
(1989) 12 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 76 of 1986

State of Himachal Pradesh	Vs	APPELLANT
Mehar Din and Another		RESPONDENT

Date of Decision : 20-12-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 377
Forest Act, 1927 — Section 41, 42
Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 — Rule 20
Probation of Offenders Act, 1958 — Section 3

Citation : (1990) 1 ShimLC 252

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : M.S. Chandel, Assistant Advocate General, for the Appellant; K.D. Sood, Prikshit Mebdudia, G.D. Verma and Y.P. Sood, for the Respondent

Judgement

V.K. Mehrotra, J.—A truck, bearing registration No. HPS 3790, loaded with timber was checked by a police party at Check Post, Dhalli in Simla on June 21, 1980. It was found that there were 130 logs of different sizes of Karl and Rei. The challan accompanying the truck contained an entry about 115 logs. The lapse was treated to be a contravention of Rule 12 read with Rule 20 of the Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 and of Section 41/42 of the Indian Forest Act, 1927.

2. Mehar Din was the driver of the truck. Karam Singh was its conductor. The owners of the timber, in whose favour the export pass had been issued by the Forest Department and on whose account the timber was being transported, were Rai Singh and Narain Singh Their authorised agent was Bhag Mal. All the five persons were prosecuted in Criminal Case No. 65/2 of 1981. by instituting a challan on June 19, 1981. The case was tried by Judicial Magistrate, First Class (III) Simla Evidence was led on behalf of the prosecution. The learned Magistrate believed the evidence and came to the conclusion that all the five persons were guilty of the offences for which they were charged. When the learned Magistrate

heard the accused on the question of sentence on May 21, 1984, he felt that as far as Mehar Din and Karam Singh were concerned, being carriers, a lenient view deserved to be taken in their case. He sentenced these two persons to undergo rigorous imprisonment for one month and to pay a sum of Rs. 500 each by way of fine. The other three persons were directed to pay fine of Rs. 500 each and, in addition, to undergo rigorous imprisonment for a period of six months each.

3. The convicted persons assailed their conviction and the sentence awarded to them by filing two separate Criminal Appeals. The appeal filed by Mehar Din and Karam Singh was dismissed. Their conviction was upheld. The appeal filed by the other three persons was, however, allowed by the learned Additional Sessions Judge, Simla, on his view that they were entitled to benefit of doubt.

4. After dismissing the appeal of Mehar Din and Karam Singh, the learned Judge considered the question of sentence to be awarded to them. In the last paragraph of his judgment, where it contains the final order passed by him, the learned Judge said "Mehar Din and Karam Singh have been found guilty of the offence as they were driver and conductor of the truck and were carrying the timber. Rai Singh and Narain Singh the owners of the timber and Bhag Mal their authorised agent have been given the benefit of doubt above. Keeping in view the status of Mehar Din and Karam Singh in whole of the episode and the fact that only 15 logs which are not very expensive were found to be in excess, I feel they deserve the benefit of Section 3 of the Probation of Offenders Act, being first offenders. Their sentence of one month R. I, and fine of Rs. 500 each is set aside and they are released after admonition u/s 3 of the Probation of Offenders Act."

5. State of Himachal Pradesh felt aggrieved by the inadequacy of the sentence awarded to Mehar Din and Karam Singh. As such, they came to this Court by filing the present appeal u/s 377 of the Code of Criminal Procedure.

6. On notice being directed to issue to them, both Mehar Din and Karam Singh put in appearance through Counsel.

7. Having heard the learned Assistant Advocate General, Shri M. S. Chandel, and the learned Counsel appearing for Shri Mehar Din (The Counsel for Karam Singh did not appear today inspite of his name having been printed in today's cause-list), I am of opinion that the order passed by the learned Additional Sessions Judge cannot be upheld.

8. The trial Magistrate had taken a lenient view in awarding the sentence to these two persons. The circumstance which had impressed the trial Magistrate was the fact that these two persons were only the carriers.

9. In appeal, the learned Additional Sessions Judge upheld the view, relating to the commission of the offence by Mehar Din and Karam Singh, taken by the trial Magistrate. The circumstance that these two persons were the driver and conductor of the truck in which some timber was being carried was not enough

to take the view that they should be let-off with admonition alone. The fact that both the courts felt that Mehar Din and Karam Singh were guilty of the offence with which they were charged and the further fact that, in his discretion, the trial Magistrate had taken a lenient view of the matter in awarding a lesser sentence to these persons, as compared to the other three accused persons, could not be lost sight of by the Additional Sessions Judge while considering the question of sentence to be awarded to these two persons.

10. A Judicial notice can be taken of the fact that offences relating to forest produce are widely prevalent in the State of Himachal Pradesh. True it is that there is no evidence of any other conviction against either of these persons on the record of this case, yet the fact that both the courts had come to a concurrent conclusion that they were guilty of the offence for which they were charged was a factor which could not be ignored while determining the quantum of punishment which was to be awarded to them. In the totality of the circumstances of the present case and, in particular, having regard to the widespread prevalence of offences relating to forest produce in the State, the learned Additional Sessions Judge could not justifiably let-off these two persons with mere admonition. In doing so he has misdirected himself in law. The order passed by him merits interference in the present appeal

11. The order of the learned Additional Sessions Judge, in so far as it extends the benefit of Section 3 of the Probation of Offenders Act, 1958, to Mehar Din and Karam Singh, is set aside.

12. The punishment awarded to these persons by the trial Magistrate is not being restored as the offence took place long ago on June 21, 1980. It would not be in the interest of justice to send them to jail after a lapse of this long period. The maximum fine of Rs. 500 provided under the rules framed u/s 42 of the Indian Forest Act is not called for as the 15 logs, in respect whereof they were convicted, in the words of the learned Additional Sessions Judge, were not "very expensive".

13. The two Respondents are directed to pay a sum of Rs. 100 each by way of fine. The fine may be deposited by them in the court of the trial Magistrate within six weeks from today; failing which they shall undergo simple imprisonment for a period of one week each.

14. The appeal is allowed with the aforesaid modification in the order of the Additional Sessions Judge, Simla.