

Kirpal Singh vs State Of Haryana on 10 May, 1999

Equivalent citations: 2000(1)ALD(CRI)613, (1999)3CALLT89(SC), 1999CRILJ5031, JT1999(9)SC207, (1999)5SCC649, 1999 AIR SCW 4868, 1999 (5) SCC 649, 1999 CRI. L. J. 5031, 1999 (4) ALLCRILR 794, 1999 SCC(CRI) 1025, (1999) 9 JT 207 (SC), (1999) 10 SUPREME 5, (2000) 1 EASTCRIC 148, (1999) 3 CALLT 89, (2000) 40 ALLCRIC 136, (2000) 1 CRIMES 53

Bench: K.T. Thomas, M.B. Shah

ORDER

1. Mr. R.S. Sodhi, learned Counsel contended that petitioner was sentenced to the period, already undergone, by the trial Court on an understanding that the court would pass such a sentence. Learned Counsel submits that the practice of pre-bargaining was adopted in the trial court for that purpose and therefore it was not open to the trial court to enhance the sentence to rigorous imprisonment for 7 years.

2. Learned Counsel in support of the said contention invited our attention to the decision of this Court in Thippeswamy v. State of Karnataka, . That is a case where the conviction was passed under Section 304A of the I.P.C. and the trial Court awarded a fine sentence of Rs. 5,000/- which on appeal by the State was enhanced to rigorous imprisonment for one year by the High Court. This Court pointed out that in a case where "there was pre-

bargain it was not open to the High Court to unilaterally enhance the sentence and if the High Court felt that the sentence awarded by the trial Court was disproportionately low the course which should have been adopted was to remit the case back to the trial court for fresh trial.

3. But in this case the situation is different. The offence found against the appellant is under Section 392 of the Indian Penal Code for which the maximum punishment imposable is 14 years and perhaps on the facts of this case the maximum punishment is imprisonment for 10 years. But Section 392, I.P.C. has to be read with Section 397 in certain cases as the Section bridles the powers of the court regarding the extent of sentence. The Court cannot award a sentence less than 7 years of imprisonment when in a particular case Section 397 is to be read along with Section 392 of the Indian Penal Code.

4. Petitioner would have succeeded in his pre-bargain by getting the minimum sentence prescribed by law and that is what the High Court has granted. Neither the trial Court nor the High Court has jurisdiction to by-pass the minimum limit prescribed by law on the premise that a pre-bargain was adopted by the accused. We are unable to agree with the learned Counsel that the accused would have thought that court would give him punishment even less than what is prescribed by law as the minimum.

5. For the aforesaid reasons we dismiss this SLP.