A VISHNU NAGNATH DESHMUKH

v.

STATE OF MAHARASHTRA

NOVEMBER 8, 2000

B [UMESH C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

Prevention of Corruption Act, 1947 : Sections 5(1)(d) and 5(2).

Indian Penal Code, 1860 : Section 161.

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Prevention of Corruption—Illegal gratification—Conviction for—Sentencing—Appellant—Accused—Acceptance of illegal gratification by—Finding of Trial Judge—Upheld by High Court—Conviction—Imprisonment of six months—Appeal before Supreme Court—Held no interference was called for with fact finding—In view of smallness of amount involved sentence D *imposed on the accused reduced to the period already undergone by him.*

Criminal trial—Accused—Sentence—Punishment—Purpose of.

B.G. Goswami **v.** *Delhi Administration,* **[1974] 1 SCR 222, relied on.**

E *Constitution of India, 1950 : Article 136*

Appeal—Examination of evidence by Supreme Court—Permissibility of—Held Supreme Court does not examine the evidence for itself except when the interest of justice so requires.

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1127 of 1995.

From the Judgment and Order dated 13.4.93 of the Bombay High Court in Crl. A. No. 799 of 1986.

G V.N. Ganpule and K. Sarada Devi (A.C.) for the Appellant.

I.G. Shah, S.S. Shinde and S.V. Deshpande for the Respondent.

The following Order of the Court was delivered :

H The appellant in this appeal by grant of special leave challenges the

judgment and order dated 13.4.1993 passed by the learned single Judge of the Bombay High Court upholding on appeal the appellant's conviction under section 5(2) read with section 5(i)(d) of the Prevention of Corruption Act, 1947 and under section 161 IPC. The Special Judge, Solapur, in Case No. 4/1986 convicted the appellant with rigorous imprisonment for six months and a fine of Rs. 100 and in default of payment of fine the appellant to undergo further rigorous imprisonment for 15 days.

The subject-matter of the appeal pertains to illegal gratification of Rs. 10. The learned advocate appearing in support of the appeal took us in great detail to the evidence tendered and contended that question of there being any corruption involved does not arise since the Tahsildar himself has allowed the appellant to retain a book for collection of money for soldiers welfare fund. Payment of Rs. 10 thus stands admitted. The dispute being whereas the appellant is contending that the same was collected at the instance of the Tahsildar on account of soldiers welfare fund, the prosecution harped upon illegal gratification. The record depicts that PW2 Yunus went to the office of the Tahsildar on 8.1.1986 and gave an application for issuance of necessary succession certificate and it is the accused who is said to have informed Yunus (PW2) that the application would be sent for inquiry but one can get a certificate only upon payment of certificate fees and in that case fees was prescribed at Rs. 10 and it is on this score that a complaint was lodged with the Anti-Corruption Department and the usual formalities regarding these matters were duly complied with. Before we proceed further in the matter we ought to appreciate that this Court does not examine the evidence for itself in appeal under Article 136 of the Constitution except when the interest of justice so requires. In the instant case the facts have been gone in detail by both the Special Judge as also by the learned single Judge of the High Court in appeal. The question of any intervention on the factual situation at this stage of the proceedings is not warranted. On the factual aspect also and having due regard to the evidence, we also cannot come as a matter of fact to a different conclusion than what has been arrived at, except however on the question of sentence. The learned advocate appearing in support of the appeal in the alternative submitted that by reason of the smallness of the amount involved and by reason of the factum that the appellant being in jail for a period of four months, the question of further punishment would not arise in the factual context and submitted that the appellant has enough sufferings already by reason of the long lapse of time during the pendency of the proceedings and interest of justice would be sub-served in having the punishment for the period already undergone. In support of the alternative

A submission strong reliance is placed on the decision of this Court in *B.G. Goswami* v. *Delhi Administration*, [1974] 1 SCR 222 wherein this Court recorded that the purpose of sentence is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future both as an individual and as a member of the society. This Court thereafter observed :-

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> "Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the consideration already noticed by us and the fact that to send the appellant back to jail now after 7 years of the agony and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs. 200 to Rs. 400. Period of imprisonment in case of default will remain the same."

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On the wake of the observations above, we also do feel it inclined to accept the submissions made on behalf of the appellant that the interest of justice would be met if we reduce the imprisonment to that already undergone by reason of the smallness of the amount involved. We take it on record that the amount of fine has already been paid and as such we do not wish to enhance the amount either. Learned counsel for the appellant in support of the appeal has stated that the appellant has undergone four month sentence. The appeal thus stands accepted in part and disposed of in terms of the above.

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T.N.A. Appeal disposed of.