MOHAMMAD GIASUDDIN A

v.

STATE OF ANDHRA PRADESH

May 6, 1977

[V. R. KRISHNA IYER AND JASWANT SINGH, JJ.] B

Criminal Procedure Code 1973—*Sec.* 248(2)—*The new pre-sentencing provision—Punishment—Nature and object of—Reformative punishment—Probation—Parole.*

The appellant along with another accused deceived several desperate unemployed youngmen, received various sums of Rs. 1200 by false pretences that they would secure jobs for them through politically influential friends and other make-believe representations. The offence of cheating under s. 420 IPC C was made out and all the 3 courts concurrently convicted both the accused. The appellant was sentenced to 3 years rigorous imprisonment. The appellant is an unemployed youngman around 28 years old and used to work as a Junior Assistant in the Andhra Pradesh Secretariat. This Court granted special leave limited to the question of sentence.

Allowing the appeal partly,

HELD : (1) The pre-sentencing provision in s. 248(2) Cr. P. C. has a D penological significance of far-reaching import which has been lost on the trial magistrate. Reform of the black letter law is a time-lagging process. At all the three tiers the focus was on the serious nature of the crime and no ray of light on the criminal or on the pertinent variety of social facts surrounding him penetrated the forensic mentation. [153 D, E]

(2) Since the whole territory of punishment in its modern setting is virtually virgin so far as our country is concerned, the court went into the subject in some incisive depth for the guidance of the subordinate judiciary. [155 G] E

(3) Progressive criminologists in the world agree that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals—mental and moral—is the key to the pathology of delinquency and the therapeutic role of punishment. The whole man is a healthy man and every man is born good. Criminality is a curable deviance. If every saint has a past every sinner has a future and it is the role of law to remind both of this. [155 B-C]

(4) Man is subject to more stresses and strains in this age than ever before F and a new class of crimes arising from restlessness of the spirit and frustration of ambitions has erupted. White collar crime, as in the present case, belongs to this disease of man's inside. Barbarity and injury recoils as injury so that if healing the mentally or morally maimed or malformed man is the goal, awakening the inner being more than torturing through exterior compulsions, holds out better curative hopes. The infliction of harsh and savage punishment is thus a relic of past and regressive times. Today sentencing should be a process of re-shaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means G of social defence. Therefore, a therapeutic, rather than a terrorem outlook should prevail in our criminal courts. [156 E, H, 157 C-D]

Tejani AIR 1974 S C 228, 236; *Jagmohan Singh* AIR 1973 SC 947 and *Santa Singh* [1976] 4 SCC 190, referred to.

(5) There is a great discretion vested in the judge while imposing sentence. The Judge must exercise this discretionary power, draw his inspiration from the humanitarian spirit of the law living down the traditional precedents which H have winked at the personality of the crime doer and been swept away by the features of the crime. Unfortunately, the Indian Penal Code still lingers in the somewhat compartmentalised system of punishment *viz.*, imprisonment,

A simple or rigorous, fine and, of course, capital sentence. There is a wide range of choice and flexible treatment which must be available with the Judge if he is to fulfil his tryst with curing the criminal in a hospital setting. Rule of thumb sentences of rigorous imprisonment or other are too insensitive to the highly delicate and subtle operation expected of a sentencing judge. Release on probation, conditional sentences, visits to healing centres, are all on the cards. [161 E-H 162 A]

B (6) In the present case the crime is doubly bad and throws light on how gullible youngmen part with hard earned money in the hope that political influence indirectly purchased through money can secure jobs obliquely. But the victims of the crime must be commisserated with and in such white collar offences it is proper to insist upon reparation of the victims apart from any other sentence. The Court, therefore, directed the appellant to pay a fine of Rs. 1200/- which was directed to be made over by the Trial Court to P.W. 1 who was victim in the present case. [162 E—FG]

C (7) The appellant is a youngman of 28 years. He has a degree in Oriental Languages and another in Commerce. He was working as a Junior Assistant in the Government Secretariat and has now lost the post consequent on the conviction. This is a hard lesson in life. The socio-economic circumstances of the man deserve notice. His parents are old and financially weak. His parents, sisters and younger brothers are his dependents. The younger brother is also unemployed. These factors suggest that the economic blow, if the appellant is imprisoned for long, will be upon his brother at College and other members of his family. He had not committed any previous crime. The court rejected D the prayer of the appellant for release on probation on the ground that the appellant had a deliberate plan behind the crime operated in partnership upon 4 or more persons and that his age is such that he cannot be called immature. The court, however, reduced the sentence to 18 months. The court also recommended that :

