

[2014] 1 S.C.R. 1063

V.K. VERMA

v.

CBI

(Criminal Appeal No. 404 of 2014)

FEBRUARY 14, 2014

**[SUDHANSU JYOTI MUKHOPADHAYA AND
KURIAN JOSEPH, JJ.]**

SENTENCE/SENTENCING:

Reducing of sentence to a period less than the minimum prescribed -- Conviction u/ss. 5(1) (d) r/w s. 5(2) of 1947 Act and s. 161, IPC - Conviction and sentence of one and half years with fine - Held: Thirty years long delay in the proceedings, three months incarceration, age of accused with ailments and the petty amount of bribe would be special reasons for reducing the substantive sentence -- Accordingly, sentence of imprisonment is reduced to the period already undergone and fine enhanced to Rs.50,000/- -- Prevention of Corruption Act, 1947 -- u/ss. 5(1) (d) r/w s. 5(2) - Penal Code, 1860 - s. 161.

The appellant was prosecuted for offences punishable us 161, IPC and s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act, 1947 on the ground that he demanded and accepted a bribe of Rs.265/- from a contractor on 21.12.1984. The trial court convicted him of the offences charged and sentenced him to undergo RI for one and a half years with a fine of Rs.5,000/- under each of the two counts. The High Court declined to interfere.

Partly allowing the appeal, the Court

HELD: 1.1. As far as punishment under old s. 161 of

A IPC is concerned, there is no mandatory minimum punishment. Under s. 5(2) of the Prevention of Corruption Act, 1947, there is a mandatory minimum punishment of one year. It may extend to seven years. However, under the proviso, the court may, for special reasons, impose
 B a sentence of imprisonment of less than one year. [para 9] [1066-G-H; 1067-A]

1.2 The long delay before the courts in taking a final decision with regard to the guilt or otherwise of the accused, is one of the mitigating factors to decide on the
 C quantum of sentence. In the instant case, it is a litigation of almost three decades in a simple trap case and that too involving a petty amount. It took 10 years for the matter to be registered as a sessions case. The trial also
 D took almost 10 years. The matter took further 10 years before the High Court. The appellant has already undergone physical incarceration for three months and mental incarceration for about thirty years. Further, he is aged 76 and also has cardio vascular problems. This Court is of the view that the facts of the case would
 E certainly be special reasons for reducing the substantive sentence. Accordingly, the substantive sentence of imprisonment is reduced to the period already undergone. However, fine is enhanced to Rs.50,000/-. [para 4,11, 15 and 16] [1065-H; 1066-A; 1067-C-F]

F *Ashok Kumar v. State (Delhi Administration)* 1980 (2) SCR 863 = (1980) 2 SCC 282; *Sharvan Kumar v. State of Uttar Pradesh*, (1985) 3 SCC 658; and *Ajab and others v. State of Maharashtra*, 1989 Supp (1) SCC 601 - relied on.

G **Case Law Reference:**

1980 (2) SCR 863 relied on para 12

(1985) 3 SCC 658 relied on para 13

H

1989 Supp (1) SCC 601 relied on **para 14** A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 404 of 2014.

From the Judgment and Order dated 22.07.2013 of the
High Court of Delhi at New Delhi in CrI. A. No. 293 of 2003. B

M. Yogesh Kanna, A. Santha Kumaran, Vanita C. Giri for
the Appellant.

P.P. Malhotra, ASG, P.K. Dey, Shadman Ali, B.V. Balram
Das for the Respondent. C

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. Appellant is the accused in C.C. No. 205 of 1994 on
the file of the Special Judge, Delhi. He was tried for offences D
under Section 161 of the Indian Penal Code (45 of 1860)
(hereinafter referred to as 'IPC') and Section 5(1)(d) read with
Section 5(2) of the Prevention of Corruption Act, 1947. The
charge was that the appellant demanded and accepted bribe E
of Rs.265/- from a contractor by name Sanjeev Kumar
Sawhney on 21.12.1984. According to the appellant, the said
contractor had an axe to grind since the appellant did not budge
to his demand for improper measurement of the work done by
him and he was actually trapped at his instance. FIR was
registered on 21.12.1984. The sessions court convicted him F
of the charges and sentenced him to undergo rigorous
imprisonment for a period of one and a half years with a fine
of Rs.5,000/- each under the charged Sections, as per
Judgment dated 10.04.2003.

3. The High Court declined to interfere with the conviction G
and sentence and dismissed the appeal as per Judgment
dated 22.07.2013 and, hence, the appeal.

