Kapur Chand Pokhraj vs The State Of Bombay on 28 March, 1958

PETITIONER:
KAPUR CHAND POKHRAJ

Vs.

RESPONDENT:
THE STATE OF BOMBAY

DATE OF JUDGMENT:
28/03/1958

BENCH:

ACT:
Criminal trial-Repeal of Penal Statute-Saving of 'Liability incurred', scope of-Sanction by authority empowered under repealing statute-If valid for prosecution for offence under repealed statute--Sentence-Whether plea of guilty a consideration for awarding light sentence-Enhancement of sentence-Bombay Sales Tax Act, 1946 (Bom V of 1946), ss. 2, 3 and 24, Bombay Sales Tax Act, 1953 (Bom. III of 1953), ss. 2, 3, 36, 37, 48 and 49-Bombay Sales Tax Ordinance III of 1952, SS. 2, 3, 36 and 37.

HEADNOTE:
The appellant was registered under the Bombay Sales Tax Act, 1946. He maintained double sets of account books and knowingly furnished, for the period September 30, 1950 to March 31, 1951, false returns to the Sales Tax Officer and thereby committed an offence under S. 24(1)(b) of the Act. Under the Act sanction of the Collector was necessary before cognizance of the offence could be taken by a Court. The I946 Act was repealed by the Bombay Sales Tax Act, 1952, but the 1952 Act was declared ultra vires by the Bombay High Court. Thereupon the Bombay Sales Tax Ordinance 11 Of 1952 was promulgated which provided that the 1946 Act was to be deemed to have been in existence up to November 1, 1952. This was followed by Ordinance 111 of 1952 which further extended the life of the 1946 Act. Thereafter, the Bombay Sales Tax Act, 1953 was passed which repealed both the 1946 Act and Ordinance III of 1952. The 1953 Act made provision for an offence similar to that covered by S. 24(1)(b) of the Act, prescribed a similar procedure for prosecuting persons committing the said offence and saved liabilities incurred under the 1946 Act. During the period when Ordinance III of 1952 was in force the State Government issued a notification

appointing the Additional Collector to be a Collector under the Ordinance, and the Additional Collector granted sanction for the prosecution of the appellant. The appellant was tried by the Presidency Magistrate before whom he pleaded guilty. The Magistrate accepted the plea, convicted him under S. 24(1)(b) of the 1946 Act and sentenced him to a fine of Rs. 200, in default to suffer one month's rigorous imprisonment. The State preferred a revision to the High Court for enhancement of the sentence. The appellant contended that by the repeal of the 1946 Act the offence was effaced and that the prosecution was defective inasmuch as sanction was given by the Additional Collector and not by the Collector as required by the 1946 Act. The High Court repelled both these contentions and enhanced the sentence to rigorous imprisonment for one month in addition to the fine already imposed

251

Held, that the offence under s. 24(1)(b) of the 1946 Act was covered by the saving clause in S. 48 of 953 Act and the appellant could be convicted of that offence. The saving by s. 48 of the 1953 Act of " any liability incurred " under the 1946 Act saved both civil and criminal liability.

Held, that the sanction given by the Additional Collector was a valid sanction for the prosecution of the appellant. The notification issued under Ordinance III of 1952 appointing the Additional Collector as Collector must be deemed to have been made in exercise of the relevant power in respect of the offence saved by the Ordinance. Further, the notification must be deemed to have continued in force under the 1953 Act by reason of s. 49(2) of that Act. Sanction pertains to the domain of procedure and the procedure prescribed under the new 1953 Act must be followed even in respect of offences committed under the repealed 1946 Act.

Held further, that in the circumstances of the case the High Court was justified in enhancing the sentence. The sentence should depend upon the gravity of the offence and not upon the fact that the accused pleaded guilty or attempted to defend the case. As the appellant had kept double sets of account books, it was eminently a case in which a substantive sentence ought to have been imposed, and the Magistrate improperly exercised his discretion in awarding a sentence of fine only. But the High Court was wrong in awarding rigorous imprisonment as s. 24(1)(b) provided only for simple imprisonment.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 34 to 36 of 1956.

Appeal by special leave from the judgment and order dated July 1, 1955, of the Bombay High Court in Criminal Revision Applications Nos. 351 to 353 of 1955 arising out of the judgment and order dated November 5, 1954, of the Court of the Presidency Magistrate 14th Court at Girgaum, Bombay in Cases Nos. 328 to 330/P of 1954.

