

PETITIONER:
RETTI DEENABANDHU & ORS.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT 11/01/1977

BENCH:
KHANNA, HANS RAJ
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KHANNA, HANS RAJ
SARKARIA, RANJIT SINGH

CITATION:
1977 AIR 1335 1977 SCR (2) 599
1977 SCC (1) 742

ACT:

Appeal against conviction--Object of challenge to conviction--High Court should not decline to go into the validity of the conviction on the ground that the appellant is set at liberty, by set off under s. 428 of the Code of Criminal Procedure 1973 (Act 2 of 1974).

HEADNOTE:

The appellants, upon conviction under the relevant sections of the Indian Penal Code, Explosive Substances Act and Arms Act, were sentenced to various terms of imprisonment. The total sentence of imprisonment to be undergone for some of the appellants was two years while in the case of other appellants it was one year. The High Court dismissed the appeal in view of the appellants' entitlement to set off the period of their pre-trial detention against the entire sentence of imprisonment imposed upon them after observing that it was not necessary to go into the matter as it would be only of an academic interest.

Accepting the appeal by Special Leave and remanding the cases to the High Court for disposing of on merits, the Court,

HELD: (1) The High Court was in error in so far as it declined to go into the validity of the conviction of the appellants. [600 F]

(2) The object of a challenge to conviction is to avoid certain consequences flowing from conviction and also to erase the stigma resulting from the conviction. The fact that the convicted person has already Undergone the sentence or is otherwise entitled to be set at liberty because of the length of the period during which he has been under detention during the course of investigation, enquiry and trial cannot prevent the accused from challenging his conviction in appeal. [600 C-F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 20 of 1977.

Appeal by Special Leave from the Judgment and Order dated 28-2-75 of the Andhra Pradesh High Court in CrI. A.

No. 462 of 1973.

S.C. Agarwala and A.P. Gupta for the Appellants.

P.P. Rao, G.N. Rao and T.V.S.N. Chari for the Respondent.

'The Judgment of the Court was delivered by

KHANNA, J. This appeal by special leave is against the judgment of the Andhra Pradesh High Court dismissing the appeal filed by the appellants.

The appellants were convicted by the Additional Sessions Judge Visakhapatnam for offences under sections 147, 148 and 352 Indian Penal Code. Some of the appellants were also convicted for offences under section 5 of the Explosive Substances Act and section 25 of the Indian Arms Act. They were sentenced to various terms of imprisonment and the sentences were ordered to run concurrently. The total sentence of imprisonment to be undergone by some of the appellants was

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two years while in the case of the other appellants it was one year. The appellants went up in appeal to the High Court against the judgment of the trial court. The High Court referred to the fact that the appellants had been in custody during the course of the investigation, inquiry and trial, for about two years. The appellants were held entitled under section 428 of the Code of Criminal Procedure, 1973 to set off the period of detention against the sentence of imprisonment imposed upon them. The High Court in view of the above dismissed the appeal after observing that it was unnecessary to go into the matter as it would be only of an academic interest.

We have heard Mr. Agarwala on behalf of the appellants and Mr. Rao on behalf of the State, and are of the opinion that the judgment of the High Court in so far as it has refrained from going into the merits of the conviction of the appellants, cannot be sustained; The fact that a convicted person has already undergone the sentence or is otherwise entitled to be set at liberty because of the length of the period during which he has been under detention during the course of investigation, inquiry and trial cannot prevent the said person from challenging his conviction in appeal. Conviction for an offence entails certain consequences. Conviction also carries with it a stigma for the convicted person. A convicted person in challenging his conviction. in appeal not only seeks to avoid undergoing the punishment imposed upon him as a result of the conviction, he also wants that other evil consequences flowing from the conviction should not visit him and that the stigma which attaches to him because of the conviction should be 'wiped out. In case the convicted person undergoes the sentence of imprisonment imposed upon him or he is otherwise entitled to be set at liberty by the time his appeal against conviction comes up for hearing in view of the length of the period he was in detention during the course of investigation, inquiry or trial, such a person would still be entitled to challenge his conviction. The fact that he is set at liberty and would not have to undergo any further sentence of imprisonment would not debar him from questioning the validity of his conviction. The object of such a challenge to conviction is to avoid the other consequences flowing from conviction and also to erase the stigma resulting from the conviction.. The High Court, in our view, was in error in so far as it declined to go into the validity of the conviction of the appellants.

We, therefore, remand the case to the High Court for disposing of the appeal of the appellants on merit.

S.R.

Appeal allowed and case remanded.

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JUDIS