

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-435 of 2019 (O&M)

DATE OF DECISION: AUGUST 16, 2019

PRITAM DASS

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: PRITAM DASS, APPELLANT IN-PERSON.
MR. SUKHDEEP PARMAR, DAG, HARYANA.

MANOJ BAJAJ, J.(ORAL)

CRM-23843-2019

The above appeal was filed by the convict Pritam Dass challenging the judgement of conviction and order of sentence dated 16.1.2019 passed by the trial Court in case FIR No.7 dated 22.1.2013 under Sections 135 of Electricity Act, 2003, Police Station Irrigation & Power, Ambala City. Alongwith the appeal, an application was filed under Section 389 Cr.P.C. for suspension of sentence bearing CRM-5437-2019, however the same was declined vide order dated 13.2.2019 and the main case (CRA-S-435-2019) was adjourned to 6.5.2019. During the pendency of the appeal, CRM-23843-2019 was filed under Section 5 of the Probation of Offenders Act, 1958 whereby the convict had given up his challenge to the conviction part in the impugned judgement and confined his prayer for extending him the concession of probation.

As per prosecution's case, during a checking conducted by the

officials of Electricity Department, on the premises of the accused-appellant, he was found committing theft of electricity and had caused a loss of ₹80,724/- to the Department. An FIR to this effect bearing No.7 dated 22.1.2013 under Section 135 of the Electricity Act, 2003, Police Station I&P, Ambala City was registered.

A perusal of the case file shows that applicant-appellant Pritam Dass was convicted for the offence punishable under Section 135 of Electricity Act, 2003 and sentenced him to serve R.I. for 6 months and to pay a fine of ₹2000/-. In default, it was ordered that the convict would further undergo simple imprisonment of 1 month, vide judgement of conviction and order of sentence dated 16.1.2019, passed by the Addl. Sessions Judge, Ambala.

It may be noticed here that the appellant was on bail as the trial Court had suspended his sentence to enable him to prefer an appeal. Despite dismissal of the application under Section 389 Cr.P.C., the appellant is yet to surrender.

The lawyers are abstaining from putting in appearance before the Court and therefore, the petitioner has put in appearance and prays that he is ready to give up his challenge to the impugned judgement of conviction. He prays that considering his advanced age and various ailments suffered by him, benefit of probation be extended to him. At this stage, the appellant submits that he was not aware of the dismissal of the application for suspension of sentence and was under the impression that the same is pending for 6.5.2019, and therefore, did not surrender before the

trial Court on 15.2.2019. However, on 6.5.2019, on account of absence of the arguing counsel for the applicant-appellant, the case was again adjourned for 1.7.2019 and finally on 1.7.2019, another counsel appeared on behalf of the applicant-appellant and filed his power of Attorney and notice of motion in this case was issued.

On the other hand, Mr. Sukhdeep Parmar, DAG, Haryana pointed out that the trial Court has specifically noticed that the present occurrence was the second offence of theft committed by the applicant-appellant. Therefore, the concession of probation be not extended to him.

In response, the grandson of the applicant-appellant has pointed out that on the previous occasion, the alleged offence was compounded. It is further pointed out that the amount of penalty of ₹80,274/- arising from the present occurrence also stands deposited. This fact is not disputed by the learned State counsel.

After hearing the appellant who is assisted by his grandson and perusing the application as well as the order of sentence passed by the trial Court and keeping in view the old age of the applicant-appellant, as well as the fact that the penalty amount already stands deposited by him with the Electricity Department, this Court is of the opinion that ends of justice would be met if the sentence of the applicant-appellant is modified by extending the benefit of probation for 6 months.

In view of the above, while upholding the conviction of the applicant-appellant, the sentence of 6 months imposed on him is modified and he is ordered to be released on probation.

The accused-appellant shall file personal bond to the satisfaction of trial Court and shall not commit any such offence in future. This bond shall be for 6 months. In case of breach of any such condition, the petitioner will subject himself to undergo the sentence before the trial Court as per law. The accused-appellant shall file the bond within a period of one month from the receipt of certified copy of this judgement.

With the above modification in the sentence part only, the application is allowed.

CRA-S-435-2019

In view of the decision rendered in the aforementioned application, the appeal is rendered infructuous and is disposed off as such.

Let a copy of this judgment be transmitted to the concerned trial Court forthwith for necessary compliance.

August 16, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No