

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Revisional Jurisdiction)

Criminal Revision No. 103 of 2015

Gopal Malhotra, s/o late Sardari Lal Malhotra, r/o near Axis Bank, Koderma,
P.O. and P.S. Koderma, District KodermaPetitioner

Versus

The State of Jharkhand

..... Opposite Party

CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioner : Mrs. Aanya, Advocate

For the State : Mrs. Priya Shreshtha, Spl. PP

Order No.06/ Dated: 02nd May 2022

The petitioner alongwith his brother was made accused in Koderma PS Case No. 338 of 2001 which was registered for commission of the offence under sections 342, 353 and 323 read with section 34 of the Indian Penal Code (in short, 'IPC').

2. In T.R. No. 493 of 2008, Ashok Malhotra and Gopal Malhotra both sons of late Sardari Lal Malhotra were convicted and sentenced to RI for two years under section 353 IPC.

3. Criminal Appeal No. 01 of 2009 filed by both the convicts was dismissed by judgment dated 31st August 2010.

4. Gopal Malhotra filed the present criminal revision petition on 09th February 2015 and thereafter surrendered on 13th April 2015 – he was released on bail on 16th April 2015.

5. In T.R. No. 493 of 2008, seven witnesses were examined by the prosecution. In addition to oral evidence, seizure memo, written report of Awadh Kishore Singh and First Information Report were laid in evidence. On behalf of the defence, Amit Kumar Sahana was produced in the Court to prove the *sanha* report vide *Sanha* No. 256 of 2000.

6. One of the contentions raised during the trial was that only for the reason that the accused refused to produce license for the shop the offence under section 353 IPC was not made out. The learned Sub-divisional Judicial

Magistrate, Koderma by judgment dated 12th December 2008 convicted the petitioner alongwith his brother under section 353 IPC and sentenced them to undergo RI for two years by the order of sentence of the same day.

7. Criminal Appeal No. 01 of 2009 was dismissed by the learned Additional Sessions Judge (F.T.C.), Koderma by observing as under:

“8. Having considered all the facts and circumstances as well as material and evidences available on the record and after perusal of learned lower court record this court find that there is no any contradiction on the point of date, place and time of occurrence. There is also no any contradiction regarding the motive of the occurrence. It appears that Ashok Malhotra and Gopal Malhotra prohibited the police for discharging its work as public servant. So they are liable for committing the offence u/s 353 I.P.C.”

8. Two fold contentions are raised by Mrs. Aanya, the learned counsel for the petitioner (i) award of maximum punishment under section 353 IPC is not justified in the facts of the case and (ii) the convict who was not the owner of the liquor shop should not have been sentenced with rigorous imprisonment for two years.

9. Mrs. Priya Shreshtha, the learned Special PP has however opposed the aforesaid submissions on the ground that huge quantity of liquor was recovered from the shop.

10. Section 353 IPC provides that the offender shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. The legislative intendment which can be gathered from the phraseology used in section 353 IPC is that wide discretion has been conferred upon the Courts in the matter of punishment for the offence under section 353 IPC. There are three alternatives provided under section 353 IPC for awarding punishment to a convict. A convict may be punished with imprisonment, or with fine, or with imprisonment and fine both. The aforesaid three types of punishments provided under section 353 IPC are in alternative to each other as the expression “or” has been used with “comma” which would mean that the punishments are alternative as the sentence uses disjunctive expression.

11. It is, thus, clear that the Courts are required to decide quantum of punishment on the basis of the materials laid during the trial which would mean that the Courts should assess the mitigating as well as aggregating

circumstances in the case and upon weighing the both types of circumstances should decide the mode and quantum of punishment to be inflicted upon the convict under section 353 IPC.

12. There is no guideline provided under the Indian Penal Code for awarding rigorous or simple imprisonment wherever the legislature has conferred powers upon the Court to award punishment of imprisonment of either description, but there again, the discretion conferred upon the Courts has to be exercised considering the materials before it.

13. In the present case, the learned Sub-divisional Judicial Magistrate, Koderma recorded the submission made on behalf of the convict that being the first offender the convict may be granted benefit of the Probation of Offenders Act. On the other hand, the prosecution put forth an argument that since the convict has obstructed the public servant from discharging his official duty no leniency should be shown to him. A glance at the aforesaid order of punishment does not reveal any other consideration by the learned Magistrate on quantum of punishment to be awarded to the petitioner who was the convict before him.

14. In “*State of Punjab v. Manjit Singh*” AIR 2009 SC 2888 the Hon'ble Supreme Court has observed as under:

“12. With regard to the quantum of punishment to be awarded to persons found guilty of offences dealt with in the IPC, the Code confers a wide discretion on the court in the matter of awarding appropriate punishment by prescribing the maximum punishment and in some cases both the maximum as well the minimum punishment for the offence. Though no general guidelines are laid down in the Code for the purpose of awarding punishment, generally the judicial discretion of the court is guided by the principle that the punishment should be commensurate with the gravity of the offence having regard to the aggravating and mitigating circumstances vis-a-vis an accused in each case.”

15. Having examined the materials on record, this Court finds that there are mitigating circumstances in the case such as the petitioner who happens to be the brother of Ashok Malhotra was not the owner of the liquor shop, and the informant stated about just a quarrel with the police force. Since both Courts have recorded concurrent findings on the presence and involvement of the petitioner in the occurrence, this Court is not inclined to minutely appreciate the evidence in exercise of the revisional jurisdiction.

However, from the records I do not find any justification for award of maximum period of imprisonment and that too rigorous in nature. The learned counsel for the petitioner would submit that in cases of socio economic offences of this nature punishment of fine would serve the interest of justice as the petitioner has been suffering the rigors of litigation since 2001.

16. This Court finds substance in the submissions made by Mrs. Aanya, the learned counsel for the petitioner and, accordingly, while upholding the judgment of conviction, the order of punishment dated 12th December 2008, as affirmed by the appellate Court, is set aside. The petitioner who has undergone sentence of imprisonment for few days is sentenced to fine of Rs.50,000/- to be paid within four weeks failing which the judgment of conviction and sentence passed in T.R. No. 493 of 2008 shall stand revived.

17. The petitioner is discharged of the liability of bail-bonds furnished by him in G.R Case No. 535 of 2001 (T.R No. 493 of 2008) arising out of Koderma PS Case No. 338 of 2001.

18. Let the lower Court records be sent to the concerned Court forthwith.

19. Let a copy of this order be transmitted to the Court concerned through 'FAX'.

(Shree Chandrashekhar, J.)