H. J. Umrigar and A. G. Ratnaparkhi, for the appellant. M. S. K. Sastri and R. H. Dhebar, for the respondent. 1958. March 24. The following Judgment of the Court was delivered by SUBBA RAO J.-These appeals by special leave are directed against the judgment of the High Court of Judicature at Bombay made in three connected Criminal Revision applications and raise the question of the maintainability of prosecution of a person for an offence committed under s. 24(1)(b) of the Bombay Sales Tax Act, 1946 (Bom. V of 1946) (hereinafter referred to as the repealed Act).

The facts that give rise to the appeals may be briefly stated: The appellant, Sri Kapur Chand Pokhraj, was the proprietor of Messrs. N. Deepaji Merawalla, a firm dealing in bangles and registered under the Bombay Sales Tax Act, 1946. He did not disclose the correct turnover of his sales to the Sales Tax Department in the three quarterly returns furnished by him to the said Department on September 30, 1950, December 31, 1950, and March 31, 1951, respectively. He maintained double sets of books of accounts and knowingly furnished false returns for the said three quarters to the Sales Tax Officer and thereby -committed an offence under s. 24(1)(b) of the repealed Act. Under that Act, sanction of the Collector was a condition precedent for launching of prosecution in respect of an offence committed under s. 24(1) of the said Act. The said Act was repealed by the Bombay Sales Tax Act, 1952 (Bom. XXIV of 1952), which was published on October 9, 1952. On December 11, 1952, the Bombay High Court declared the Act of 1952 ultra vires and the State .of Bombay preferred an appeal against the judgment of the Bombay High Court to the Supreme Court. On December 22, 1952, the State Government, in order to get over the dislocation caused by the Bombay judgment, issued the Bombay Sales Tax Ordinance II of 1952, where under it was provided that the 1946 Act was to be deemed to have been in existence up to November 1, 1952. On December 24, 1952, another Ordinance, Ordinance III of 1952, was promulgated extending the life of the Act of 1946. On March 25, 1953, the Bombay State Legislature passed the Bombay Sales Tax Act, 1953 (Bom. III of 1953), (hereinafter referred to as the repealing Act), repealing the Act of 1946 and the Ordinance III of 1952. The material fact to be noticed is that the Act III of 1953, though it repealed the earlier Act and the Ordinance extending the life of that Act, made provision for an offence similar to that covered by s. 24(1) of the repealed Act, prescribed a similar procedure for prosecuting persons committing the said offence and saved the liabilities incurred under the repealed Act. During the period when the Ordinance III of 1952 was in force, the State Government issued a notification under s. 3 of that Ordinance appointing the Additional Collector of Bombay to be a Collector under the said Ordinance. On July 4, 1953, i.e., after Act III of 1953 came into force, Mr. Joshi, the Additional Collector of Bombay, granted sanction for the prosecution of the appellant in respect of the offence committed by him under s. 24(1)(b) of the repealed Act. After obtaining the sanction, the appellant was prosecuted under s. 24(1)(b) of the Bombay Sales Tax Act, 1946. Before the Presidency Magistrate the appellant pleaded guilty to the charge. The learned Magistrate accepted his plea and convicted him for the offence for which he was charged and sentenced him to pay a fine of Rs. 200, in default to suffer one month's rigorous imprisonment. The State of Bombay preferred a Revision against the said Order to the High Court of judicature at Bombay praying that the sentence imposed

on the appellant be enhanced on the ground that as the appellant kept double sets of accounts and intentionally furnished false information, the interest of justice required that substantive and heavy sentence should be imposed on him. Before the High Court, the appellant pleaded that by the repeal of the Sales Tax Act, 1946, the offence, if any, committed by him was effaced and that in any view the prosecution was defective inasmuch as sanction had been given by the Additional Collector and not by the Collector of Sales Tax. The contentions did not find favour with the learned Judge of the High Court. In rejecting them, the learned Judge enhanced the sentence passed upon the appellant to rigorous imprisonment for a period of one month in each of the three cases in addition to the fine already imposed by the Magistrate. He directed the substantive sentence of imprisonment in all the three cases to be concurrent. The appellant obtained special leave from this Court to prefer the above appeals against the judgment of the High Court.

