

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

ORDER

KAYAM KHAN VS. STATE OF RAJASTHAN
(S.B.CRIMINAL MISC. PETITION NO.755/2006)

Date of order : 12th June 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI, VJ.

Mr.Day Ram Choudhary for the petitioner
Ms. R.R.Kanwar, Public Prosecutor

BY THE COURT:

This miscellaneous petition under Section 482 of the Code of Criminal Procedure ('the Code' hereafter) has been submitted by the petitioner-convict Kayam Khan in the circumstances somewhat peculiar thus:

The petitioner submitted a revision petition before this Court against the judgment and order dated 07.06.1993 passed by the Addl. Sessions Judge No.2, Jodhpur in Criminal Appeal No.62/1993 that was directed against the judgment and order dated 16.08.1986 passed by the Addl. Chief Judicial

Magistrate No.1, Jodhpur in Criminal Case No.105/1983. It appears from the material placed on record that learned appellate court sentenced the petitioner under Section 279 and 304A IPC for one year's rigorous imprisonment and also directed payment of Rs.20,000/- as compensation to the legal representatives of the deceased Uttamaram who had died in the accident caused by rash and negligent driving of a truck by the petitioner on 22.08.1981.

The revision petition aforesaid being S.B. Criminal Revision Petition No.173/1993 was heard and decided by this Court on 27.10.2005. It appears that learned Single Judge of this Court was satisfied that there was no ground to interfere with conviction of the petitioner; and a submission was made on behalf of the petitioner for extending him the benefit of probation. Thereupon, the learned Single Judge was pleased to observe that the petitioner would be entitled to the benefit of probation provided he would pay a compensation of Rs.50,000/- instead of Rs.20,000/- to the Legal Representatives of the deceased within three months from the date of order and the revision petition was accordingly disposed of. The order dated 27.10.2005 in its entirely reads thus,-

"27.10.2005

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr.Rakesh Calla, for the petitioner.
Mr.Narendra Moolchandani, P.P.

This revision petition is directed against the judgment dated 7.6.1993 passed by the learned Additional District and Sessions Judge, No.2, Jodhpur convicting the petitioner Kayam Khan u/s 279 IPC and 304 A IPC and sentencing one year's rigorous imprisonment and payment of R.20,000/- as compensation in favour of the L.Rs. of deceased Uttamaram, who died in the accident caused by rash and negligent driving of truck No.RJI 1625, which was being driven by the petitioner Kayam Khan on 22.8.1981, the date of incident.

Heard learned counsel for the petitioner and perused the impugned orders and record of the case. I do not find any ground to interfere with the conviction of the petitioner under the aforesaid provisions. However, the learned counsel submits that the petitioner deserves to be given the benefit of probation under the Probation of Offenders Act.

Having considered the submission of the learned counsel, the petitioner will be entitled to the benefit of probation provided, he pays a compensation of Rs.50,000/- instead of Rs.20,000/- to the L.Rs. of the deceased Uttamaram [within a period of three months from today.]

With these observations, the revision petition is disposed of."

(Parenthesis supplied)

The petitioner-convict has stated his predicament in this petition under Section 482 of the Code in the manner that he was required to make deposit of Rs.50,000/-within three

months from the date of the order but could not deposit for not receiving of the information of the order within time and has stated that he is still ready to deposit the said amount. The petitioner has pointed out that for default in deposit of the amount, the learned trial court issued warrant and the petitioner was thereupon apprehended and produced before the trial court on 24.04.2006 and he had been sent to jail and attachment has been issued for recovery of the compensation amount of Rs.20,000/- . The petitioner has submitted that he had moved an application for obtaining certified copy of the order dated 27.10.2005 on 10.04.2006 but certified copy was not made available as the file was not traceable in the office. The petitioner had, therefore, submitted a typed copy of the order dated 27.10.2005 and made the submission that he is suffering imprisonment from 24.04.2006 although he is ready to deposit the amount of compensation which he could not earlier deposit for want of knowledge of the order dated 27.10.2005 within time; and has prayed for suitable orders to be passed in the interest of justice.

