HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE TWENTY FIRST DAY OF JANUARY

TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CRIMINAL REVISION CASE NO: 1597 OF 2006

Between:

1. GUTHULA RAMA KRISHNA, S/o Ganga Raju,
   Coolie,
   R/o Kingamparthi Village,
   Yeleswaram Mandal,
   East Godavari District.

...PETITIONER(S)

AND:

1. THE STATE OF AP REP BY ITS PP HYD., rep. by its Public Prosecutor,
   High Court of A.P., at Hyderabad,
   through its Proh. & Excise Inspector,
   Prathipadu,

...RESPONDENTS

Counsel for the Petitioner(s): N SIVA REDDY

Counsel for the Respondents: PUBLIC PROSECUTOR

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CRIMINAL REVISION CASE No.1597 of 2006

ORDER:

Heard Sri N.Siva Reddy, learned counsel for the petitioner/revisionist and Sri Soora Venkata Sainath, learned Spl.Asst.Public Prosecutor, representing the respondent/State.

2. This revision has been filed by the petitioner/convict challenging the judgment and order, dated 04.09.2006, passed by the court of Principal Sessions Judge, East Godavari at Rajahmundry in Criminal Appeal No.31 of 2006, by which the petitioner's appeal, filed against the judgment and order, dated 19.01.2006 in C.C.No.367 of 2004 on the file of the Judicial First Class Magistrate, Prathipadu was dismissed.

3. The prosecution case is that on 04.07.1999 at about 8 p.m while the Prohibition & Excise Sub-Inspector, Prathipadu along with his staff was patrolling the suspected places at Lingamparthy for detection of Prohibition & Excise offences found the accused carrying a black coloured plastic cane in his right hand. On suspicion, the above accused was detained and questioned about the contents of the cane, the accused stated that the cane contained illicit distilled liquor, on examination of the cane 10 liters of I.D.Liquor was found. On further enquiry the accused revealed his identity and stated that he purchased the said liquor from an unknown person and getting the same for retail sale. The Prohibition & Excise Sub-Inspector took samples of about 300 ml liquor from the cane separately into a bottle for the purpose of chemical analysis, sealed the sample bottle and also the cane with the remaining quantity of liquor with his seal and affixed identity slips duly signed by the accused, seized the contraband property and arrested the accused under the cover of a

special report drafted at the scene of offence. LW 1 (G.Ellaiah) forwarded the special report along with the accused and property to the SHO, Prathipady and SHO Prathipadu registered a case as Cr.No.301/98-99 U/Sec.8(e) r/w 7(a) of APP Amendment Act, 1997.

4. The petitioner/accused, when brought before the court, pleaded guilty for the offence on his examination under Section 239 Cr.P.C.

5. The Judicial First Class Magistrate, Prathipadu, vide judgment, dated 19.01.2006, convicted the accused on his pleading guilty for the offence under Section 8(e) read with Section 7A of A.P.Prohibition Act, 1995, as amended in 1997, and sentenced him to undergo rigorous imprisonment for one year.

6. The petitioner filed Criminal Appeal No.31 of 2006 which, the appellate court dismissed, holding that there was no illegality in the judgment passed by the trial court.

7. The learned counsel for the petitioner submits that in the revision the challenge is confined to the extent of the punishment of sentence of R.I. for one year and as the conviction was made on the petitioner pleading guilty, the same cannot be challenged. He further submits that a lenient view may be taken considering the age of the accused at the time of the offence and long pendency of the case, so as to reduce the punishment of one year R.I. to already undergone.

8. Sri Soora Venkata Sainath, learned Spl.Asst.Public Prosecutor, for the respondent/State submits that one year R.I. is the minimum sentence that has been imposed on conviction of the accused/petitioner under Section 8(e) read with Section 7A of the Prohibition Act, 1995. The maximum sentence is up to 5 years. The trial court has already taken a lenient view by imposing only the minimum sentence, provided by the statute. The judgment under challenge therefore calls for no interference.

9. I have considered the submissions advanced by the learned counsels for the parties and perused the material available on record.

10. Section 7A of the A.P.Prohibition Act, reads as under:

"**7A. Prohibition of production etc., of arrack.** - The production, manufacture, storage, possession, collection, purchase, sale and transport of arrack is hereby prohibited."

11. Section 8(e) of the A.P.Prohibtion Act reads as under:

"**8. Punishment for buying, selling, consumption etc., of liquors.** - whoever –

(a) consumes any liquor except in accordance with the provisions of this Act or the Andhra Pradesh Excise Act 1968, or the terms of any rule, notification, order, licence or permit issued thereunder shall be punished with imprisonment for a term which may extend upto six months or with fine which may extend upto one thousand rupees or with both.