The learned Counsel for the appellant raised before us the same contentions which his client unsuccessfully raised before the High Court. We shall now proceed to deal with them seriatim.

The main argument of the learned Counsel was that the Bombay Sales Tax Act, 1953 (Bom. III of 1953) in repealing the Act of 1946 did not save penalties in respect of offences committed under that Act and therefore no prosecution was maintainable in respect of an offence committed under the Act of 1946. A clearer conception of the argument can be had by looking at the relevant saving provisions enacted in Act III of 1953 and also the relevant sections of the Bombay General Clauses Act. Section 48(2) of the Bombay Sales Tax Act, 1953 reads:

> " Notwithstanding the repeal of the said Act and the said entries, the said repeal shall not affect or be deemed to affect-
>
> (i) any right, title, obligation or liability already acquired, accrued or incurred;
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> (ii) any legal proceeding pending on the 1st day of November, 1952 in respect of any right, title, obligation or liability or anything done or suffered before the Raid date;

and any such proceeding shall be continued and disposed of, as if this Act had not been passed;

(iii)the recovery of any tax or penalty which may have become payable under the said Act and the said entries before the said date; and all such taxes or penalties or arrears thereof shall be assessed, imposed and recovered, so far as may be, in accordance with the provisions of this Act; ".

Section 7 of the Bombay General Clauses Act says:

> " Where this Act, or any Bombay Act made after the commencement of this Act, repeals any enactment hitherto made or thereafter to be made, then, unless a different intention appears, the repeal shall not-
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation,, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed."

A comparative study of the aforesaid provisions indicates that while under s. 7 of the Bombay General Clauses Act, there is a specific saving of any penalty, forfeiture or punishment incurred in respect of any offence committed under the enactment repealed, as distinct from civil rights and liabilities, under s. 48 of Act III of 1953, there is no separate treatment of Civil and Criminal matters; while under the former provisions legal proceedings are saved, under the latter provisions legal proceedings pending on November 1, 1952, in respect of rights acquired or liabilities incurred under the repealed Act are saved. By such a study of the two provisions, the argument proceeds, it is clear that the enactment of a specific saving clause in the repealing Act indicates a " different intention "

excluding the operation of s. 7 of the General Clauses Act and the omission under s. 48 of the repealing Act of a clause similar to el. (d) of s. 7 of the General Clauses Act, demonstrates that the liability saved excludes criminal liability. In our view the consideration of the provisions of s. 7 of the General Clauses Act need not detain us, for s. 48(2)(i) of the repealing Act affords a complete answer to the question raised. Under that clause, the repeal did not affect any right, title or obligation or liability already acquired, accrued or I incurred, The words liability incurred " are very general and comprehensive and ordinarily take in both civil and criminal liability. In Criminal Law the term " liability covers every form of punishment to which a man subjects himself -by violating the law of the land. There is no reason why the all comprehensive word should not carry its full import but be restricted to civil liability alone ? The context does not compel any such limitation. Indeed, there is no conceivable ground to impute to the Legislature the intention to wipe out the offences committed under the repealed Act, when it expressly retained the same offences under the repealing Act. If there was any justification for preserving Civil liabilities incurred under the repealed Act, there was an equal justification to save criminal liabilities incurred under that repealed Act. The fact that s. 7 of the Bombay General Clauses Act provided separately in different clauses for Criminal and Civil liabilities, while s. 48(2) of the repealing Act clubbed them together in one clause is not decisive

