

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

Cr. Rev. No. 44/2008
Cr.M.A No. 34/2008

Date of decision: 22.08.2012

Pawan Kumar	V.	State of J&K
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Coram:

Mr. Justice J. P. Singh.

Appearing Counsel:

For Petitioner(s) : Mr. Babu Ram Sharma, Advocate.

For Respondent(s) : Ms. Z.S.Wattali, Dy.A.G.

i)	Whether approved for reporting in Press/Media	:	Yes
ii)	Whether to be reported in Digest/Journal	:	Yes

The petitioner, Pawan Kumar alias Billa was convicted, for Wrongful Restraint, And, Using Criminal Force to a lady with intent to outrage her modesty, and sentenced to *Rigorous Imprisonment for three months and fine of Rs.1000/- with default sentence of one month's rigorous imprisonment under Section 354 RPC, and to one month's rigorous imprisonment and fine of Rs.500/- with default sentence of one month's rigorous imprisonment under Section 341 RPC* by the Judicial Magistrate, Ist Class (City Judge), Jammu. His Appeal against the Sentence failed before the 3rd Additional Sessions Judge, Jammu.

Questioning the Sentence awarded by the learned Magistrate and the affirmation thereof by the 3rd Additional Sessions Judge, the petitioner has invoked the *Revisional*

Jurisdiction of this Court seeking setting aside of his *Conviction and Sentence*.

Heard learned counsel for the parties and perused the records.

The Appellate Court's Judgment exposes perfunctory determination of the petitioner's Appeal, for, there is absolutely no discussion, on any of the points/issues raised by the petitioner in his Appeal comprising of sixteen paragraphs running over seven pages, where he had, *inter alia*, indicated weaknesses in the prosecution case on the basis whereof, it should fail besides projecting, in detail, as to how was he aggrieved by the Magistrate's appreciation of evidence ignoring the factors highlighted by him in the Appeal.

The offences for which the petitioner was convicted provide for alternate punishments i.e. imprisonment or fine or both.

Neither the learned Magistrate nor the Appellate Court has considered the factors and circumstances while preferring Custodial Punishment, to Fine provided in the two Sections.

The judgment of the learned Magistrate and that of the Appellate Court further demonstrate that the provisions of the Jammu and Kashmir Probation of Offenders Act, 1966 and those of Section 562 of the Code of Criminal Procedure, Svt. 1989 consideration whereof before imposition of Sentence is mandatory, were not taken note of.

Another striking illegality that appears in the two judgments is that both the Courts below have not given any

reason(s) to justify and affirm the Sentence of Imprisonment awarded to the petitioner.

The provisions of Sections 366 and 367 of the Code of Criminal Procedure are applicable as much to the orders of Sentence as these so apply to the Judgments of Conviction or Acquittal. The Criminal Courts are, therefore, under obligation to spell out reasons justifying the Sentence which in their opinion was awardable to the petitioner, in the facts and circumstances of the case.

This apart, the accused cannot be deprived of his right to know the factors that had weighed with the Punishing Authority in awarding him Sentence. That could be known only if the Authority had spelt out reasons therefor demonstrating the working of the mind of the Punishing Authority before its determining the question of Sentence, for, absence thereof may disable the accused to exercise completely and absolutely his right to appeal against the order of Sentence thereby violating the principles of Natural Justice.

The trial Court having faulted in not considering the provisions of the Jammu and Kashmir Probation of Offenders Act and those of Section 562 of the Code of Criminal Procedure, the Appellate Court could well taking notice thereof, consider recording requisite finding needed by the Criminal Code in terms of the Provisions of the above two Sections, in case it had found on facts that the issues raised by the petitioner against his conviction did not warrant interference with the order of Conviction, before determining the Appeal on merits in accordance with law.

Learned 3rd Additional Sessions Judge, Jammu has, therefore, acted illegally in disposing of the petitioner's Appeal in a slipshod manner without dealing with the issues raised against his Conviction and passing appropriate orders as warranted under law on his Sentence in case his Conviction was to be upheld.

The Judgment of the Appellate court, therefore, needs to be set aside.

This Criminal Revision accordingly succeeds and is, therefore, allowed setting aside the judgment and order of learned 3rd Additional Sessions Judge, Jammu dated September 20, 2008.

The petitioner's Appeal against his sentence awarded by the learned Judicial Magistrate, Ist Class (City Judge), Jammu on 16.03.2006 shall, accordingly revive for its consideration afresh in accordance with law by the learned 3rd Additional Sessions Judge, Jammu.

(J. P. Singh)
Judge

Jammu:
22.08.2012
Pawan Chopra