

RAVINDER SINGH
V.
STATE OF HIMACHAL PRADESH
(Criminal Appeal No. 16 of 2003)

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APRIL 30, 2009

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[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

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Sentence/sentencing: Imposition of sentence under ex post facto law – Held: In criminal proceeding, conviction and sentence under the ex post facto law is prohibited – Sentence imposable on completion of trial would be the sentence imposable on the date of commission of offence – On facts, seizure of 5 bottles of illicit liquor – Conviction u/s.61(1)(a) and sentence for 6 months – During relevant period, no minimum sentence was imposable u/s.61(1)(a) – Considering the quantity of illicit liquor seized and passage of time, conviction is upheld and sentence is restricted to one already undergone – Punjab Excise Act, 1914 – s.61(1)(a) – Constitution of India, 1950 – Article 20(1).

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Prosecution case was that accused-appellant was carrying 5 bottles of illicit liquor. The trial Court found him guilty for the offence punishable under section 61(1)(a) of the Punjab Excise Act, 1914 and sentenced him to simple imprisonment for six months. The conviction was upheld by Sessions Court and High Court.

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In appeal to this Court, appellant challenged the conviction. He also challenged sentence on the ground that though the trial Court was of the view that the six months sentence would be harsh, yet being of the view that the minimum sentence imposable was 6 months, imposed the sentence of 6 months; that since occurrence took place on 25.5.1995 at which point of time there was

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A no minimum sentence prescribed; and that the amendment to section 61(1)(a) bringing in the concept of minimum sentence was introduced on 23.6.1995.

Partly allowing the appeal, the Court

B HELD: A bare reading of section 61(1)(a) of Punjab Excise Act prior to amendment introduced by Himachal Pradesh Act No.8 of 1995 dated 23.6.1995 makes it clear that though the maximum sentence was prescribed, there was no minimum sentence prescribed. It is trite law that

C the sentence imposable on the date of commission of the offence has to determine the sentence imposable on completion of trial. This position is clear even on a bare reading of Article 20(1) of the Constitution of India, 1950. Under Article 20(1) of the Constitution what is prohibited

D is the conviction and sentence in criminal proceedings under ex post facto law. Considering the quantity of illicit liquor seized and the passage of time, the conviction is upheld and the period of sentence is restricted to the one already undergone. [Para 9, 10 and 12] [940-E-G; 941-E-F]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 16 of 2003.

F From the Judgment & Order dated 10.5.2002 of the High Court of Himachal Pradesh, Shimla in Criminal Revision No. 100/2000.

J.S. Attri, Anshu Attri (for Goodwill Indeevar) for the Appellant.

G Naresh K. Sharma for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Heard learned counsel for the parties.

H 2. Challenge in this appeal is to the judgment of a learned

Single Judge of the Himachal Pradesh High Court upholding the conviction of the appellant for offence punishable under Section 61(1)(a) of the Punjab Excise Act, 1914 (hereinafter referred to as 'the Act').

3. The allegation against the accused-appellant was that he was carrying illicit liquor in a container wrapped in a gunny bag. The accused was driving truck bearing No.HPA-1975 and the truck was stopped and search was carried out. On checking the container, it was found that it contained five bottles of illicit liquor. On analysis by the Chemical Examiner, the sample which was collected was found to be illicit liquor.

4. Learned Chief Judicial Magistrate, Solan, found the appellant guilty of the offence punishable under Section 61(1)(a) of the Act and sentenced him to simple imprisonment for six months and to pay a fine of Rs.5,000/- with default stipulation.

5. The matter was carried in appeal by the appellant before the learned Sessions Judge who dismissed the appeal. The appellant challenged the order of the learned Sessions Judge before the High Court by filing criminal revision which, by the impugned order, dismissed the appeal.

6. In support of the appeal learned senior counsel for the appellant submitted that the evidence adduced by the prosecution to establish the accusations was not sufficient to record the conviction. Additionally, it is submitted that though the learned Chief Judicial Magistrate was of the view that six months' sentence would be harsh, yet, being of the view that the minimum sentence imposable was six months, imposed the sentence of six months. According to learned senior counsel for the appellant, the occurrence took place on 25th May 1995 at which point of time there was no minimum sentence prescribed as amendment to Section 61(1)(a) bringing in the concept of minimum sentence was introduced by Himachal Pradesh Act No.8/1995 dated 23rd June 1995.

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A 7. Learned counsel for the respondent, on the other hand, submitted that the relevant date would be the date of conviction and not the date of commission of the offence.

B 8. Prior to the amendment by the Himachal Pradesh Amendment Act, Section 61(1)(a) read as follows :

"61.(1) *Penalty for unlawful import, export, transport, manufacture, possession, etc.:* Whoever, in contravention of any section of this Act or of any rule, notification issued or given thereunder or order made, or of any license, permit or pass granted under this Act,-

C (a) imports, exports, transports, manufactures, collects or possesses any (intoxicant); or
(b)
D (c)

E shall be punishable for every such offence with imprisonment for a term which may extend to three years and with fine upto two thousand rupees and if found in possession of a working still for the manufacture of any intoxicant shall be punishable with the minimum sentence of six months imprisonment and fine of two hundred rupees."

F 9. A bare reading of the above provision makes it clear that though the maximum sentence was prescribed, there was no minimum sentence prescribed.

G 10. It is trite law that the sentence imposable on the date of commission of the offence has to determine the sentence imposable on completion of trial. This position is clear even on a bare reading of Article 20(1) of the Constitution of India, 1950 (in short, 'the Constitution'). The said provision reads as under:

H "20. Protection in respect of conviction for offences.-(1) No person shall be convicted of any offence except for

violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

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11. Wills in his Constitutional Law of the United States (at page 516) brought out a lucid classification of the penal law which are ex post facto :

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- (i) when they make criminal an act which was innocent when done;
- (ii) when they make a crime greater than it was when it was committed;
- (iii) when they make the punishment greater than the punishment was at the time the act was committed;
- (iv) when they change the rule of evidence as to deprive a defendant of a substantive right; and
- (v) when they make retrospective qualifications for an offence which are out a proper exercise of the police power.

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Under Article 20(1) of the Constitution what is prohibited is the conviction and sentence in criminal proceedings under ex post facto law.

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12. Considering the quantity of illicit liquor seized and the passage of time, while upholding the conviction, we restrict the period of sentence to the one already undergone.

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13. The bail bonds executed to give effect to the order of bail dated 09th September 2002 shall stand discharged.

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14. The appeal is allowed to the aforesaid extent.

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Appeal partly allowed.

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