of the question raised, as, for ought we know, s. 48 might be an attempt by the Legislature at precise drafting by omitting unnecessary words and clauses. Nor the circumstance that a special provision is made under s. 48(2) of the repealing Act -for pending proceedings is indicative of any conscious departure by the Legislature from the established practice embodied in s. 7 of the General Clauses Act indicating an intention to save only offences under the repealed Act in-respect of which legal proceedings were pending on a specified date. It is more likely, as the learned Judge of the Bombay High Court pointed out, that el. 2 was enacted to obviate the argument that once a case is sent up the liability merges in the proceedings launched and has to be saved specially. On a fair reading of the terms of the saving clause in s. 48(2) of the repealing Act, we cannot give a restricted meaning to the words" liability incurred", especially when the scheme of the Act does not imply that the Legislature had any intention to exclude from the saving clause criminal liability incurred under the repealed Act. We, therefore, hold that the liability incurred i.e. the offence committed, under the repealed Act, is covered by the saving clause embodied in s. 48 of -the repealing- Act. In this view it is not necessary to express our view whether, by reason of the saving clause enacted in s. 48 of the repealing Act, the Legislature indicated a different intention within the meaning of s. 7 of the Bombay General Clauses Act so as to exclude its operation in construing the provisions of the repealing Act. Even so, the learned Counsel contended that the appellant, who committed the offence under the repealed Act, should be prosecuted only with the previous sanction of the Collector as provided by that Act, but as the sanction in the present case was given by the Additional Collector, the Magistrate had no jurisdiction to take cognizance of the offence. To appreciate this argument it would be necessary to notice the provisions relating to sanction in the repealing Act and in the Acts and Ordinances that preceded it.

" BOMBAY SALES TAX ACT, 1946.

" Section 24 (1)(b): Whoever-fails,without sufficient cause, to submit any return as required by, section 10 or know- ingly submits a false return,..... shall, in addition to the recovery of any tax that may be due from him be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both; and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence."

Section 24(2): No Court shall take cognizance of any offence under this Act, or under the rules made thereunder, except with the previous sanction of the Collector and no Court inferior to that of a Magistrate of the Second Class shall try any such offence."

" Section 2(a) : " Collector " means the Collector of Sales Tax appointed under sub-section (1) of Section 3."

" Section 3(1) : For carrying out the purposes of this Act, the State Government may appoint any person to be a Collector of Sales Tax and such other persons to assist him as the State Government thinks fit."

ORDINANCE No. II of 1952:

Under this Ordinance, Bombay Act V of 1946 and the entries relating to the said Act in the third schedule to the Bombay Merged States (Laws) Act, 1950 were deemed to have continued to be in force up to and inclusive of November 1, 1952. ORDINANCE III OF 1952:

"Section 36. Offences and Penalties: whoever

(b) fails without sufficient cause, to furnish any return or statement as required by section 13 or 18 or knowingly furnishes a false return or statement,.....

in addition to the recovery of any tax that may be due from him, be punishable with simple imprisonment which may extend to six months or with fine not exceeding two thousand rupees or with both; and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of the continuance of the offence."

" Section 37. Cognizance of offences. (1). No Court shall take cognizance of any offence punishable under section 36 or under any rules made under this Ordinance except with the previous sanction of the Collector and no Court inferior to that of a Magistrate of the Second Class shall try any such offence."

" Section 2(6): " Collector " means the Collector of Sales Tax appointed under section 3."

" Section 3(1): For carrying out the purposes of this Ordinance, the State Government may appoint any person to be a Collector of Sales Tax, and such other persons to assist him as the State Government thinks fit."

BOMBAY SALES TAX ACT, 1953 (Act III of 1953):

" Section 36: Whoever-

(b) fails without sufficient cause, to furnish any return or statement as required by Section 13 or 18 or knowingly furnishes a false return or statement.....

shall, in addition to the recovery of any tax that may be due from him, be punishable with simple imprisonment which may extent to six months or with fine not exceeding two thousand rupees or with both; and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of the continuance of the offence."

"Section 49(2): Any appointment, notification, notice, order, rule, regulation or form made or issued or deemed to have been made or issued under the Ordinance hereby repealed shall continue in force and be deemed to have been made or issued under the provisions of this Act. in so far as such appointment, notification, notice, order, rule, regulation or form is not inconsistent with the provision of this Act, unless it has been already, or until it is superseded by an appointment, notification, notice, order, rule, regulation or form made or issued under this Act."

THE BOMBAY SALES TAX (AMENDMENT) ACT, 1956. (BOMBAY ACT NO. XXXIX OF 1956) Section 3. Amendment to section 3 of Bom. III of 1953 : In section 3 of the said Act, for sub-section (1), the following sub-section shall be and shall be deemed ever to have been substituted, namely:-

(1) for carrying out the purpose of this Act, the State Government may appoint-

(a) a person to be the Collector of Sales Tax, and

(b) one or more persons to be Additional Collectors of Sales Tax, and

(c) such other persons to assist the Collector as the State Government thinks fit."

