State Of Madhya Pradesh vs Vikram Das on 8 February, 2019

Equivalent citations: AIR 2019 SUPREME COURT 835, 2019 (4) SCC 125, AIRONLINE 2019 SC 62, 2019 CRI LJ 1502, (2019) 1 ALD(CRL) 501, (2019) 1 CGLJ 457, (2019) 1 CRILR(RAJ) 166, (2019) 1 CRIMES 80, (2019) 1 RECCRIR 986, (2019) 1 UC 478, (2019) 201 ALLINDCAS 120, (2019) 2 ALLCRILR 128, (2019) 2 ALLCRIR 1583, (2019) 2 PAT LJR 141, (2019) 2 SCALE 695, 2019 (2) SCC (CRI) 20, (2019) 74 OCR 84, 2019 CALCRILR 2 210, 2019 CRILR(SC MAH GUJ) 166, 2019 CRILR(SC&MP) 166, (2020) 1 MH LJ (CRI) 1

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Bench: Hemant Gupta, Dhananjaya Y. Chandrachud

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 208 OF 2019
(Arising out of S.L.P (Crl.) No. 2328 of 2015)

STATE OF MADHYA PRADESH .....APPE

Versus

VIKRAM DAS .....RESP

JUDGMENT

Hemant Gupta, J.

The State is in appeal challenging the Order dated 08.05.2012 passed by the High Court of Judicature of Madhya Pradesh at Jabalpur, sentencing the respondent for an offence under Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 19891 to the sentence already undergone, but enhancing the fine from Rs. 500/- to Rs. 3000/-.

2. The aforesaid Order of the High Court was passed in appeal filed by the respondent herein against the Order dated 12.03.2007 passed 1 The Act by the trial court whereby the respondent was

convicted for the offence under Section 3(1)(xi) of the Act and was sentenced to undergo rigorous imprisonment for six months with fine of Rs. 500/-.

3. In appeal, the High Court has recorded the statement of the counsel for the respondent that he does not wish to press the appeal on merit and confines his argument to the sentence part only. It was on such statement; the appeal was disposed of. The relevant extract from the order of the High Court reads as under:-

> "(2) Learned counsel for the appellant, at the outset, submitted that he does not wish to press the appeal on merit and confine his arguments to the sentence Part only. He has challenged only quantum of punishment. He has submitted that, appellant has deposited the fine amount of Rs. 500/- and has been undergone sentence for 11 days during the course of trial.....
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> (5) Accordingly, the appeal filed by the appellant is partly allowed. The order of conviction passed against the appellant is maintained. However, the sentence of six months R.I. awarded to the appellant is modified to the extent of sentence already undergone by him. His jail sentence is hereby set aside. The fine of Rs. 500/-

imposed by the trial court is hereby enhanced to Rs. 3,000/- (Rs. Three Thousand only)....."

4. Section 3(1) of the Act provides for a punishment for a term which shall not be less than six months but which may extend to five years and with fine. Therefore, the only question is whether the High Court could award sentence less than the minimum sentence contemplated by the Statute. The relevant Section 3(1)(xi), as it existed prior to amendment by Central Act No. 1 of 2016, reads as under:-

> "3. Punishments for offences of atrocities.- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, --
>
> .....
>
> (xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

..... Shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

5. Learned counsel for the appellant relies upon judgment of this Court in Narendra Champaklal Trivedi v. State of Gujarat 2 wherein an argument raised by the appellant was rejected that sentence less than minimum sentence can be awarded in exercise of the powers conferred under Article 142 of the Constitution. The Court held as under:-

"27. The submission of the learned counsel for the appellants, if we correctly understand, in essence, is that the power under Article 142 of the Constitution should be invoked. In this context, we may refer with profit to the decision of this Court in Vishweshwaraiah Iron & Steel Ltd. v. Abdul Gani3 wherein it has been held that the constitutional powers under Article 142 of the Constitution cannot, in any way, be controlled by any statutory provision but at the same time, these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in any statute dealing expressly with the subject. It was also made clear in the said decision that this Court cannot altogether ignore the substantive provisions of a statute.

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2 (2012) 7 SCC 80
3 (1997) 8 SCC 713

30. In view of the aforesaid pronouncement of law, where the minimum sentence is provided, we think it would not be at all appropriate to exercise jurisdiction under Article 142 of the Constitution of India to reduce the sentence on the ground of the so-called mitigating factors as that would tantamount to supplanting statutory mandate and further it would amount to ignoring the substantive statutory provision that prescribes minimum sentence for a criminal act relating to demand and acceptance of bribe. The amount may be small but to curb and repress this kind of proclivity the legislature has prescribed the minimum sentence. It should be paramountly borne in mind that corruption at any level does not deserve either sympathy or leniency. In fact, reduction of the sentence would be adding a premium. The law does not so countenance and, rightly so, because corruption corrodes the spine of a nation and in the ultimate eventuality makes the economy sterile."

