

(1999) 12 KAR CK 0042
In the Karnataka High Court
Case No : Criminal Appeal No. 716 of 1995

State of Karnataka

APPELLANT

Vs

Erappa Kurugodeppa Pujar and Others

RESPONDENT

Date of Decision : 09-12-1999

Acts Referred:

Arms Act, 1959 — Section 25
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307
Probation of Offenders Act, 1958 — Section 4, 6

Citation : (2000) CriLJ 2163

Hon'ble Judges : N.S. Veerabhadraiah, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : B.G. Muddappa, Addl. S.P.P, for the Appellant; F.V. Patil, for the Respondent

Judgement

1. The State of Karnataka has preferred this appeal which is directed against the decision in Sessions Case No. 74/1991 which emerges from the Court of the I Addl. Sessions Judge, Dharwad at Hubli. The six respondents-accused were charged with having committed offences punishable under Sections 143, 147, 148, 324, 307 and 504 read with. Section 149, IPC, and u/s 25 of the Arms Act. Briefly stated, it was alleged that on 3-8-1990 at about 1 p.m. an incident had taken place wherein A1 to 6 had collectively assaulted P.Ws. 3 to 7 as a result of which each of them sustained some injuries. A complaint was lodged with the Police on that evening and the six accused persons were arrested and ultimately charge-sheeted for the aforesaid offences. At the conclusion of the trial, A1 to 6 were convicted of the offences punishable under Sections 143, IPC and Section 323 read with. Section 149, IPC, only, and they were acquitted of the other offences with which they were charged. The present appeal has been directed by the State against this decision both with regard to the adequacy of sentence as also with regard to the aspect of acquittal on the remaining charges.

2. At the outset we need to point out that having heard the learned Addl. SPP., and the Counsel who represents the respondent accused as also having

examined the record of this case, that we find no infirmity with regard to the order of acquittal as far as the remaining charges are concerned, as that part of the order is well founded. We therefore do not propose to disturb the aspect of the case.

3. The learned SPP however drew our attention to the Probation of Offenders Act and he assailed the order of the trial Court whereby the accused have been given the benefit of Section 4 of the Probation of Offenders Act whereunder they have been directed to execute a bond for maintaining good behaviour for a period of one year. It has been pointed out to us that this order was incorrect and furthermore, that there are certain legal requirements as also procedures that are required to be observed and that in totality of this situation, that the order giving the accused benefit of the Probation of Offenders Act is liable to be set aside. On a clear construction of the law, the learned counsel who represents the respondent accused has also had to concede that having regard to the law as enunciated by the Supreme Court, that there does appear to be some error as far as this aspect of the trial Court's judgment is concerned. In the decision reported in *Ram Singh v. State of Haryana*, 1972 SCC 162, the Supreme Court while considering the ambit and scope of Sections 4 and 6 of the Probation of Offenders Act has laid down that the procedure requires that the Court has to call for a report from the Probation Officer and on a consideration of the report and any other information available relating to the character and physical and mental condition of the Offender, the Court has to then decide as to whether or not the benefit of the provisions of this Act can be extended. When the plea was raised for the first time before the Supreme Court, the Apex Court pointed out that in the absence of this procedure having been followed, that it is not open to the Court to extend any benefits to the accused under the provisions of that Act. In an other decision reported in *Jagdev Singh and Another Vs. State of Punjab*, the Supreme Court was considering the object and scope of Sections 4 and 6 of the Act and has also held that as far as the serious offences are concerned which are punishable with imprisonment for life that the benefit of these sections is not available.

4. Coming to the facts of the present case, we note that in the first instance the Court has not called for a report from the Probation Officer for the purposes of considering the report as also other relevant issues such as the character and background of the accused persons. The Supreme Court has held that this procedure is condition precedent which would mean that in the absence of such procedure being followed, no order u/s 4 could be valid. The other aspect of some importance is the fact that Section 4 of the Probation of Offenders Act is essentially intended to enforce good conduct on the part of accused persons who have committed an offence though not one of a very serious or grave nature and in order to ensure that they maintain good conduct and do not involve themselves in any further offences. What is important is that, a Court is, subject to being satisfied with the report and the other circumstances invested with the power to defer the sentence if the accused who is bound over maintains good

conduct for the prescribed period of time. If there is default, then the Court will pronounce the requisite sentence. A clear reading of Section 4 would therefore indicate that if the Court desires to give the benefit of the Probation of Offenders Act to accused persons then the Court will have to do it without sentencing the accused. If the Court sentences the accused, then there can be no question of extending the benefit of Probation of Offenders Act. This is an aspect of law of some importance because what we find in the present case is that, the learned trial Judge has imposed both, a sentence and a fine on the accused persons and has thereafter also extended to them the benefit of Probation of Offenders Act. This is legally incorrect and impermissible and as the learned Addl. SPP, pointed out it is because of this legal error that the State has essentially preferred the present appeal. To this extent, the grounds on which the concluding portion of the operative portion of the trial court order has been assailed will have to be upheld.

5. The last question that arises is as to whether the rest of the operative part of the order is correct. We have already indicated that we do not propose, on a reconsideration of the facts and circumstances of this case, to disturb the order of acquittal; but as far as the convictions are concerned, we do notice that there is an error in the operative part of the order in so far as there are findings to the effect that five persons namely PWs. 3 to 7 have been injured and in this view of the matter, where the six accused persons have been convicted of the offences punishable u/s 323 read with 149, IPC, the correct order would require that each of the accused persons would have to pay a fine of Rs. 100/- in respect of each of the separate offences in so far as injuries have been caused to five of the prosecution witnesses namely P.Ws.. 3 to 7, by reason of the provisions of Section 149, IPC. To this extent therefore, while maintaining the convictions u/s 143, 323 read with 149, IPC, we maintain the fine of Rs. 100/- imposed for the offence punishable u/s 149, IPC, and we direct that as far as the fine u/s 323 read with 149, is concerned that the same will stand altered to Rs. 600/- per accused in place of the figure earlier awarded. We do not propose to provide for any in default sentence as we have taken note of the fact that the accused have spent some period in custody. The accused are however directed to deposit the fine amount in the trial Court within a period of eight weeks from today or if some amount has been deposited the balance amount shall be deposited with the trial Court within that period failing which, the trial Court shall take necessary steps for recovery. The amount of Rs. 600/- shall be paid as compensation to P.Ws. 3 to 7 each after issuing notice to them. It is directed that the direction of the trial court extending the benefit of Section 4 of the Probation of Offenders Act to the accused is hereby set aside.

The appeal succeeds to this extent and stands disposed of. The bail bonds to stand cancelled.