NOTIFICATION ISSUED BY THE STATE GOVERNMENT UNDER SECTION (3) OF THE ORDINANCE III OF 1952:

"Government of Bombay is pleased to declare the Additional Collector of Sales Tax, Bombay State, Bombay, as " Collector of Sales Tax, Bombay State, Bombay " for purposes of the Bombay Sales Tax (No. 2) Ordinance, 1952 (Bombay Ordinance No. III of 1952)."

It will be seen from the aforesaid provisions that under the Acts as well as under the Ordinances, knowingly furnishing a false return or statement is made an offence punishable with simple imprisonment or fine or with both. The only difference is that under the Ordinance and the Act of 1953, the maximum amount of fine is increased from Rs. 1,000 to Rs. 2,000. Under the Ordinance as well as under

the Acts, no Court can take cognizance of the said offence except with the previous sanction of the Collector. The term Collector " is defined in similar terms in the Ordinance as well as in the Acts, i e., a person appointed as ,"Collector " by the State Government. The notification issued by the State Government under Ordinance 11I of 1952, appointing the Additional Collector as Collector of Sales Tax must be deemed to have continued to be in force under the Bombay Sales Tax Act, 1953, by reason of s. 49 (2) of that Act, as it is common case that no fresh notification was made under that Act repealing that made under that Ordinance. Shortly stated, the Bombay Act III of 1953, introduced the same offence and provided for the same machinery that its predecessors contained. On the basis of the aforesaid provisions, the argument of the

learned Counsel for the appellant is that as the State Government appointed the Additional Collector as Collector of Sales Tax in exercise of the power conferred on it under the Ordinance III of 1952 and not under the power conferred on it by the repealed Act, the sanction given by the Additional Collector to prosecute the appellant is invalid. The first answer to this contention is that, as the State Government had the power to appoint any person including' an Additional Collector as Collector of Sales Tax both under the repealed Act as well as the Ordinance III of 1952, the appointment may reasonably be construed to have been made in exercise of the relevant power in respect of the offence saved under the Ordinance. The second answer is more fundamental. There is an essential distinction between an offence and the prosecution for an offence. The former forms part of the substantive law and the latter of procedural law. An offence is. an aggregate of acts or omissions punishable by law while prosecution signified the procedure for obtaining an adjudication of Court in respect of such acts or omissions. Sanction or prior approval of an authority is made a condition precedent to prosecute in regard to specified offences. Prosecution without the requisite sanction makes the entire proceeding ab initio void. It is intended to be a safeguard against frivolous prosecutions and also to give an opportunity to the authority concerned to decide in the circumstances of a particular case whether prosecution is necessary. Sanction to prosecute for an offence is not, therefore, an ingredient of the offence, but it really pertains to procedure. In Maxwell's Interpretation of Statutes, the following passage appears at page 225:

" Although to make a law punish that which, at the time when it was done, was not punishable, is contrary to sound principle, a law which merely alters the procedure may, with perfect propriety, be made applicable to past as well as future transactions."

In the instant case when the repealing Act did not make any change either in the offence or in the procedure prescribed to prosecute for that offence and expressly saved the offence committed under the repealed Act, the intention can be legitimately imputed to the Legislature that the procedure prescribed' under the new Act should be followed, even in respect of offences committed under the repealed Act. If so, it follows that, as sanction pertains to the domain of procedure, the sanction given by the Additional Collector appointed by the State as Collector of Sales Tax was valid.

Even so, it was contended that the notification appointing the Additional Collector as Collector of Sales Tax issued under Ordinance No. 11 of 1952 would not enure to the prosecution launched under Act III of 1953. This argument ignored the express provisions of s. 49 (2) of the said Act (already extracted supra), which in clear and express terms laid down that notifications issued or orders made under the repealed Ordinance would be deemed to have been made or issued under the provisions of the Act and would continue to be in force until superseded by appropriate orders or notifications under the new Act. It was not suggested that any fresh notification revoking that made under the Ordinance was issued under the repealing Act. If so, it follows that the notification issued under the Ordinance appointing the Additional Collector as Collector of Sales Tax continued to be in force when the said Collector gave sanction to pro- secute the appellant. In this view it is not

necessary to consider the scope of the Bombay Sales Tax (Amendment) Act, 1956.

