

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.956 OF 2019
(Arising out of SLP(Cr1.)No.6927/2018)

PRAKASH JAIN & ORS.

... APPELLANT(S)

VS.

THE STATE OF KARNATAKA

... RESPONDENT(S)

O R D E R

1. Leave granted.
2. We have heard learned counsel for the parties.
3. The accused-appellants have been convicted under Section 379 IPC and Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, by the learned Trial Court. The sentence imposed in respect of both the offences is one of fine. The appeal of the accused-appellants before the learned Sessions Judge was dismissed. Against the same a revision was filed before the High Court. The High Court while affirming and upholding the conviction, enhanced the sentence to one of rigorous imprisonment of three months for the offence under Section 379 IPC and rigorous imprisonment of six months for the offence under the Mines and Minerals (Development and Regulation) Act, 1957, This was done by

the High Court in the appeal filed by the accused-appellants against the conviction and sentence of fine and in the absence of any appeal by the State.

4. It is a well settled principle of law that though the High Court has the power to enhance the sentence *sou motu*, such power should be exercised sparingly and in exceptional circumstances and furthermore this power should not be exercised without issuing notice to the accused. This notice cannot be an illusory notice. As far as the present case is concerned, it appears that during the course of hearing notice was given. However, it is not clear whether such a notice was an oral notice or a notice in writing. In our view, such a notice would not satisfy the legal requirements. Any notice for enhancement must indicate why the Court wants to enhance the sentence and it must give reasonable time to the accused to answer the notice. This did not happen in the present case.

5. In the above facts, we are inclined to take the view that the High Court has exceeded its jurisdiction under the law to order imposition of sentence of imprisonment on the accused-appellants. The appeal of the accused-appellants is, therefore, allowed to the extent that the sentence of imprisonment by the High Court, in so far as two offences are concerned, is set aside.

6. The appeal is allowed and all pending applications stand disposed of.

.....CJI.
[RANJAN GOGOI]

.....J.
[DEEPAK GUPTA]

.....J.
[ANIRUDDHA BOSE]

New Delhi;
3rd July, 2019.

ITEM NO.38

COURT NO.1

SECTION II-C

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

Petition(s) for Special Leave to Appeal (Cr1.) No(s).6927/2018

**(Arising out of impugned final judgment and order dated 14-02-2018
in CRLRP No.2234/2010 passed by the High Court Of Karnataka Circuit
Bench At Dharwad)**

PRAKASH JAIN & ORS.

Petitioner(s)

VERSUS

THE STATE OF KARNATAKA

Respondent(s)

Date : 03-07-2019 This petition was called on for hearing today.

CORAM :

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE**

**For Petitioner(s) Mr. Mukul Rohtagi, Sr. Adv.
 Mr. Kailash Pandey, Adv.
 Mr. Ranjeet Singh, Adv.
 Ms. Nupur Sharma, Adv.
 Mr. J.K. Mishra, Adv.
 Mr. Gaichangpou Gangmei, AOR**

**For Respondent(s) Mr. V.N. Raghupathy, AOR
 Mr. Parikshit P. Angadi, Adv.**

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

Leave granted.

The appeal is allowed in terms of the signed order.

**(Anand Prakash)
Branch Officer**

**(Sarita Purohit)
AR-cum-PS**

(Signed order is placed on the file)