ATTORNEY-GENERAL
v.
SAMPATH

COURT OF APPEAL.
GUNASEKERA, J. (P/CA).
DE SILVA, J.
C.A. REV: 650/96.
H.C. COLOMBO 7764/96.
JUNE 23, 1997.

Offensive Weapons Act No. 18 of 1966 – Section 2(1) (B) – Indicted – Pleaded guilty – Sentence to be effective from date of offence – Section 287, section 300 Criminal Procedure Act – Could the period of remand that has been served be deemed to be a part of the sentence imposed – Imposing a fine is it mandatory.

Held:

(1) The learned High Court Judge having imposed a term of three years R.I. could not have in law directed that the period spent in remand by the accused-respondent should be taken into consideration as a part of the period of the sentence that he had served.

(2) Under section 2(1)(B) imposing a fine is a mandatory provision.

APPLICATION in Revision by the Attorney-General.

Rienzie Aresakularatne D.S.G., with *Kapila Waidyaratne S.S.C.*, for Attorney-General.

Mevan Balalle for accused-respondent (assigned).

Cur. adv. vult.

June 23, 1997.
GUNASEKERA, J. (P/CA)

This is an application in revision filed by the Hon. Attorney-General seeking to have the sentence imposed by the learned High Court Judge on 02.09.1996 on the accused-respondent on pleading guilty to a charge under section 2(1)(B) of the Offensive Weapons Act No. 18 of 1966 set aside.

The accused-respondent was indicted with having being in possession of two offensive weapons on or about 23.05.1993, punishable under section 2(1)(B) of the Offensive Weapons Act. When the trial was taken up on 02.09.1996 the accused-respondent had withdrawn his earlier plea of not guilty and pleaded guilty to the charge in the indictment. After hearing Counsel for the State and learned Counsel for the accused-respondent in mitigation, the trial judge had sentenced the accused-respondent to a term of three years Rigorous Imprisonment and directed that the said sentence of three years Rigorous Imprisonment to be effective from 23.05.1993 which was the date of offence and the date on which he had been arrested, taking into account the fact that the accused-respondent had been in custody for a period of three years and four months the learned trial judge had taken the view that the sentence of three years imposed by him had already been served by the accused-respondent and directed the Prison Authorities to release the accused-respondent from custody. It is against this order that the Attorney-General had filed this application in revision on the basis that there is no provision in law for the learned trial Judge to have directed that sentence imposed by him should have retrospective effect.

It is submitted by learned Deputy Solicitor General that for an Offence under section 2(1)(B) it was open to the learned trial judge to have imposed a maximum sentence of 10 years Rigorous Imprisonment and a maximum fine of Rs. 10,000/- and in addition whipping. The learned trial judge having imposed a term of 3 years rigorous imprisonment could not have in law directed that the period spent in remand by the accused-respondent should be taken into consideration as a part of the period of the sentence that he has served. In this connection learned Deputy Solicitor-General draws our attention to provisions of sections 287 and 300 of the Code of Criminal Procedure Act. These two provisions clearly indicate that upon the sentence being pronounced after conviction that the Registrar of the High Court shall make out a warrant of committal which shall be signed by the judge who passed the sentence, or a colleague of his or his successor in office and dated of the day that sentence was passed.

Section 300 states that when a person actually undergoing imprisonment is sentenced to imprisonment such imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced.

These two provisions clearly indicate that the trial judge is not empowered to direct that a period of remand that has been served by an accused should be deemed to be a part of the sentence imposed and treat, that as a part of the sentence that he has served. The learned Deputy Solicitor General also contends that the learned trial judge has failed to give effect to the imperative provisions of section 2(1)(B) in that trial judge had failed to impose a fine on the accused-respondent on pleading guilty.

We have considered the provisions of section 2(1) (B) of the Offensive Weapons Act and are of the view that imposing a fine is a mandatory provision. In the circumstances we are of the view that there is merit in the contention made on behalf the Hon. Attorney-General. Thus we set aside the order of the learned High Court Judge dated 02.09.1996. Having regard to the fact that the accused-respondent has been out of jail consequent upon the order made by the learned trial judge on 02.09.1996 and also having regard to the facts as set out by Counsel who appeared assigned on his behalf in mitigation we impose a term of two years rigorous imprisonment on the accused-respondent from today and direct that the two years Rigorous Imprisonment be suspended for a period of five years. In addition we impose a fine of Rs. 1000/- and in default of payment impose a term of six months rigorous imprisonment. The learned trial judge is to comply with provisions of section 303 subsections (4) and (6) of the Code of Criminal Procedure Act and consider giving reasonable time for payment by instalment of the fine imposed. The application in revision is allowed.

DE. SILVA, J. - I agree.

Application allowed.