

(2011) 09 GUJ CK 0050
In the Gujarat High Court

Case No : Criminal Revision Application No. 555 of 2005

Mansukhgiri Sureshgiri Bawaji

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Electricity Act, 1910 — Section 39
Penal Code, 1860 (IPC) — Section 379

Citation : (2011) 09 GUJ CK 0050

Hon'ble Judges : Sonia Gokani, J

Bench : Single Bench

Advocate : Hriday Buch, for the Appellant; K.P. Rawal, APP, for the Respondent

Judgement

Sonia Gokani, J.—This Revision Application is preferred u/s 397 read with Section 401 of the Code of Criminal Procedure 1973, challenging the order of IIIrd Joint Judicial Magistrate First Class, Veraval dated 11.7.2005, convicting and sentencing the present Petitioner for the period of 6 months of simple imprisonment and imposing fine of Rs. 5,000/- and on failure, to suffer further simple imprisonment for 45 days as also order of confirmation of the order of conviction and fine by the learned Additional Sessions Judge, Veraval in Criminal Appeal No. 3 of 2002 dated 11.7.2005.

2. As can be seen from the record, the present Petitioner is alleged to have committed the theft of energy by illegally using wires connected to the low voltage line of the GEB. This theft of energy was detected by the officers of the Gujarat Electricity Board in relation to five shop-keepers and complaint in this regard has been lodged against the present Petitioner whose trial resulted into the order of conviction and fine as mentioned hereinabove.

3. Being aggrieved by the impugned orders of both the Courts below who have concurrently held the Petitioner guilty of theft u/s 379 of Indian Penal Code as also u/s 39 of the Indian Electricity Act, 1910, the present Revision Application is preferred.

4. Having heard the learned advocate Mr. Hriday Buch with learned advocate Mr. Param Buch appearing for the Petitioner and learned APP Mr. K.P. Rawal appearing for the State, and having regard to the material placed before this Court, this Criminal Revision Application is partially allowed as detailed hereinafter.

5. Learned advocate Mr. Buch has fairly submitted that when there are concurrent findings of two Courts below, in Revision Application, the powers to be exercised by Revisional Court would be limited under the statute. He candidly submitted that it was apparent to point out any incorrectness or perversity in the findings of either of the Courts having regard to the facts presented before those authorities. However, he has fervently urged the Court mitigating circumstances for reduction of sentence by considering the fact that Petitioner is a patient of Tuberculosis and medical evidence to that effect has also come on record. It is also argued that the complaint has been lodged only against the present Petitioner though commission of the theft was done. Four other shop owners also and for the reasons best known to the Company, the rest went scot free. He also urged that protracted period of litigation must weigh with the Court to reduce the punishment of simple imprisonment awarded by the Appellate Court instead this Court may consider imposing more amount towards fine. He further pleaded to consider the young age of Petitioner at the time of detection of theft. Urge was also made for invocation of provisions of Probation of Offenders Act in favour of present Petitioner, so as to avail him an opportunity to be a good citizen without suffering the imprisonment as directed. Learned advocate Mr. Buch also relied on the judgment of Delhi High Court in case of Virender Singh Vs. State, which according to him is the case of similarly situated convict, whose conviction was u/s 39 of Indian Electricity Act, where High Court of Delhi permitted invocation of the powers of Probation of Offenders Act. Request therefore is reiterated is to invoke those provision in case of the present Petitioner as well.

6. Learned APP resisted invocation of the provisions of Probation of Offenders" Act in as much as the conviction according to him concerns the theft of electricity which is the theft of a public assets and in such cases no leniency could be shown by the Court. However, as regards reduction in the punishment of simple imprisonment of six months awarded by the Appellate Forum, it was left to the discretion to this Court by the learned APP.

7. From the report called from the jail authority, it is pointed out that the total period of imprisonment, Petitioner has undergone is one month and one day.

8. As noted hereinbefore, since both the Courts have concurrently established the guilt of the accused by holding in unequivocal terms that the prosecution succeeded in proving the charges against present Petitioner beyond reasonable doubts, with neither mistake in appreciation of evidence adduced nor on any other ground, when perversity is pointed out in the findings arrived at by these Courts, the powers of revisional court are not to be exercised to interfere with or to disturb such concurrent findings of guilty of convict, both under the Indian

Penal Code and Electricity Act. It is not required of the High Court in such circumstances, to conclude differently upon re-appraisal even when there are possibility of two views. Resultantly, in absence of any illegality or incorrectness in the orders of Court below, exercise of revisional powers are not warranted so far as recordance of conviction is concerned.

9. In this premise, the issue reduces to a very narrow compass on the aspect of punishment.

10. At the first go, it would be essential to state that this Court is disinclined to invoke powers under the Probation of Offenders" Act in as much as question as rightly pointed out by learned APP relates to theft of energy. The theft since is of the public asset, it would not be appropriate to accede to the request of the learned advocate to invoke the provisions of Probation of Offenders" Act. However, other facts which emerge on the record of the present case indicate in clear terms that the Petitioner convict was of an young age when the incidence had taken place. He was barely 20 years old, when the crime was registered against him. Again, there was a long drawn litigation, where for the incident which took place in the year 1999, this revision is being decided in the year 2011, convict has experienced sufficient hazards of litigating process for all these years. Moreover, he has already paid the charges of energy stolen long ago to the authority. As also can be noted from the record, he was shown as a patient of Tuberculosis for which he was undergoing the treatment and last but not the least is that, it is not the case of prosecution that in the entire last decade, there is any recurrent incident of such a nature having been committed by the Petitioner nor was he having any criminal antecedent.

11. All these grounds cumulatively lead this Court to reduce his order of sentence from the period of 6 months to period undergone as both these Sections being 379 of the Indian Penal Code and Section 39 of Indian Electricity Act prescribe in the event of guilt punishment of either imprisonment or fine and when the Petitioner has undergone the imprisonment for the period of one month and one day, it would be appropriate and just to construe the period undergone as sufficient by way of an order of conviction. However, over and above the amount of fine levied, additional amount of fine of Rs. 10,000/- is imposed which shall be paid by the Petitioner without further loss of time. This fine is u/s 39 of the Indian Electricity Act.

12. With this enhancement in the fine, this revision application is partly allowed. Order under challenge of guilt of the Petitioner is upheld and confirmed as mentioned hereinbefore, with the modification in the orders of period of imprisonment as also in the fine. For the offences u/s 379 of Indian Penal Code and Section 39 of the Indian Electricity Act, period of sentence is reduced to the period of sentence undergone by the Petitioner whereas additional amount of Rs. 10,000/- (Rupees Ten Thousand only) by way of fine shall be paid without further loss of time and in default, Petitioner to undergo simple imprisonment of two months.

13. Rule is made absolute to the above extent and this Revision Application stands disposed of accordingly.