

**By Adv Asim Sarode**

For the offence of theft there is punishment of imprisonment of either description which may extend to 3 years, with fine, or both according to the Indian Penal Code. The offence of theft is even though cognizable and non-bailable it is compoundable. So according to the criminal justice jurisprudence when the offence is compoundable then generally it cannot be termed as serious category of an offence. Otherwise also the seriousness and gravity of an offence can be assessed by the facts and circumstances involved in any incidence of crime. Every citizen in a free country is having right to do fair, law based analysis of any judgment given by any courts in India without challenging the integrity of the person working as judge.

The present case of theft in which poor laborer has been convicted by a Magistrate Court in Pune with 3 years of imprisonment for attempting theft of some meager amount seems to be very harsh punishment. Because according to the facts mentioned by the police in this case it clearly shows that the accused laborer was arrested when he was trying to run away with the donation box kept in the temple. That means it was an attempt to commit theft, as the process of grabbing the money from the donation box was not even completed and hence there is a mention in the complaint that the accused was caught red handed.

So considering the judicious interpretation of the incidence of offence based on the circumstances mentioned in the case itself, reasonableness while awarding the sentence shall be maintained is the accepted principle in criminal law.

Considering the fact that this was the first offence in which the accused was involved, the Magistrate should have applied the provisions of The Probation of Offender Act 1958. This Act is about considering the circumstances for release of offender of certain category on probation or after due admonition. Because it has been considered according to progressive interpretation of criminal law that persons having no criminal records and tendency who are first offenders shall not be put in situation which will bring connection with the obdurate criminals which will result in increasing the criminal tendencies in any individual. The modern trend of penology, according to which effort to be made to bring about correction and reformation of the individual offender and not to resort to retributive justice is not seen to be percolated to the level of lower judiciary. Section 3 of the Probation of Offender Act 1958 gives clear cut authority to the Magistrate Court to release certain offenders; this principle is supported by section 360 of Criminal Procedure Code also. But it seems that in today's age no one is ready to keep and express reliance on the prospective "good behavior" of persons living with poverty.

The criminal law is concerned with harm that people suffer and other people cause – harms such as loss of life, bodily injury, loss of autonomy and serious harm to property. Even though the criminal law's goal is not to compound the offences, to rehabilitate or to inculcate the values then also the accepted principle of maintaining ratio between gravity of offence and quantum of punishment has brought into action as 'best practices' into criminal justice administration. So with due respect the judicial setup it must be understood that the punishment awarded by the Magistrate Court is not in accordance with the progressive judgments pronounced by higher Courts and also by the Apex Court of India.

This case is definitely having strong materials of subject matters to challenge the conviction as it is also non-proportionate to award 3 years of punishment for attempt to commit a theft of meager amount of 320 rupees. Here the issues related to fairness, just and equitable sentence as well as human rights can be brought into action. We all need to maintain the elementary principal of the Constitution which gives us all equality before Law and Equal protection of Law. At the same time such types of cases brings a need to have more sensitive and pro-active implementation of the Laws which are having right based sense and reformative approach.