(a) he should not be given work of a monotonous, mechanical, degrading type, but of a mental, intellectual or like type mixed with a little manual labour. This would ensure that the person does work more or less of the kind he used to;

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(b) the appellant must be paid a reasonable fraction of remuneration by way of wages for the work done, as unpaid work is bonded labour and humiliating;

(c) the appellant should be allowed to participate in sports and games, and take to artistic activity and/or meditational course. He should be given such opportunities by the Jail authorities as would stimulate his creativity and sensitivity.

F (d) a guarded parole release every 3 months for at least a week. [162 H, 163 A-E]

Humanitarian winds must blow into the prison barricades. Jail reforms from abolition of convict's constume and conscript labour to restoration and fraternal touch, are on the urgent agenda of the nation. Our prisons should be correctional houses, and not cruel iron aching the soul. [164 C]

G The court observed that the State should not hesitate to respect the personality in each convict in the spirit of the preamble to the Constitution and not to permit the colonial hang-over of putting people behind the bars and then forget about them. [164 F]

R. v. *King* [1970] (2) All, E.R. 248 and *R.* v. *Ironfield* [1971] (1) All E.R. 202, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 195 of 1977.

H Appeal by Special Leave from the Judgment and Order dated the 25-10-1976 of the Andhra Pradesh High Court in Crl. R., Case No. 660 of 1970 and Crl. R.P. No. 646 of 1976.

G. Venkatrama Sastry and *G. Narasinhulu* for the Appellant. A

P. Parameswara Rao and *G. Narayana* Rao for Respondent.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—Some basic issues bearing on prescription of punishments arise for judicial investigation in this criminal appeal where leave has been limited to tailoring the sentence by appellate review to fit the gravity of the delinquency and the redemption of the deviant.. B

The facts leading up to the conviction may need brief narration. The appellant, along with another accused, deceived several desperate unemployed young men, received various sums of Rs. 1200/- by false pretences that they would secure jobs for them through politically influential friends and other make-believe representations. The offence of cheating under section 420 IPC was made out and conviction of both the accused followed. The 1st accused (appellant before us) is a young man around 28 years old and works as a Junior Assistant in the Planning and Financial Department of the Andhra Pradesh Secretariat and the other accused is his friend who personated as a State Port Officer. Before the trial court, there was a formal, almost pharisaic, fulfilment of the pre-sentencing provision in section 248 (2) Cr. P. C. 1973. The opportunity contemplated in the sub-section has a penological significance of far-reaching import, which has been lost on the trial Magistrate. For he disposed of this benignant obligation by a brief ritual : C D

> "I made of the accused that they were found guilty under section 420 IPC and the punishment contemplated thereof." E

Reform of the black letter law is a time-lagging process. But judicial metabolism is sometimes slower to assimilate the spiritual substance of creative ideas finding their way into the statute book. This may explain why the appellate courts fell in line with the Magistrate's mechanical approach and confirmed the condign punishment of 3 years' rigorous imprisonment. At all the three tiers the focus was on the serious nature of the crime (cheating of young men by a government servant and his blackguardly companion) and no ray of light on the 'criminal' or on the pertinent variety of social facts, surrounding him penetrated the forensic mentation. The humane art of sentencing remains a retarded child of the Indian criminal system. F G

Now we enter the area of punitive treatment of criminals, assuming that the guilt has been brought home. Certain elemental factors are significant strands of criminological thought. Since the whole territory of punishment in its modern setting is virtually virgin so far as our country is concerned, we may as well go into the subject in some incisive depth for the guidance of the subordinate judiciary. The subject of study takes us to our cultural heritage that there is divinity in every man which has been translated into the H

A constitutional essence of the dignity and worth of the human person. We take the liberty of making an *Indian* approach and then strike a cosmic note.

Progressive criminologists across the world will agree that the Gandhian diagnosis of offenders at patients and his conception of prisons as hospitals—mental and moral—is the key to the pathology B of delinquency and the therapeutic role of 'punishment' The whole man is a healthy man and every man is born good. Criminality is a curable deviance. The morality of the law may vary, but is real. The basic goodness of all human beings is a spiritual axiom, a fall-out of the *advaita* of cosmic creation and the spring of correctional thought in criminology.