Lastly, a strong plea was made for reducing the sentence of imprisonment given by the High Court to that of fine. It was said that the Magistrate in exercise of his discretion gave the sentence of fine and the High Court was not justified in enhancing the same to imprisonment without giving any reasons which compelled them to do so. Reliance was placed in this context on two decisions of this Court--Dalip Singh v. State of Punjab (1) and Bed Raj v. The State of Uttar Pradesh (2). In the former case, the Sessions Judge convicted each of the 7 accused under s. 302, Indian Penal Code read with s. 149, Indian Penal Code. As the fatal injuries could not be attributed to any one of the accused, he refrained from passing a sentence of death, but instead he convicted them to imprisonment for life. The High Court, without giving any reasons, changed their sentences from transportation to death. Bose J. who delivered. the judgment of the Court, in holding that the High Court should not have interfered with the discretion exercised by the Sessions Judge, made the following observation at page 156:

> " But the discretion is his and if he gives reasons on which a judicial mind could properly found, and appellate Court should not interfere. The power to enhance a sentence from transportation to death should very rarely be exercised and only for the strongest (1) [1954] S. C. R, 145.
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> (2) [1955] 2 S. C. R. 583.

possible reasons. It is not enough for an appellate Court to say, or think, that if left to itself it would have awarded the greater penalty because the discretion does not belong to the appellate Court but to the trial Judge and the only ground on which an appellate Court can interfere is that the discretion has been improperly exercised, as for example, where no reasons are given and none can be inferred from the circumstances of the case, or where the facts are so gross that no normal Judicial mind would have awarded the lesser penalty."

In the latter case, the appellant along with another was convicted by the Sessions Judge under s. 304 Indian Penal Code and sentenced to three years' rigorous imprisonment. On appeal the High Court enhanced the sentence to ten years. In enhancing the sentence, the learned Judges gave the reason that the deceased was unarmed and the attack was made with a knife and it could not be said that the appellant did not act in a cruel or unusual manner. This Court, in allowing the appeal on the question of sentence, made the following observation at page 588:

> " A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate Court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment..... In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate."

These observations are entitled to great weight. But it is impossible to lay down a hard and fast rule, for each case must depend upon its own facts. Whether in a given case there was proper exercise of judicial discretion by the trial Judge depends upon the circumstances of that case. In the present case, the appellant kept double sets of account books and submitted false returns for successive quarters, omitting from the turn-over shown by him in the returns substantial amounts. Under s. 24(1) of the Act, infringement of the provisions of the Act is made punishable. The offences under that section are of different degrees of moral turpitude. They range from a mere infringement of a rule to conscious and deliberate making of false returns. For all the offences, the section fixes the maximum punishment of simple imprisonment which may extend to six months. The magistrate, who tries the offenders under that section, is given a wide discretion to could the punishment in such a way as to make it commensurate with the nature of the offence committed. Though the appellant adopted a syste- matic scheme to defraud the State by keeping double sets of account books and therefore deserved deterrent punishment, the learned Magistrate, presumably because the appellant pleaded guilty, without giving any reasons, gave him the lenient punishment of fine of Rs. 200. It is obvious that the sentence should depend upon the gravity of the offence committed and not upon the fact that the accused pleaded guilty or made an attempt to defend the case. In the circumstances the High Court was certainly justified in enhancing the sentence from fine to-imprisonment and fine and it had given good reasons for doing so. The High Court thought and, in our view, rightly that as the appellant had kept double sets of account books, it was eminently a case in which a substantive sentence ought to have been imposed. The Magistrate has improperly exercised his discretion within the meaning of the aforesaid observations of this Court and therefore, the High Court was certainly within its right to enhance the sentence.

But the High Court committed a mistake in awarding a sentence of rigorous imprisonment for a period of one month, which it is not entitled to do under the provisions of s. 24(1) of the Act. Under that section the Court had jurisdiction only to give a maximum sentence of simple imprisonment extending to 6 months but had no power to impose a sentence of rigorous imprisonment. This mistake, if any, should go to the benefit of the appellant, for the High Court might have imposed a sentence of longer period of simple imprisonment if it had realised that it had, no power to sentence the appellant to rigorous imprisonment. Be it as it may, as the High Court had no power to impose a sentence of rigorous imprisonment we change the sentence from rigorous imprisonment to simple imprisonment for a period of one month in each case. With this modification the appeals are dismissed.

Appeals dismissed.