

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl) No.1499/2011
(From the judgment and order dated 20/08/2009 in CRLR No.1317/2009 of The
HIGH COURT OF M.P AT JABALPUR)

STATE OF M.P. Petitioner(s)

VERSUS

NEBU LAL Respondent(s)

(With appln(s) for exemption from filing O.T. and office report)

Date: 05/04/2013 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR
HON'BLE MR JUSTICE PINAKI CHANDRA GHOSE

For Petitioner(s) Mr. Siddhartha Dave, Adv.
Ms. Jemtiben AO, Adv.
Ms. Vibha Datta Makhija, Adv.

For Respondent(s) Ms. Nidhi, Adv.(SCLSC)

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed; the judgment and order of the High
Court is set aside. The sentence imposed on the respondent by
the trial Court and confirmed by the Appeal Court is upheld.
The respondent is directed to surrender within a period of eight
weeks from the date of service of a copy of this order to serve
the remaining period of sentence.

| (VINOD LAKHINA) | | (INDU BALA KAPUR) |
| COURT MASTER | | COURT MASTER |

(SIGNED ORDER IS PLACED ON THE FILE)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 541 OF 2013
[Arising out of Special Leave Petition (Criminal) No.1499 of
2011]

STATE OF MADHYA PRADESH ...APPELLANT

VERSUS

NEBU LAL ...RESPONDENT

ORDER

Leave granted.

The respondent having been convicted for an offence punishable under Section 377 of the Indian Penal Code, 1860 (for short "IPC") was sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/- by order, dated 29th January, 2009, passed by the Judicial Magistrate First Class, Bhopal in Criminal Case No.1568 of 2006.

Aggrieved by the aforesaid conviction dated 29th January, 2009, the respondent preferred Criminal Appeal No.73 of 2009. By judgment and order, dated 9th July, 2009, the aforesaid criminal appeal was dismissed and the sentence imposed by the Judicial Magistrate First Class, Bhopal in order, dated 29th January, 2009, was confirmed.

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Aggrieved by the aforesaid order, the respondent preferred Criminal Revision No.1317 of 2009 before the High Court of Madhya Pradesh. The High Court, by order, dated 20th August, 2009, has confirmed the conviction under Section 377 IPC, but has reduced the sentence imposed on the respondent to the period already undergone, subject to depositing compensation of Rs.2,000/-

The State has filed the present appeal challenging the aforesaid order of the High Court.

Mr. Siddhartha Dave, learned counsel appearing for the State of Madhya Pradesh, submits that the respondent was already the beneficiary of extraordinary leniency shown by the Judicial Magistrate First Class in sentencing the respondent, which had been confirmed by the Appeal Court. There was no justifiable reason on the basis of which the High Court could further reduce the aforesaid sentence of two years. The respondent had committed the offence with a boy, who was only twelve years of age. The High Court completely ignored this crucial aspect.

...3/-

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On the other hand, Ms. Nidhi, learned counsel appearing for the respondent has submitted that the High court has reduced the sentence taking into consideration the economic condition of the respondent. The High Court has also taken into consideration

that the respondent is an illiterate person, living in a jhuggi.

We have considered the submissions made by the learned counsel. We are satisfied that the High Court has committed an error of jurisdiction in reducing the sentence from two years Rigorous Imprisonment to sentence already undergone. The respondent had undergone only 42 days' imprisonment at the time when the High Court passed the impugned order. In our opinion, the High Court was not justified in interfering with the orders passed by the trial Court and confirmed by the Appeal Court.

...4/-

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In view of above, the appeal is allowed; the judgment and order of the High Court is set aside. The sentence imposed on the respondent by the trial Court and confirmed by the Appeal Court is upheld. The respondent is directed to surrender within a period of eight weeks from the date of service of a copy of this order to serve the remaining period of sentence.

.....,J.
(SURINDER SINGH NIJJAR)

.....,J.
(PINAKI CHANDRA GHOSE)

NEW DELHI
APRIL 05, 2013