of Section 2(ia) (a),(j) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') by the Metropolitan Magistrate, New Delhi, on 9.5.2000 in case No. 42 of 1994. Thereupon, on 12.5.2000 he was sentenced to undergo simple imprisonment for one year, in addition to a fine of Rs. 2000 in default of payment of which to undergo a further sentence of simple imprisonment for one month. B Thereafter, the respondent went on appeal and the learned Additional Sessions Judge, New Delhi, by his judgment dated 20.3.2001 in Crl. Appeal No.11 of 2000 affirmed the findings of the trial court that the offence has been properly proved on the basis of proper and sufficient materials and consequently sustained the conviction. So far as the question of sentence is concerned, C adverting to the claim made for the benefit of Section 433 (d) of the Criminal Procedure Code, the Appellate Judge found it not possible for him to grant relief on the view that the power to commute under the said provision vests with the State Government and it was not permissible for him to adopt the course made in 1996 (2) FAC. 187 by this Court, in exercise of its inherent powers. The sentence imposed by the trial court was also, thus, confirmed. D

Aggrieved, the respondent pursued the matter on revision before the High Court in Crl. Revision Petition No.188 of 2001. The conviction of the respondent was not challenged by the respondent before the High Court. So far as the sentence is concerned, adverting to the certificate of the Director, E Central Food Laboratory, wherein it was found stated that the colouring matter was not injuries to health and placing reliance upon the decision of this Court reported in 2000 Crl. L. J. 2777, wherein a direction was issued by this Court to the Government under Section 433 Cr. P.C. benefit of Section 433 (d) Cr. P.C. was claimed for the respondent. Taking into account the same and the concession said to have been made by the counsel for the State, F the learned Judge in the High Court felt persuaded to extend the benefit of commutation of sentence, as envisaged under Section 433 (d) Cr. P.C. and directed the respondent to deposit in the trial court Rs. 20,000 as fine. in commutation of the sentence of imprisonment and inform the Government of such deposit for formalising the matter by passing appropriate orders under G Section 433 (d) Cr.P.C. it was also ordered that on deposit of the fine amount, the sentence of imprisonment imposed shall stand suspended. Aggrieved against this order of the High Court dated 24.4.2001 this appeal has been filed by the Delhi Administration.

The learned Solicitor General, appearing for the appellant, contended H that the High Court could not order for the commutation of the sentence,

once the conviction of the respondent has been upheld and no jurisdictional or other error of any kind was also found in the sentence imposed. Placing reliance upon a decision of this Court reported in *State of Punjab* v. *Kesar Singh,* [1996] 5 SCC 495, it has been urged that the power under Section 433 CR. P.C. has to be exercised by the State Government, in its discretion and it is not for the High Court to pass an order for commutation and direct the State Government to formalise the same on deposit of the fine amount specified by the Court. Argued the learned Solicitor General further that the offence of Food Adulteration is a social evil and when the legislature, keeping in view of the same, has mandated a minimum sentence for given violation, it would not be proper for ordering commutation resulting in circumvention of the legislative intention. Orders of this nature passed in large numbers in New Delhi and all over other places in the country are said to be causing severe impediment in the effective enforcement of the provisions of the Act to curb the social evil, having further wide ramifications on the society, Shri Ranjit Kumar, learned senior counsel, appearing for the respondent with equal force and vehemence contended that once the so-called adulteration was considered to be not injurious to health, there is nothing illegal in the course adopted by the High Court, and following the earlier decisions of this Court reported in *N. Sukumaran Nair* v. *Food inspector, Mavelikara,* [1997] 9 SCC 101 and *Santosh Kumar* v. *Municipal Corporation and Anr.,* [2000] 9 SCC 151 , more so when the counsel appearing for State in the High Court conceded to the fact that the case on hand is similar. It was also submitted that the respondent has since remitted sum of Rs. 20.000 and the interests of justice would not suffer a casualty, by allowing the order of the High Court to stand and the Government passing orders commuting the sentence of imprisonment into one of fine, as indicated by the High Court.

