

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 227 OF 2013
(Arising out of Special Leave Petition (Crl.) No.2537/2012)

Gita Ram & Anr.Appellant(s)

Vs.

State of H.P.
.....Respondent(s)

J U D G M E N T

M.Y.EQBAL,J.

Leave granted.

2. This appeal by special leave arises out of the judgment and order dated 21.11.2011 of the High Court of Himachal Pradesh at Shimla in CRLR No. 36/2006. Notice was issued on the limited question of sentence in a conviction of the appellants under Section 292 read with Section 34 of the IPC and Section 7 of Cinematograph Act.

3. The prosecution case was that on 07.12.2001 on the basis of secret information the patrolling party raided the

premises in Dhawan Video Hall, Sai Road and found that the appellants were showing blue film to young men and about 15 viewers were there in the hall. It was alleged that CD of blue film, namely "Size Matter" was displayed by the appellants to the viewers on Videocon TV Sony C.D. player, one CD namely "Size Matter", two C.Ds. of "Jawani Ka Khel", remote, ticket book, T.V. and poster were taken into possession in the presence of the witnesses.

4. The appellants were charged for offences punishable under Section 292 read with Section 34 IPC and Section 7 of Cinematograph Act.

5. After the statements of the appellants were recorded under Section 313 Cr.P.C. the trial began and, finally on completion of trial the Sub Divisional Judicial Magistrate convicted and sentenced the appellants to undergo simple imprisonment for 6 months under Section 292 of the IPC and fine of Rs.1,000/- under Section 7 of Cinematograph Act.

6. On appeal filed by the appellants, the Additional Sessions Judge Fast Track Court, Solan Camp at Nalagarh affirmed the judgment passed by the Trial Court. However,

the appellants being first offenders Sessions Judge showed some leniency in sentence of imprisonment and instead of imprisonment of 6 months the appellants were sentenced to simple imprisonment for one month each. The sentence awarded by the Trial Court was modified to that extent. The imposition of fine of Rs.1,000/- by the trial court for the offence under Section 292 IPC and further fine of Rs.1000/- was imposed on them for offence under Section 7 of the Cinematograph Act, were maintained. The appellants then preferred revision before the High Court of Himachal Pradesh. The High Court examined all the materials available on record as also the evidence, both oral and documentary and finally came to the conclusion that there is no perversity in the impugned judgment. Accordingly, the revision was dismissed.

7. Ms. Sweta Garg, learned counsel appearing for the appellants submitted that the appellants are not habitual offenders and having regard to the fact that the appellants, for the first time, were found to be indulged in the commission of offence they deserved to be released on

probation under Section 4 of the Probation of Offenders Act. Learned counsel submitted that the ends of the justice would be sub-served if the sentence is modified only by imposing of fine and they may be asked to furnish bond in terms of Section 4 of the Probation of Offenders Act.

8. We are unable to appreciate the submissions made by the learned counsel. Section 292 IPC reads as under:

“Sale, etc. of obscene books, etc.-
 [(1) For the purposes of sub-section(2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.]

[(2)] Whoever -

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire distribution, public exhibition or circulation, makes produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure

or any other obscene object whatsoever,
or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished [on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees].

[Exception

.....”

9. The aforesaid provision was amended in 1969 whereby a dichotomy of penal treatment was introduced for dealing with the first offenders and the subsequent offenders. The intention of the Legislature while amending the provision is to deal with this type of offences which corrupt the mind of the people to whom objectionable things can easily reach and need not be emphasized that corrupting influence is more likely to be upon the younger generation who has got to be protected from being easy prey. Exactly, a similar question was considered by this Court in the case of **Uttam Singh vs. The State (Delhi Administration)** 1974 (4) SCC 590. In that case the accused was convicted under Section 292 IPC on the charge of selling a packet of playing cards portraying on the reverse luridly obscene naked pictures of men and women in pornographic sexual postures. A similar argument was advanced by the counsel to give benefit of Section 4 of the Probation of Offenders Act. The Court rejecting the submission observed:

“There are certain exceptions to this section with which we are not concerned. This section was amended by Act XXXVI when apart from enlarging the scope of the exceptions, the penalty was enhanced which was earlier up to three months or with fine or with both. By the amendment a dichotomy of penal treatment was introduced for dealing with the first offenders and the subsequent offenders. In the case of even a first conviction the accused shall be punished with imprisonment of either description for a term which may extend to two years and with fine which may extend to two thousand rupees. The intention of the legislature is, therefore, made clear by the amendment in 1969 in dealing with this type of offences which corrupt the minds of people to whom these objectionable things can easily reach and it needs not be emphasized that the corrupting influence of these pictures is more likely to be upon the younger generation who has got to be protected from being easy prey to these libidinous appeals upon which this illicit trade is based. We are, therefore, not prepared to accept the submission of the learned counsel to deal with the accused leniently in this case.”

10. A similar view was taken by Punjab and Haryana High Court in the case of **Bharat Bhushan** vs. **State of Punjab** reported in 1999 (2) RCR (Criminal) 148 refusing to give

benefit of probation for exhibiting blue film punishable under Sections 292 and 293 of the IPC. The Court held that:

“exhibiting blue film in which man and woman were shown in the act of sexual intercourse to young boys would definitely deprave and corrupt their morals. Their minds are impressionable. On their impressionable minds anything can be imprinted. Things would have been different if that blue film had been exhibited to mature minds. Showing a man and a woman in the act of sexual intercourse tends to appealing to the carnal side of the human nature. Petitioner is the first offender and is a petty shopkeeper, maintaining a family and as such the High Court feel that he should be dealt with leniently in the matter of sentence. He cannot be released on probation of good conduct as the act imputed to him tended to corrupt and deprave the minds of immature and adolescent boys.”

11. In the facts and circumstances of the case and also considering the nature of the activities and the offence committed by the appellants, we are unable to show any leniency and to modify the sentence any further.

12. For the aforesaid reasons, we do not find any merit in the appeal which is accordingly dismissed.

.....J.
(T.S. THAKUR)

.....J.
(M.Y.
EQBAL)

New Delhi
February 01, 2013



JUDGMENT