

**MOHAMMED ALI**

v.

**REGINAM**

[SUPREME COURT, 1969 (Moti Tikaram Ag. P.J.), 3rd, 28th March]

Criminal Jurisdiction

*Criminal law—practice and procedure—passing sentence—medical and social reports upon accused—contents to be made known to the accused.*

Where, in passing sentence upon an accused person, a court has before it a medical report and/or a Probation Officer's report in respect of the accused, the contents of the report or reports should be made known to the accused, in order that he may take advantage of any favourable aspects thereof when he addresses the court in mitigation.

Case referred to :

*R. v. Hughes* [1969] Crim.L.R. 20; (1968) 53 Cr.App.R. 125.

Appeal against a sentence imposed in the Magistrate's Court for fraudulent conversion.

Appellant in person.

*J. R. Reddy* for the respondent.

MOTI TIKARAM J. : [28th March 1969]—

This is an appeal against sentence only.

On the 27th January, 1969, the appellant pleaded guilty before a First Class Magistrate sitting at Ba to six counts of fraudulent conversion. He asked that nine other similar offences arising out of the same employment be taken into account. Upon conviction he was sentenced to twelve months' imprisonment on each count but the sentences were made to run concurrently, so that the total effective sentence was twelve months only.

In view of the accused's background and his history of mental and nervous breakdown the learned trial magistrate very rightly called for, not only a medical report but also a probation officer's report. He took these reports into consideration before passing sentence. However, it appears that copies of these reports were not made available to the appellant nor is there anything on trial record to indicate that these reports were read out to the accused in open court. Indeed the two grounds urged in support of the appeal against the alleged severity of the sentence, read as follows :—

“THAT The Magistrate erred in law by refusing to let the contents of the Medical Officer's report known to me despite my request, thereby depriving me of the benefit of full facts about my mental and physical conditions to be used in mitigation, therefore miscarriage of justice has taken place.

A THAT Similarly the learned Magistrate erred in law by refusing to let the report of the Probation Officer known to me thereby depriving me of the benefit of full facts as the Probation Officer found them, to be used in mitigation therefore miscarriage of justice has taken place."

B It is a well recognized practice and indeed an eminently desirable one that where a trial court is minded to take into consideration a social or a medical report on the accused person in assessing the nature and quantum of punishment to be passed upon him the contents of the report or reports must be made known to the accused person. The latest observation on the subject is to be found in the decision of the Court of Appeal in *R. v. Hughes* [1969] Crim. L.R. 20, where their Lordships stated that a trial judge should say in open court whether a social enquiry report has been received and whether the defendant has seen it.

C To enable the appellant to address this court adequately in support of his petition a copy of the probation officer's report as well as a copy of the medical report was supplied to him along with the typed copy of the case record. He has drawn to my attention the salient features of the two reports in so far as they are favourable to his plea. Needless to say he glossed over those portions which do not stand him in good light, for example the probation officer's observation that the accused person prepared the account book very cleverly so as to hide his actions "which was not the work of mentally ill person". However, the Consultant Psychiatrist's diagnosis included the observation amongst others — "character and personality deterioration due to brain damage." He however was of the opinion that the deterioration of the memory was not severe in that the accused was fit to plead and appreciates the significance of pleading guilty or not guilty. He was of the view that although there is no cure for this unfortunate man it is just possible that further decline may be arrested by hospitalization and maintenance on suitable drugs. The appellant has argued that a prison term particularly a long one would further impair his condition. Needless to say the appellant is not the only party to be considered in this case. The effectiveness and purpose of punishment are amongst the relevant factors to be considered.

F As far as the appellant's plea before this court is concerned he was clear, cogent and indeed very persuasive. Although the sentencing Magistrate specifically stated that he took into account the medical and social report I am in some doubt as to what the position might have been, had the appellant been given an opportunity in the court below to address in mitigation by referring to and emphasising the various salient features of the reports.

G Under normal circumstances on no account can it be said that the sentence of twelve months was in any way manifestly harsh, excessive or wrong in principle, bearing in mind the nature of offences, the amounts involved and the degree of planning that must have preceded the commission of the offences. On the other hand it does appear that this H appellant, notwithstanding his mental breakdown and other obstacles necessarily arising from such a condition, has made a determined effort to make good in life for himself, his wife and children. He managed to keep out of trouble for almost eight years. Although in law he is

responsible for his criminal acts the possibility of his damaged mental condition contributing towards his criminal lapses cannot be ruled out. Under these very special circumstances and in no way reflecting on the learned trial magistrate's assessment I have come to the view that a long sentence in this case will serve no useful purpose. I reduce the sentences from twelve months' imprisonment to six months' imprisonment on each count and order that they shall run concurrently. I also further order that the appellant be transferred to Suva Gaol where psychiatric treatment and hospitalization is more readily available.

*Appeal allowed.*