C If every saint has a past, every sinner has a future, and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the world treasury of criminology. The drawback of our criminal process is that often they are built on the bricks of impressionist opinions and dated values, ignoring empirical studies and deeper researches.

D India, like every other country, has its own crime complex and dilemma of punishment. Solutions to tangled social issues do not come like the crack of down but are the product of research and study, oriented on the founding faiths of society and driving towards that transformation which is the goal of free India. Man is subject to more stresses and strains in this age than ever before, and a new class of crimes arising from restlessness of the spirit and frustration E of ambitions has erupted. White-collar crime, with which we are concerned here, belongs to this disease of man's inside.

If the psychic perspective and the spiritual insight we have tried to project is valid, the police billy and the prison drill cannot 'minister to a mind diseased', nor tone down the tension, release the repression, F unbend the perversion, each of which shows up as debased deviance, violent vice and behavioral turpitude. It is a truism, often forgotten in the hidden vendetta in human bosoms, that barbarity breeds barbarity, and injury recoils as injury, so that if healing the mentally or morally maimed or malformed man (found guilty) is the goal, awakening the inner being, more than torturing through exterior compulsions, holds out better curative hopes.

G An aside. A holistic view of sentencing and a finer perception of the effect of imprisonment give short shrift to draconian severity as self-defeating and fillips meditational relaxation, psychic medication and like exercises as apt to be more rewarding. Therefore, the emphasis has to be as much on man as on the *system,* on the inner imbalance as on the outer tensions. Perhaps the time has come for H Indian criminologists to rely more on Patanjali sutra as a scientific curative for crimogenic factors than on the blind jail term set out in the Penal Code and that may be why western researchers are now seeking Indian yogic ways of normalising the individual and the group.

Western jurisdiction and sociologists, from their own angle have struck a like note. Sir Samual Romilly, critical of the brutal penalties in the then Britain, said in 1817 : "The laws of England are written in blood". Alfieri has suggested : 'society prepares the crime, the criminal commits it. George Micodotis, Director of Criminological Research Centre, Athens, Greece, maintains that 'Crime is the result of the lack of the right kind of education.' It is thus plain that crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual, and goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The *human* today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defense. We, therefore consider a therapeutic, rather than an in 'terrorem' outlook, should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. In the words of George Bernard Shaw : 'If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries'. We may permit ourselves the liberty to quote from Judge Sir Jeoffrey Streatfield : 'If you are going to have anything to do with the criminal courts, you should see for yourself the conditions under which prisoners serve their sentences.' In the same strain a British Buddhist-Christian Judge, speaking to a BBC reporter underscored the role of compassion :

> "Circuit Judge Christmas Humphreys told the BBC reporter recently that a judge looks 'at the man in the dock in a different way : not just a criminal to be punished, but a fellow human being, another form of life who is also a form of the same one life as oneself.' In the context of *karuna* and punishment for *karma* the same Judge said : 'The two things are not incompatible. You do punish him for what he did, but you bring in a quality of what is sometimes called mercy, rather than an emotional hate against the man for doing something harmful. You feel with him; that is what compassion means."
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> The Listener, November 25, 1976, p. (692)

Incidentally, we may glance at the prison system which leaves much to be desired in the sense of humanizing and reforming the *man* we call *criminal.*

Jimmy Carter, currently President of the United States and not a law man, made certain observations in his Law Day Speech to the University of Georgia while he was Governor of that State, which bear quotation :

> "In our prisons, which in the past have been a disgrace to Georgia, we've tried to make substantive changes in the

A quality of those who administer them and to put a new realm of understanding and hope and compassion into the administration of that portion of the system of justice. Ninety-five percent of those who are presently incarcerated in prisons will be returned to be our neighbors. And now the thrust of the entire program, as initiated under Ellis Mac Dougall and now continued under Dr. Ault, is to try to B discern in the soul of each convicted and sentenced person, redeeming features that can be enhanced. We plan a career for that person to be pursued while he is in prison. I believe that the early data that we have on recidivism rates indicates the efficacy of what we've done."

