

Masarullah vs State Of Tamil Nadu on 18 November, 1982

Equivalent citations: AIR1983SC654, 1983CRILJ1043, 1982(2)SCALE1130, (1982)3SCC458, AIR 1983 SUPREME COURT 654, 1983 ACJ 719, 1983 CRILR(SC MAH GUJ) 7, 1982 CRIAPPR(SC) 411, 1982 (3) SCC 458, 1983 CRI APP R (SC) 411, (1983) LS 34, 1983 (1) SCWR 151, 1983 SCC(CRI) 84, (1983) SC CR R 191, (1983) CHANDCRIC 24

Bench: D.A. Desai, R.B. Misra

ORDER

1. Special leave granted.

2. We heard Mr. A.T.M. Sampath, learned Counsel for the appellant and Mr. A.V. Rangam, learned standing counsel for the State of Tamil Nadu. A question of very limited importance has been raised by Mr. Sampath in this appeal. He contends that the petitioner should have been given the benefit of the Section 6 of the Probation of Offenders Act, 1958 (Act for short).

3. Section 6 of the Act provides that when any person under twenty one years of age is found guilty of having committed an offence punishable with imprisonment (but not imprisonment for life) the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender it would not be desirable to deal with him under Section 3 or 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so. Sub-section 2 of Section 6 provides that when the Court wants to deal with the case under Section 3 or Section 4 of the Act, the Court shall call for a report from the Probation Officer and consider the report as also any other information available to it relevant to the character and physical and mental condition, of the person concerned.

4. Turning to the facts of this case: appellant Masarullah was convicted for offences under Sections 452 and 397 I.P.C. and was sentenced to suffer imprisonment for 5 years and 7 years respectively. His appeal to the High Court failed. Hence this appeal by Special Leave.

5. The only question which we have to address ourselves is whether the accused should be given the benefit of the Probation of Offenders Act, 1958. The High Court first examined the question whether in the facts of this case Sections 6 and 4 would be attracted. After noticing that the correct charge against the appellant would be for an offence under Section 392 read with Sections 397 and 452 IPC observed that neither of the offences is punishable with imprisonment for life. The High Court then proceeded to consider that even though case of the appellant would fall under Sections 4 and 6 of the Act, declined to give him benefit for the reasons which may be extracted in the words of the High Court:

This is a case where the offender has not succumbed to any sudden temptation or uncontrol able impulse. This is a case where it was preplanned. He gets a cycle outside the premises, enters the building with two others, brandishes a knife, makes the victim part with the jewels including her 'thali mani', and bolts the victim and her children inside the room. The commission of the offence implies previous preparation. Because he was not able to unlock the cycle which he wanted to ride he was no able to flee from the scene quickly and that facilitated in his apprehension. The offence was an act of daring and is reprehensible in nature.

So saying the High Court rejected the request for giving benefit of the provisions of the Act. The question is whether the approach of the High Court is correct in law.

6. In case of an offender under the age of twenty one years on the date of commission of the offence, the Court is expected ordinarily to give benefit of the provisions of the Act and there is an embargo on the power of the Court to award sentence unless the Court considers otherwise, 'having regard to the circumstances of the case including nature of the offence and the character of the offender', and reasons for awarding sentence have to be recorded. Considerations relevant to the adjudication of this aspect are, circumstances of the case, nature- of the offence and character of the offender. It is, therefore, necessary to keep in view the afore-mentioned three aspects while deciding whether the appellant should be granted the benefit of the provisions of the Act.

7. We have on record the report made by the Probation Officer,. v. Division Madras, it is a detailed report. It shows that the appellant was below 20 years of age on the date of commission of offence. He was educated upto 8th standard (failed). At the relevant time he was employed as a carpenter in E.C.C. on a monthly salary of Rs. 350/-. The man comes from a lower middle class but respectable family. His father is a retired school teacher. The officer reports that the appellant fell into undesirable company and carne under the evil influence of the movie which accentuated the dormant criminal propensity and proclivity in him. Report sets out the background of the family of which the appellant is a member. Father is a retired school teacher. His brothers and sisters are well settled. Parents are keen to improve the appellant and are ready to supervise and exercise control over him. The question now is whether he should be condemned to seven years jail life to make him a hardened criminal or he can be reclaimed. Answer is in favour of reclamation. He ought to be saved from himself. He must be removed from all associates stated by the officer and the movie influence. We are impressed by the recommendations made by the Probation Officer.

8. Reasons which weighed with the High Court for not granting benefit of the provisions of the Act are effectively answered by the report of the Probation Officer. Here is a young man. He is serving. He comes from lower middle class, but respectable family having an atmosphere of educational culture. In his formative impressionable years, he comes under the undesirable influence of movie eulogising crime and showing criminal a daring person. This young man falls a prey and a victim. He emulates his hero of movie. Latent psychopathic background lead him astray. Therefore, having regard to nature of offence, the character of offender and the attendant and surround-ding circumstances as revealed in the report of the probation officer and being influenced by the modern trend of reclamation of offender rather than condemnation, we consider this a preeminently fit case

to grant the benefit of modern penological approach as enacted in the Act.

9. We should, therefore, like to suspend his sentence and put him under the supervision of his father, Appellant is already released on bail. He must appear within two weeks before the II Assistant Sessions Judge Madras. He is called upon to enter into a bond with two sureties one of whom must be his father in the amount of Rs. 3,000/- each, to appear and receive sentence when called upon during such period, not exceeding three years from the date, he enters into a bond and he must be informed that in the meantime he is required to keep peace and be of good behaviour. The Assistant Session Judge, Madras while taking bond for him inform him that as far as possible he must keep away from movies and the assurance in respect of that should be incorporated in bond. A visit to movie will not be treated as a breach of bond. The Probation Officer must keep supervision over the appellant. This appeal is allowed to this extent.