
(1989) 04 RAJ CK 0027

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 62 of 1989

Sriram and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 05-04-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360, 379
Penal Code, 1860 (IPC) — Section 379, 411

Citation : (1989) WLN 64

Hon'ble Judges : V.S. Dave, J

Bench : Single Bench

Judgement

V.S. Dave, J.—This revision petition has been directed against the judgment, dated 7-3-1989, of the Additional Sessions Judge, Bundi partly allowing the appeal of the petitioners against the judgment dated 8-2-1984 of the Judicial Magistrate No. 2, Bundi. Learned Addl. Sessions Judge altered the conviction of petitioners from one u/s 379, IPC sentence of one year's rigorous imprisonment and a fine of Rs. 500/- each to one u/s 411, IPC and each of them to undergo six months' rigorous imprisonment, while maintaining the amount of fine. However, the sentence in default of payment of fine was reduced from 5 months' rigorous imprisonment each to 2 months' rigorous imprisonment each.

2. Learned counsel for the petitioners argued this case for some time on merits, then conceded and in my opinion rightly so there are no grounds for interference in concurrent findings of fact arrived at by both the court below. He however, submits that learned Addl. Sessions Judge, while altering the conviction from one under section, 379, IPC to Section 411, IPC and considering the case u/s 360, Cr.P.C. without any reason discriminated between the case of accused Suwa and accused petitioners Sriram & Chandra. Appellate court has erred in not considering the provisions of Section 360, Cr.P.C. No reasons have been assigned for refusal of benefit u/s 360, Cr.P.C. when the legislature has cast an imperative duty to assign special reasons for not giving the benefit of the provisions of Section 360, Cr.P.C. Once the court was of the opinion that case u/s 379, IPC is

not made out and if the court was considering it to be a mitigating circumstance for reduction of the sentence, fact of benefit should not have been considered for refusing the benefit.

3. Learned Public Prosecutor also concedes to the extent that fact of benefit should not have been taken note of for the purpose of refusing the benefit of probation.

4. I have considered the circumstances of the case. It is true that lifting of the goods in running bus cannot be appreciated and is a serious circumstance. But that alone cannot be a circumstance for not considering the case u/s 360, Cr.P.C. muchless when the court has not accepted the prosecution story that the accused had removed the goods from a running bus. To use that circumstance after acquitting the accused of the offence u/s 379, IPC is not a correct approach and, therefore, the case of the petitioners deserve to be considered for benefit u/s 360, Cr.P.C.

5. In the result, this Petition is partly allowed. The conviction of the accused-petitioners is maintained But instead of sentence them at once to any punishment, it is directed that they be released on their entering into a bond in the sum of Rs. 2000/- each to the satisfaction of the lower court, to appear and receive sentence when called upon during a period of one year and in the mean time to keep the peace and be of goods behaviour.