In the light of what we propose to do, in disposing of this appeal, C another observation of Jimmy Carter in the course of the same speech is relevant :

"Well, I don't know the theory of law, but there is one other point 1 want to make, just for your own consideration. I think we've made great progress in the Pardons and Paroles Board since I've been in Office and since we've reorganized the Government. We have five very enlight- D ened people there now. And on occasion they go out to the prison system to interview the inmates, to decide whether or not they are worthy to be released after they serve one third of their sentence. I think most jurors and most judges feel that when they give the sentence, they know that after a third of the sentence has gone by, they will be eligible for careful consideration. Just think for a moment about your E own son or your own father or your own daughter being in prison, having served seven years of a lifetime term and being considered for a release. Don't you think that they ought to be examined and that the pardons and Paroles Board ought to look them in the eye and ask them a question and if they are turned down, ought to give them some substantive reason why they are not released and what they F can do to correct their defects ?".

We have dealt with the subject sufficienty to set the humanitarian tone that must inform the sentencing judge, the *Karuna* that must line his verdict. The same compassionate outlook is reflected in some of the decision of this Court and of the High Courts indicating the distance between current penal strategy and Hammurabi's Code. G which, in about 1975 B.C., insited 'on an eye for an eye, a tooth for a tooth'.

Referring to the earlier Criminal Procedure Code and its deficiency in regard to sentencing, this Court observed in *Tejani* (AIR 1974 SC 228, 236) :

H "Finally comes the post-conviction stage where the current criminal system is weakest. The Court's approach has at once to be socially informed and personalised. Unfortunately, the meaningful collection and presentation of

the penological facts bearing on the background of the individual, the dimension of damage, the social milieu and what not—these are not provided in the Code and we have to make intelligent hunches on the basis of materials adduced to prove guilt. In this unsatisfactory situation which needs legislative remedying we go by certain broad features."

Similarly, in *Jagmohan Singh* (AIR 1973 SC 947) : 1973 (2) SCR 541,560 this Court observed :

"The sentence follows the conviction, and it is true that no formal procedure for producing evidence with reference to the sentence is specifically provided. The reason is that relevant facts and circumstances impinging on the nature and circumstances of the crime are already before the Court. Where counsel addresses the court with regard to the character and standing of the accused, they are duly considered by the Court unless there is something in the evidence itself which belies him or the Public Prosecutor for the State challenges the facts. If the matter is relevant and is essential to be considered, there is nothing in the Cr. P. C. which prevents additional evidence being taken. It must however be stated that it is not the experience of criminal courts in India that the accused with a view to obtaining a reduced sentence ever offers to call additional evidence.

However, it is necessary to emphasize that the Court is broadly concerned with the facts and circumstances whether aggravating or mitigating, which are connected with the particular crime under enquiry. All such facts and circumstances are capable of being proved in accordance with the provisions of the Indian Evidence Act in a trial regulated by the Cr. P.C. The trial thus does not come to an end until all the relevant facts are proved and the counsel on both sides have an opportunity to address the court....."

The Kerala High Court, in *Shiva Prasad* (1969 Ker. L.T. 862) had also something useful to say in this regard :

"Criminal trial in our country is largely devoted only to finding out whether the man in the dock is guilty. It is a major deficiency in the Indian system of criminal trials that the complex but important sentencing factors are not given sufficient emphasis and materials are not presented before the court to help it for a correct judgment in the proper personalised, punitive treatment suited to the offender and the crime....."

Likewise, Shri Justice Dua (as he then was) of the Punjab High Court had indicated the guidelines on the application of the rehabilitative theory in *Lekharaj & Ors* v. *State* (AIR 1960 Punjab 482) where the learned Judge had pointed out the relevance of the offender's circumstances and social milieu, apart

A from the daring and reprehensible nature of the offence. The Law Commission of India (in 47th Report) has summed up the components of a proper sentence :

> "A proper sentence is a composite of many factors, including the nature of the offence, the circumstances—extenuating or aggravating—of the offence, the prior criminal record, if any, of the offender, the age of the offender, the professional and social record of the offender, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospect for the rehabilitation of the offender, the possibility of a return of the offender to normal life in the community, the possibility of treatment or of training of the offender, the possibility that the sentence may serve as a deterrent to crime by this offender, or by others, and the present community need, if any for such a deterrent in respect to the particular type of offence involved." (para 7.44)

All that we have said upto now emphasizes the need on the part of the judges to see that sentencing ceases to be downgraded to Cinderella status.