6. In State v. Ratan Lal Arora4, this Court was considering the grant of benefit of Probation of the Offenders Act, 1958 5 to a convict of the offences under Prevention of Corruption Act, 1988 6. It was held that in cases where an enactment enacted after the Probation Act prescribes minimum sentence of imprisonment, the provisions of the Probation Act cannot be invoked. The Court held as under:-

"12. That apart, Section 7 as well as Section 13 of the Act provide for a minimum sentence of six months and one year respectively in addition to the maximum sentences as well as imposition of fine. Section 28 further stipulates that the provisions of the Act shall be in addition to and not in derogation of any other law for the time being in force. In the case of Supdt., Central Excise v. Bahubali7 while dealing with Rule 126-P(2)(ii) of the Defence of India Rules which prescribed a

> minimum sentence and Section 43 of the Defence of India Act, 1962 almost similar to the purport enshrined in Section 28 of the Act in the context of a claim for granting relief under the Probation Act, this Court observed that in cases where a specific enactment 4 (2004) 4 SCC 590 5 Probation Act 6 Corruption Act 7 (1979) 2 SCC 279 enacted after the Probation Act prescribes a minimum sentence of imprisonment, the provisions of the Probation Act cannot be invoked if the special Act contains any provision to enforce the same without reference to any other Act containing a provision, in derogation of the special enactment, there is no scope for extending the benefit of the Probation Act to the accused....."

7. In the case of Mohd. Hashim v. State of Uttar Pradesh and Others8, the question examined was in relation to minimum sentence provided for an offence under Section 4 of the Dowry Prohibition Act, 19619, providing for minimum sentence of six months. It was held that benefit of the Probation Act cannot be extended where minimum sentence is provided. The Court held as under:-

> "19. The learned counsel would submit that the legislature has stipulated for imposition of sentence of imprisonment for a term which shall not be less than six months and the proviso only states that sentence can be reduced for a term of less than six months and, therefore, it has to be construed as minimum sentence. The said submission does not impress us in view of the authorities in Arvind Mohan Sinha10 and Ratan Lal Arora11 . We may further elaborate that when the legislature has prescribed minimum sentence without discretion, the same cannot be reduced by the courts. In such cases, imposition of minimum sentence, be it imprisonment or fine, is mandatory and leaves no discretion to the court. However, sometimes the legislation prescribes a minimum sentence but grants discretion and the courts, for reasons to be recorded in writing, may award a lower sentence or not award a sentence of imprisonment. Such discretion includes the discretion not to send the accused to prison. Minimum sentence means a sentence which must be imposed without leaving any discretion to the court. It means a quantum of punishment which cannot be reduced below the period fixed. If the sentence can be reduced to nil,

8 (2017) 2 SCC 198 9 Act of 1961 10 (1974) 4 SCC 222 11 (2004) 4 SCC 590 then the statute does not prescribe a minimum sentence. A provision that gives discretion to the court not to award minimum sentence cannot be equated with a provision which prescribes minimum sentence. The two provisions, therefore, are not identical and have different implications, which should be recognised and accepted for the PO Act.

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24. At this juncture, the learned counsel for the respondents would submit that no arguments on merits were advanced before the appellate court except seeking release under the PO Act. We have made it clear that there is no minimum sentence, and hence, the provisions of the PO Act would apply. We have also opined that the court has to be guided by the provisions of the PO Act and the precedents of this Court. Regard being had to the facts and circumstances in entirety, we are also

inclined to accept the submission of the learned counsel for the respondents that it will be open for them to raise all points before the appellate court on merits including seeking release under the PO Act."

8. In view of aforesaid judgments that where minimum sentence is provided for, the Court cannot impose less than the minimum sentence. It is also held that provisions of Article 142 of the Constitution cannot be resorted to impose sentence less than the minimum sentence.

9. The conviction has not been disputed by the respondent before the High Court as the quantum of punishment alone was disputed. Thus, the High Court could not award sentence less than the minimum sentence contemplated by the Statute in view of the judgments referred to above.

10. Therefore, the present appeal is allowed. The order passed by the High Court is set aside. The respondent shall undergo the remaining sentence imposed by the trial court for an offence under Section 3(1)(xi) of the Act. The respondent shall surrender before the Court within four weeks.

.....J. (Dr. Dhananjaya Y. Chandrachud) .....J. (Hemant Gupta) New Delhi, February 8, 2019.