We have carefully considered the submissions of the learned counsel appearing on either side. Apparently, the learned Judge in the High Court was merely swayed by considerations of judicial comity and propriety and failed to see that merely because this Court has issued directions in some other cases, to deal with the fact situation in those other cases, in the purported exercise of its undoubted inherent and plenary powers to do complete justice, keeping aside even technicalities, the High Court, exercising statutory powers under the Criminal Laws of the land, could not afford to assume to itself the powers or jurisdiction to do the same or similar things. The High Court and all other courts in the country were no doubt ordained to follow and apply the law declared by this Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and ascertain the law.

A if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately, to the case before them. Considered in that context, we could not find from the decisions reported in [1997] 9 SCC 101 (supra) and [2000] 9 SCC 151 (supra) any law having been declared or any principle or question of law having been decided or laid down therein and that in those cases this Court merely proceeded to give certain directions B to dispose of the matter in the special circumstances noticed by it and the need felt, in those cases, by this Court to give such a disposal. The same could not have been mechanically adopted as a general formula to dispose of, as a matter of routine, all cases coming before any or all the courts as an universal and invariable solution in all such future cases also. The High C Court had no justifying reason to disturb the conclusion of the first Appellate Court, in this regard.

That apart, Section 433 of the Code of Criminal procedure, 1973 also enacts that the appropriate Government may, without the consent of the person sentenced, commute, among other things enumerated therein a sentence of D simple imprisonment for fine. This Court in *State of Punjab* v. *Kesar Singh* (supra), though while considering clause (b) of the very provision has observed as follows: "The mandate of Section 433, Cr. P.C. enables the Government in an appropriate case to commute the sentence of a convict and to prematurely order his release before expiry of the sentence as imposed by the Courts.....That E apart, even if the High Court could give such a direction, it could only direct consideration of the case of premature release by the Government and could not have ordered the premature release of the respondent itself. The right to exercise the power under Section 433. Cr. P.C. vests in the Government and has to be exercised by the Government in accordance with the rules and established principles. The impugned order of the High Court cannot, therefore, F be sustained and is hereby set aside" From the nature and content of the order passed by the High Court in this case, it could be seen that no discretion or liberty whatsoever has been left with the State Government to exercise powers under Section 433 (d), Cr.P.C. at its discretion the same being part of the residuary sovereign power of the State. So far as the case on hand is G concerned not only the High Court had decided to commute but issued a mandatory direction to the Government with no discretion or liberty left with it, except to 'formalise the same,' on payment of the fine amount specified by the Court. This is nothing but assuming powers where there are none for the High Court and where the statute concerned specifically entrusts it to only the appropriate Government.

H

We are also of the view that even the appropriate Government may not, as a matter of routine course, indulge in exercise of such powers at its sweet will, pleasure and whim or fancy. As observed earlier, the powers conferred upon the appropriate Government under Section 433, Cr. P.C. have to be exercised in accordance with rules and established principles-reasonable and rationally, keeping in view the reasons germane and relevant for the purpose of law under which the conviction and sentence has been imposed, commiserative facts necessitating the commutation, and the interests of the society and public interest. The exercise of any power vested by the statute in a public authority is to be always viewed as in trust, coupled with a duty to exercise the same in larger public and societal interest, too. When, the legislature concerned has chosen to mandate for the imposition of a minimum sentence in a given situation, their responsibility of the appropriate Government becomes all the more greater and power under Section 433, Cr.P.C., may have to be exercised with great circumspection, Otherwise, the legislative will might become a mere dead-letter at the whim of the executive.

Be that, as it may, this judgment shall not be construed to take away the benefit, if any, already given to an accused, purporting to follow the earlier decisions, as has been done in this case. To some extent, this situation seems to have arisen due to a misunderstanding of the impact of the two judgments, noticed above and the reporting of such cases as though they constituted any precedent for future guidance. So far as the case on hand is concerned, it has been represented that the accused has remitted the sum of Rs. 20.000 as stipulated by the learned Judge in the High Court and treating this and such cases where already orders have been passed by Courts, at least, the appropriate Government would do well to grant relief to the accused concerned. If in any case, it is considered by the Government, in its discretion, not advisable to do so, it is always open to the Government concerned to either move the very Court or the Appellate/ Revisional forum to modify the orders so as to leave the matter to the sole discretion of the appropriate Government, to be exercised in accordance with law.

The appeal is allowed to the extent the extent of clarifying the position of law to be followed and disposing of the same in the light of the further directions, contained supra.

N.J. Appeal allowed.