The new Criminal Procedure Code, 1973 incorporates some of these ideas and gives an opportunity in s. 248(2) to both parties to bring to the notice of the court facts and circumstances which will help personalize the sentence from a reformative angle. This Court, in *Santa Singh* (1976) 4 SCC 190, has emphasized how fundamental it is to put such provision to dynamic judicial use, while dealing with the analogous provisions in s. 235(2) :

> "This new provision in s. 235(2) is in consonance with the modern trends in penology and sentencing procedures. There was no such provision in the old Code. It was realised that sentencing is an important stage in the process of administration of criminal justice—as important as the adjudication of guilt—and it should not be consigned to a subsidiary position as if it were a matter of not much consequence. It should be a matter of some anxiety to the court to impose an appropriate punishment on the criminal and sentencing should, therefore, receive serious attention of the Court. (p. 194).
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> Modern penology regards crime and criminal as equally material when the right sentence has to be picked out. It turns the focus not only on the crime, but also on the criminal and seeks to personalise the punishment so that the reformist component is as much operative as the deterrent element. It is necessary for this purpose that facts of a social and personal nature, sometimes altogether irrelevant if not injurious, at the stage of fixing the guilt, may have to be brought to the notice of the court when the actual sentence is determined. (p. 195).

A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances extenuating or aggravating—of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the Court in deciding upon the appropriate sentence. (p. 195).

The hearing contemplaced by section 235(2) is not confined merely to hearing oral submissions, but it is also intended to give an opportunity to the prosecution and the accused to place before the court facts and material relating to various factors bearing on the question of sentence and if they are contested by other side, then to produce evidence for the purpose of establishing the same. Of course, care would have to be taken by the court to see that this hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be harmonised with the requirement of expeditious disposal of proceedings." (p. 196).

It will thus be seen that there is a great discretion vested in the Judge, especially when pluralistic factors enter his calculations Even so, the judge must exercise this discretionary power, drawing his inspiration from the humanitarian spirit of the law, and living down the traditional precedents which have winked at the personality of the crime doer and been swept away by the features of the crime. What is dated has to be discarded. What is current has to be incorporated. Therefore innovation, in all conscience, is in the field of judicial discretion.

Unfortunately, the Indian Penal Code still lingers in the somewhat compartmentalised system of punishment viz. imprisonment, simple or rigorous, fine and, of course, capital sentence. There is a wide range of choice and flexible treatment which must be available with the judge if he is to fulfil his tryst with cruing the criminal in a hospital setting. Maybe in an appropriate case actual hospital treatment may have to be prescribed as part of the sentence. In another case, liberal parole may have to be suggested and, yet in a third category, engaging in certain types of occupation or even going through meditational drills or other courses may be part of the sentencing prescription. The perspective having changed, the legal strategies and judicial resources, in their variety, also have to change. Rule

A of thumb sentences of rigorous imprisorment or other are too insensitive to the highly delicate and subtle operation expected of a sentencing judge. Release on probation, conditional sentences, visits to healing centres, are all on the cards. We do not wish to be exhaustive. Indeed, we cannot be.

Sentencing justice is a facet of social justice, even as redemption B of a crime-doer is an aspect of restoration of a whole personality. Till the new Code recognised statutorily that punishment required considerations beyond the nature of the crime and circumstances surrounding the crime and provided a second stage for bringing in such additional materials, the Indian courts had, by and large, assigned an obsolescent backseat to the sophisticated judgment on sentencing. Now this judicial skill has to come of age.

C

The sentencing stance of the court has been outlined by us and the next question is what 'hospitalization' techniques will best serve and sentencee, having due regard to his just deserts, blending a feeling for a man behind the crime, defence of society by a deterrent component and a scientific therapeutic attitude at once correctional and realistic. The available resources for achieving these ends within D the prison campus also has to be considered in this context. Noticing the scant regard paid by the courts below to the soul of s. 248(2) of the Code and compelled to gather information having sentencing relevancy, we permitted counsel on both sides in the present appeal to file affidavits and other materials to help the Court make a judicious choice of the appropriate 'penal' treatment. Both sides have filed affidavits which disclose some facts pertinent to the project.