(b) possesses, collects, buys, sells, transports, produces or manufactures any liquor other than arrack except in accordance with the provisions of the Andhra Pradesh Excise Act 1968, (Act 17, of 1968) or the terms of any rule, notification, order, licence or permit issued thereunder shall be punished,--

(i) where the liquor involved in the offence is less than such quantity as may be notified in this behalf with imprisonment for a term which shall not be less than six months but which may extend upto three years or with fine which shall not be less than rupees ten thousand or shall not be less than thrice the value of the liquor involved in the offence whichever is higher but which may extend upto six times the value of such liquor, such value being arrived at [in the manner prescribed or with both]

(ii) where the liquor involved in the offence is not less than the quantity notified as aforesaid with imprisonment for a term which shall not be less than one year but which may extend upto five years and with fine which shall not be less than rupees twenty thousand or shall not be less than thrice the value of the liquor involved in the offence whichever is higher but which may extend upto six times the value of such liquor, such value being arrived at in the manner prescribed.

(iii) where the commission of any offence either under sub-clause (i) or sub-clause (ii) is abetted, the abettor shall be liable for punishment with imprisonment of either description and with fine as provided there in.

(c) having obtained a licence or permit granted under Andhra Pradesh Excise Act 1968, sells any liquor other than arrack otherwise than in accordance with the provisions of this Act or terms of any rule, notification, order, licence or permit issued thereunder shall be

punished with imprisonment for a term which may extend upto six months or with fine which may extend upto rupees one thousand or with both..

(d) allows consumption of arrack upon premises in his immediate possession shall be punished with imprisonment for a term which extend upto three years or with fine which extend upto ten thousand rupees or with both.

(e) contravenes the provisions of section 7-A shall on conviction be punished with imprisonment for term which shall not be less than one year but which may extend upto five years and with fine which shall not be less than rupees ten thousand but which may extend upto rupees one lakh."

12. A bare reading of Section 8(e) of A.P.Prohibition Act, 1995 makes it evident that on conviction of the accused under Section 7A of the Act, 1995 the punishment of imprisonment provided, is for a term which shall not be less than one year, but which may extend upto 5 years and fine. The mandate under Clause (e) of Section 8 of the Act, 1995 is very clear that in case of conviction the punishment of imprisonment shall not be for a term less than one year.

13. In ***State of M.P. v. Vikram Das***[1] where Section 3(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 provided for a punishment for a term which shall not be less than six months but may extend upto five years and with fine, and the minium sentence imposed by the trial court was reduced by the high court to the sentence already undergone, the Hon'ble Supreme Court held that the high court could not award sentence less than the minimum sentence contemplated by the statute. It was held that where minimum sentence is provided by the statute, the court cannot impose less than the minimum sentence and even the provisions of Article 142 of the Constitution of India could not be resorted to, to impose sentence less than the minimum sentence.

[1] (2019) 4 SCC 125

14. It is appropriate to refer paragraph Nos.4 to 9 of ***State of M.P. v. Vikram Das*** (supra) as under:

> **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 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.** The learned counsel for the appellant relies upon the judgment of this Court in *Narendra Champaklal Trivedi* v. *State of Gujarat*[3] 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: (SCC pp. 89-91, paras 27 & 30)
>
> "*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 Gani*[4] 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.
>
> * * *
>
> *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 128borne 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 Arora*[5], this Court was considering the grant of benefit of Probation of the Offenders Act, 1958[6] to a convict of the offences under the Prevention of Corruption Act, 1988[7]. 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: (SCC p. 596, para 12)

"*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 *CCE* v. *Bahubali*[8] 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 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 *Mohd. Hashim* v. *State of U.P.*[9], the question examined was in relation to minimum sentence provided for an offence under Section 4 of the Dowry Prohibition Act, 1961[10], 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: (SCC pp. 207 & 209, paras 19 & 24)

"*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 [illegible]129in view of the authorities in *Arvind Mohan Sinha*11 and *Ratan Lal Arora*5. 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, 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.

* * *

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 the aforesaid judgments that where minimum sentence is provided for, the court cannot impose less than the minimum sentence. It is also held that the provisions of Article 142 of

the Constitution cannot be resorted to, 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.

15. In ***Meera v. State by the Inspector of Police Thiruvotriyur Police Station, Chennai***[2] the Hon'ble Supreme Court has held that merely because long time has passed in concluding the trial and/or deciding the appeal by the high court, is no ground not to impose the punishment and/or to impose the sentence already undergone.

16. This court finds that the learned trial court, by taking a lenient view, has imposed only the minimum sentence provided by law.

17. I do not find any illegality in the orders passed by the learned courts below.

18. In the result, the Criminal Revision Case is dismissed.

19. The bail bonds of the petitioner/accused shall stand cancelled. He shall surrender before the Superintendent, Central Prison, Rajahmundry for serving the sentence. If he fails to do so, the trial court shall take necessary steps to arrest the petitioner/accused for serving the sentence imposed against him.

20. Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI,J

Date: 21.01.2022
Dsr

Note:
LR copy to be marked
B/o
Dsr

[2] 2022 SCC Online SC 31