

NADIR KHAN

A

v.

THE STATE (DELHI ADMINISTRATION)

June 3, 1975

[P. K. GOSWAMI, VACATION JUDGE]

B

*Code of Criminal Procedure. (II of 1974)—s. 401, scope of*

The petitioner was convicted under s. 61(a) of the Punjab Excise Act and sentenced to two months' rigorous imprisonment. Revision application to the Sessions Judge having failed, he moved the High Court under s. 482, Cr. P.C. 1973 (II of 1974) read with Art. 227 of the Constitution. Invoking its revisional jurisdiction *suo motu* the High Court issued a rule for enhancement of the sentence and raised it to six months. In application for special leave, the petitioner contended that the High Court, in revision s. 401, Cr. P.C. had no jurisdiction or power to enhance the sentence in the absence of an appeal by the State under s. 337 Cr. P.C.

C

Dismissing the petition,

HELD : The High Court, as an effective instrument for administration of criminal justice, keeps a constant vigil and wherever it finds that justice has suffered, it takes upon itself as its bounden duty to *suo motu* act where there is flagrant abuse of the law. The character of the offence and the nature of disposal of a particular case by the subordinate court prompt remedial action on the part of the High Court for the ultimate social good of the community, even though the State may be slow or silent in preferring an appeal provided for under the new Code. In a given case of public importance, the High Court reacts to public concern over the problem and may act *suo motu* on perusal of newspaper reports disclosing imposition of grossly inadequate sentence upon such offenders. This salutary power which existed in the old Code has not been denied by Parliament under the new Code. [490C-F]

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CRIMINAL APPELLATE JURISDICTION : Criminal S.L.P. No. 554 of 1975.

From the judgment and order dated the 21st April, 1975 of the Delhi High Court in CrI. Misc. (Main) No. 79 of 1975.

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K. N. Chitkara and E. C. Agarwala, for the petitioner.

The order of the Court was passed by

GOSWAMI J.—I am reluctant to leave this matter with the usual monomial order since the submission of the learned counsel has sought to cast an unmerited doubt on the undoubted jurisdiction of the High Court in acting *suo motu* in criminal revision in appropriate cases. The attempt has to be nipped in the bud.

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In this case, the petitioner was found in illegal possession of ganja weighing 7 kgs. and was convicted by the Metropolitan Magistrate, Delhi, under s. 61(a) of the Punjab Excise Act as extended to Delhi and sentenced to two months' rigorous imprisonment. With no right of appeal available, there was an unsuccessful revision application before the Additional Sessions Judge, Delhi. The petitioner then moved the Delhi High Court under s. 482 of the Code of Criminal Procedure, 1973 (Act II of 1974) read with Art. 227 of the Constitution against the conviction. This time he was worse off as the High Court thought that the sentence awarded was inadequate and by in-

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- A invoking its revisional jurisdiction issued, *suo motu*, a rule for enhancement of the sentence and ultimately raised the sentence to six months. Hence this special leave petition.

B The question raised by the learned counsel in this application is, that the High Court, in revision under s. 401 Cr. P.C., has no jurisdiction or power to enhance the sentence in the absence of an appeal against the inadequacy of sentence under s. 377.

- C It is well known and has been ever recognised that the High Court is not required to act in revision merely through a conduit application at the instance of an aggrieved party. The High Court, as an effective instrument for administration of criminal justice, keeps a constant vigil and wherever it finds that justice has suffered, it takes upon itself as its bounden duty to *suo motu* act where there is flagrant abuse of the law. The character of the offence and the nature of disposal of a particular case by the subordinate court prompt remedial action on the part of the High Court for the ultimate social good of the community, even though the State may be slow or silent in preferring an appeal provided for under the new Code. The High Court in a given case of public importance e.g. is now too familiar cases of food adulteration reacts to public concern over the problem and may act *suo motu* on perusal of newspaper reports disclosing imposition of grossly inadequate sentence upon such offenders. This position was true and extant in the old Code of 1898 and this salutary power has not been denied by Parliament under the new Code by re-arrangement of the sections.
- E It is true the new Code has expressly given a right to the State under s. 377 Cr. P.C. to appeal against inadequacy of sentence which was not there under the old Code. That however does not exclude revisional jurisdiction of the High Court to act *suo motu* for enhancement of sentence in appropriate cases. What is an appropriate case has to be left to the discretion of the High Court. This Court will be slow to interfere with exercise of such discretion under Art. 136 of the Constitution.
- F

- G S. 401 expressly preserves the power of the High Court, by itself to call for the records without the intervention of another agency and has kept alive the ancient exercise of power when something extraordinary comes to the knowledge of the High Court. The provisions under s. 401 read with s. 386(c)(iii) Cr. P.C. are clearly supplemental to those under s. 377 whereby appeals are provided for against inadequacy of sentence at the instance of the State Government or Central Government, as the case may be. There is therefore, absolutely no merit in the contention of the learned counsel that the High Court acted without jurisdiction in exercising the power of revision, *suo motu*, for enhancement of the sentence in this case. The application stands rejected.
- H P.B.R.

*Petition dismissed.*