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We have earlier mentioned that the social abhorrence of the crime is an input, since the emphatic denunciation of a crime by the community must be reflected in the punishment. From this angle we agree with the trial court that unconscionable exploitation of unfortunately unemployed young men by heartless deception, compounded by pretension to political influence, calls for punitive severity to serve F as deterrent. The crime here is doubly bad and throws light on how gullible young men part with hard money in the hope that political influence, indirectly purchased through money, can secure jobs obliquely. But then the victims of the crime must be commisserated with and in such white-collar offences it is proper to insist upon reparation of the victims, apart from any other sentence. In the present case, four young men have been wheedled out of their little fortunes by two convicts and so, to drive home a sense of moral responsi- G bility to repair the injury inflicted, we think it right to direct the appellant to pay a fine of Rs. 1200/- which will be made over by the trial court to P.W.1 (whose case alone is the subject of the prosecution) under section 357 of the Code. That is to say, a fine of Rs. 1200/- is imposed will be paid over to the aforesaid P.W.1.

H What are the other circumstances which we may look into ? The appellant is a young man of 28 years. He has a degree in Bachelor of Oriental Languages and another in Commerce, which suggests that he may respond to new cultural impact. He was working as a Junior

Assistant in the Government Secretariat and has now lost the post consequent on the conviction. This is a hard lesson in life. The socio-economic circumstances of the man deserve to be noticed. His parents are old and financially weak, since they and the appellant's sisters and younger brother are his dependents. The younger brother also is unemployed. These factors suggest that the economic blow, if the appellant is imprisoned for long, will be upon his brother at College and the other members of his family. Extenuation is implicit in this fact. He prays for release on probation or under s. 360 of the Code because he has no blemish by way of previous crime or bad official record. Having regard to his age (not immature) and the deliberate plan behind the crime operated in partnership upon four—perhaps more—persons, we reject his request as over-ambitious. At the same time, a contrite convict, yet in his twenties, may deserve clement treatment. A just reduction of the sentence is justified and we think that incarceration for 18 months may be adequate. But this long period has to be converted into a spell of healing spent in an intensive care ward of the penitentiary, if we may say so figuratively. How can this be achieved ? First, by congenial work which gives job satisfaction—not jail frustration, nor further criminalisation. We therefore direct the State Government to see that within the framework of the Jail Rules, the appellant is assigned work not of a monotonous, mechanical, degrading type, but of a mental, intellectual, or like type mixed with a little manual labour(1). This will ensure that the prisoner does work more or less of the kind he is used to. The jail, certainly, must be able to find this kind of work for him, even on its own administrative side—under proper safeguards though.

Shri PP Rao, appearing for the State, assures us that in keeping with this constructive suggestion of the Court the jail authorities will assign to the appellant congenial work of a mental-cum-manual type and promote him to an officer-warder's position if his conduct is good. We have also made the suggestion that the appellant must be paid a reasonable faction of remuneration by way of wages for the work done, since unpaid work is bonded labour and humiliating. This amount may be remitted to his father once in three months. Shri Rao, on behalf of the State Government, has assured the Court that immediate consideration will be given to this idea by the State Government and the jail authorities.

We also think that the appellant has slipped into crime for want of moral fibre. If competent Jail Visitors could organise for him processes which will instil into him a sense of ethics it may help him become a better man. Self-expression and self-realisation have a curative effect. Therefore, any sports and games, artistic activity

(1) Says Gandhiji in Harijan : Feb. 6, 1947 "Intellectual work is important and has an undoubted place in the scheme of life. But what I insist on is the necessity of physical labour. No man, I claim, ought to be free from that obligation; it will serve to improve even the quality of his intellectual output".

A and/or meditational course, may also reform. We strongly recommend that the appellant be given such opportunities by the jail authorities as will stimulate his creativity and sensitivity. In this connection we may even refer to proven advantages of kindling creative intelligence and normalising inner imbalance reportedly accomplished by Transcendental Meditation (TM) propagated by Maharshi Mahesh Yogi in many countries in the west. Research projects conducted in B various countries bring out that people practising such or like courses change their social behaviour and, reduce their crime-proneness. We do not prescribe anything definite but indicate what the prison doctors may hopefully consider. While it is beyond us to say whether the present facilities inside the Central Prison, Hyderabad, make it feasible for the appellant to enjoy these benefits and thereby improve his inner being, we strongly feel that the humanitarian winds must blow C into the prison barricades. More than this is expected in this decade, when jail reforms, from abolition of convict's costume and conscript labour to restoration of basic companionship and atmosphere of self-respect and fraternal touch, are on the urgent agenda of the nation. Our prisons should be correctional houses, not cruel iron aching the soul