4. One wonders as to how it took ten years for the matter
to be registered as sessions case and stranger is it to see that
the trial also took almost ten years and still stranger is that the H

A matter took ten years in the High Court.

5. Pursuant to dismissal of the appeal before the High Court, the appellant surrendered before the Special Judge on 03.10.2003 and he was sent to custody. On 28.10.2013, this Court issued notice limited to the quantum of sentence.

B Thereafter, by Order dated 16.12.2013, the appellant was enlarged on bail.

C 6. Learned counsel for the appellant submits that the incident is of the year 1984, the appellant is now aged 76 and he is sickly. Heard also the counsel for the CBI who has strongly opposed even any lenient approach by this Court.

7. Section 5 of the Prevention of Corruption Act, 1947 deals with criminal misconduct. Section 5(2) deals with punishment, which reads as under:

D **"5. Criminal misconduct.**

E (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine :

Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year."

F 8. Section 161 of IPC was omitted by the introduction of the Prevention of Corruption Act, 1988. The pre-amended proviso dealt with the offence of public servant taking gratification other than legal remuneration in respect of an official act. The punishment was:

G "... imprisonment of either description for a term which may extend to three years, or with fine or with both"

H 9. Thus, as far as punishment under the old Section 161 of IPC is concerned, there is no mandatory minimum punishment. The question is whether the sentence could be reduced for any special reason. Under the old Prevention of

Corruption Act, 1947, there is a mandatory minimum punishment of one year. It may extend to seven years. However, under the proviso, the court may, for special reasons, impose a sentence of imprisonment of less than one year. A

10. In imposing a punishment, the concern of the court is with the nature of the act viewed as a crime or breach of the law. The maximum sentence or fine provided in law is an indicator on the gravity of the act. Having regard to the nature and mode of commission of an offence by a person and the mitigating factors, if any, the court has to take a decision as to whether the charge established falls short of the maximum gravity indicated in the statute, and if so, to what extent. B C

11. The long delay before the courts in taking a final decision with regard to the guilt or otherwise of the accused is one of the mitigating factors for the superior courts to take into consideration while taking a decision on the quantum of sentence. As we have noted above, the FIR was registered by the CBI in 1984. The matter came before the sessions court only in 1994. The sessions court took almost ten years to conclude the trial and pronounce the judgment. Before the High Court, it took another ten years. Thus, it is a litigation of almost three decades in a simple trap case and that too involving a petty amount. D E

12. In *Ashok Kumar v. State (Delhi Administration)*¹, the commission of offence of theft was in 1971 and the Judgment of this Court was delivered in 1980. The conviction was under Section 411 of IPC. This Court having regard to the purpose of punishment and "the long protracted litigation", reduced the sentence to the period already undergone by the convict. F

13. In *Sharvan Kumar v. State of Uttar Pradesh*², the commission of offence was in 1968 and the judgment was delivered in 1985. The conviction was under Sections 467 and 471 of IPC. In that case also, the long delay in the litigation G

1. (1980) 2 SCC 282.

2. (1985) 3 SCC 658. H

A process was one of the factors taken into consideration by this Court in reducing the sentence to the period already undergone.

14. In *Ajab and others v. State of Maharashtra*³ also, this Court had an occasion to examine the similar situation. The offence was committed in 1972 and this Court delivered the Judgment in 1989. The conviction was under Section 224 read with Section 395 of IPC. In that case also "passage of time was reckoned as a factor for reducing the sentence to the period already undergone". This Court in that case, while reducing the substantive sentence, increased the fine holding that the same would meet the ends of justice.

15. The appellant is now aged 76. We are informed that he is otherwise not keeping in good health, having had also cardio vascular problems. The offence is of the year 1984. It is almost three decades now. The accused has already undergone physical incarceration for three months and mental incarceration for about thirty years. Whether at this age and stage, it would not be economically wasteful, and a liability to the State to keep the appellant in prison, is the question we have to address. Having given thoughtful consideration to all the aspects of the matter, we are of the view that the facts mentioned above would certainly be special reasons for reducing the substantive sentence but enhancing the fine, while maintaining the conviction.

16. Accordingly, the appeal is partly allowed. The substantive sentence of imprisonment is reduced to the period already undergone. However, an amount of Rs.50,000/- is imposed as fine. The appellant shall deposit the fine within three months and, if not, he shall undergo imprisonment for a period of six months. On payment of fine, his bail bond will stand cancelled.

R.P.

Appeal partly allowed.

H 3. 1989 Supp (1) SCC 601.