On this miscellaneous petition being placed before the Court on 05.06.2006 on defect side, a report was obtained from the office about the record of Criminal Revision Petition No.173/1993; and the office reported that the said record was not traceable despite all efforts and such efforts were still

continuing. Having regard to the circumstances of the case, filing of the certified copy of the order dated 27.10.2005 was dispensed with and the petition was directed to be registered and placed for orders on 07.06.2006 and learned Public Prosecutor was also requested to take instructions and to place photostat, if available, of the order dated 27.10.2005 on record. The matter was taken up on 08.06.2006 and learned Public Prosecutor has placed photostat of the certified copy of the order dated 27.10.2005 on record and quotation aforesaid has been taken wherfrom.

Having heard the learned counsel for the petitioner and the learned Public Prosecutor, this court is clearly of opinion that the prayer made by the petitioner deserves to be allowed in the larger interest of justice and for reaching to the objective of the order dated 27.10.2005; and if the time permitted for deposit of the compensation amount would not be enlarged, it would defeat the very purpose of the directions dated 27.10.2005 and the Legal Representatives of the deceased would stand deprived of the enhanced compensation awarded without any other purpose being achieved.

Under the scheme of the Code, ordinarily an order passed by the court cannot be altered or reviewed except for correction of clerical or arithmetical error but in the present case, it is noticed that this court by the order dated

27.10.2005: (a) maintained the conviction of the petitioner;(b) accepted his prayer for extending benefit of probation but on the condition of his making payment to the Legal Representatives of the deceased an enhanced amount of compensation of Rupees fifty thousand; and (c) required that the payment (of compensation) be made within three months. Parts (a) and (b) aforesaid of the order dated 27.10.2005 are clearly substantive in nature, they remain unexceptionable, and cannot be altered or modified. However, part (c) thereof, as put in parenthesis in the quotation supra, that is the time period for payment of the amount of compensation, is obviously directory in nature and the same is not the part of substantive order or direction. Such period has been stated for payment of the amount of compensation and not of deposit of fine. The amount of compensation is obviously meant for the benefit of the Legal Representative of the deceased and once this court had passed the order, such amount of compensation could have been recovered under the process of law even if no time limit was fixed for making such payment; and this court seems to have fixed the time in the interest of the said Legal Representatives of the deceased. The order passed by this court cannot be construed to be an order of sentence of imprisonment in the event of default of payment of compensation nor it has been directed that in the event of

default of payment within three months the substantive sentence of imprisonment would be resuscitated. On the overall construction of the order dated 27.10.2005, this Court is of opinion that the time limit provided therein could be relaxed that would serve larger interest of justice.

The petitioner has submitted that he did not timely receive the information about the order dated 27.10.2005 and hence could not make payment and has of course been apprehended but has yet offered to make payment of the enhanced amount of compensation. The original case file of the Criminal Revision Petition is not traceable but from the copy of the order dated 27.10.2005, it does appear that the petitioner was not present before the court when the said order was passed. In the overall circumstances of the case, there is nothing to indicate that the petitioner deliberately avoided compliance of the order passed by this court.

If the prayer of the petitioner of making payment now would be rejected and he would be required to undergo imprisonment, the net result would be to deprive the Legal Representatives of the deceased of substantial amount of enhanced compensation without any corresponding gain of anybody. Such result would be plain miscarriage of justice. Having regard to the peculiar facts and circumstances of the case, this court is clearly of opinion that the directory part of

the order dated 27.10.2005 deserves to be relaxed in the larger interest of justice.

In the aforesaid view of the matter, this miscellaneous petition under Section 482 of the Code is allowed; the directory part of the order dated 27.10.2005 is relaxed; and it is ordered that as soon as the petitioner gets deposited the amount of compensation of Rs. Fifty Thousand with the trial court; and completes other requirements for release on Probation, he may be set at liberty. It shall be required of the learned trial court to inform the Legal Representatives of the deceased immediately of the orders passed by this court and to ensure timely payment of amount of compensation to them, as and when the same is deposited.

(DINESH MAHESHWARI), VJ.

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