We have given thought to another humanising strategy, viz., a D guarded parole release every three months for at least a week, punctuating the total prison term. We direct the State Government to extend this parole facility to the appellant, Jail Rules permitting, and the appellant submitting to conditions of discipline and initiation into an uplifting exercise during the parole interval. We further direct the Advisory Board of the Prison, periodically to check whether the appellant is making progress and the Jail au hori t es are helping in the pro- E cess and implementing the prescription hereinabove given. Indeed, the direction of prison reform is not towards dehumanization but rehumanization, not maim and mayhem and vulgar callousness but man-making experiments designed to restore the dignity of the individual and the worth of the human person. This majuscule strategy involves orientation courses for the prison personnel. The State will not hesitate, we expect, to respect the personality in each convict, in the F spirit of the Preamble to the Constitution and will not permit the colonial hangover of putting people 'behind the bars' and then forget about them. This nation cannot—and, if it remembers its incarcerated leaders and freedom fighters—will not but revolutionize the conditions inside that grim little world. We make these persistent observations only to drive home the imperative of Freedom—that its deprivation, by the State, is validated only by a plan to make the sen- G tencee more worthy of that birthright. There is a spiritual dimension to the first page of our Constitution which projects into penology. Indian courts may draw inspiration from *Patanjali sutra* even as they derive punitive patterns from the Penal Code (most of Indian meditational therapy is based on the sutras of *Patanjali*).

Before we close this judgment we wish to dispel a possible mis- H apprehension about the fine we are imposing upon the cheat although we have proceeded on the footing of his family being relatively indigent. The further direction for making over the fine to the deceivees also needs a small explanation.

There is nothing in principle, as Lord Parker pointed out in *R. V. King* (1970 2 All. E. R. 248) to prevent a court from imposing a fine even when imposing a suspended sentence of imprisonment. 'Indeed, in many cases it is quite a good thing to impose a fine which adds a sting...' of course, the fine should not be altogether beyond the sentences means.

As to whether it is wrong to make a sort of compensation order in a case of a convicted person without much means, again, Lord Parker in *R. V. Ironfield* (1971 1 All. E. R. 202) has observed :

> "If a man takes someone else's property or goods, he is liable in Law to make restitution, or pay compensation... A victim.... need not be put to the additional trouble and expense of independent proceedings, and certainly cannot be required to forego his rights in order to facilitate the rehabilitation of the man who has despoiled him."

Counsel for the appellant has repeated that his client is taking examination in Accountancy—an indication of this anxiety to improve himself. We have no doubt that the jail authorities will afford facilities to the appellant to do his last-minutes studies and take the examination and, for that purpose, allow him to go to any library and the examination hall under proper conditions of security.

The affidavit on behalf of the State indicates that a tendency to turn a new page is discernible in the appellant and this has to be strengthened imaginatively by the Jail Superintendent, if need be, by affording him opportunity for initiation into Transcendental Meditation courses or like exercises provided the appellant shows an appetite in that direction and facilities are available in Hyderabad City.

Shri P. P. Rao, for the State, has represented that the Andhra Pradesh Government is processing rules for payment of wages to prisoners who work but that it may take a few months more for finalisation. It is a little surprising that at least two decades or more have been spent in this country after Freedom discussing active programmes of correction although in some States, for long years the wage system has been in vogue. Andhra Pradesh State will rise to this civilized norm and, when it finalises rules, will take care to see that the wages rates are reasonable and not trivial and that retrospective effect will be given to see that at least from October 2, 1976 (the birthday of the Father of the Nation) effect is given to the wage policy.

Shri Sastry, for the appellant, assured the Court that he had been instructed to state that Rs. 1200/- would be paid right away out of the fine imposed.

We allow the appeal in humanist part, as outlined above, while affirming the conviction. More concretely, we direct that (a) the sentence shall be reduced to 18 (eighteen) months, less the period already undergone; (b) our directions, above mentioned, regarding parole and assignment of suitable work and payment of wages in jail shall be complied with; and (c) the appellant shall pay a fine of

A Rs. 1200/-. We appreciate the services of counsel Shri P. P. Rao in disposing of this appeal justly. We may also mention that Shri G. V. R. Sastry appearing for the appellant has also helped the court towards the same end.

P.H.P. *Appeal allowed.*