2019 INSC 142

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1723 OF 2009

Ambi Ram ....Appellant(s)

VERSUS

State of Uttarakhand ....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. This appeal is filed against the final judgment and order dated 14.05.2009 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No. 258 of 2001 (Old No.1518/1991) whereby the High Court partly allowed the appeal filed by the appellant herein.

2. A few facts need mention to appreciate the short controversy involved in this appeal.

3. The appellant was working as "Kanoongo/Patwari" at Didihat, Uttarakhand. He was prosecuted for commission of the offences punishable under Section 5 (2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as “the PC Act”) read with Section 161 of the Indian Penal Code, 1860(hereinafter referred to as “IPC”).

4. The charge against the appellant was that he assured one Gopal Singh that he would not arrest him nor would implicate him in one pending criminal case, if he pays him Rs.1200/-.

5. It was the case of the prosecution that the appellant while accepting the illegal gratification of Rs.1200/- from Gopal Singh on 30.09.1985 was caught by S.P. (Vigilance) in a trap arranged for this purpose at the behest of Gopal Singh.

6. The Sessions Judge, Pithoragarh, by order dated 05.08.1991, found the case of the prosecution proved beyond reasonable doubt and accordingly

convicted the appellant for the offences punishable under Section 5 (2) of the PC Act read with Section 161 IPC and sentenced him to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.5000/- under Section 5(2) of the PC Act and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year and to undergo rigorous imprisonment for a period of three years under Section 161 IPC. Both the sentences were to run concurrently.

7. The appellant felt aggrieved by his conviction and sentence and filed an appeal in the High Court. By impugned order, the High Court partly allowed the appeal. The High Court maintained the conviction insofar as it pertains to the offence punishable under Section 5(2) of the PC Act but interfered in quantum of sentence awarded and accordingly reduced the jail sentence from four years to one year and reduced the fine amount of

Rs.5000/- to Rs.3000/- in default of payment of fine to further undergo rigorous imprisonment for three months. So far as the offence punishable under Section 161 IPC is concerned, the High Court upheld the conviction but reduced the sentence from three years to one year. Both the sentences were to run concurrently.

8. The appellant(accused) felt aggrieved and has filed this appeal by way of special leave in this Court.

9. Heard Mr. Arun K. Sinha, learned counsel for the appellant(accused) and Mr. Ashutosh Kumar Sharma, learned counsel for the respondent(State).

10. Learned counsel for the appellant (accused) has argued only one point. He did not question the legality of the conviction. All that he argued was that the jail sentence awarded to the appellant be reduced.

11. According to him, having regard to the fact that the appellant is now aged around 78 years and suffering from heart ailment and further the incident is of the year 1985 and, in the meantime, 34 years have elapsed and lastly, the appellant has undergone around one month and 10 days imprisonment, this Court should exercise its powers under proviso to Section 5 (2) of the PC Act and reduce the jail sentence from one year to what is undergone by the appellant, i.e., 1 month and 10 days as his total jail sentence and may, if considered proper, instead enhance the fine amount.

12. Learned counsel for the respondent, in reply, supported the impugned order and contended that having regard to the factual circumstances, no case of further reduction in the sentence awarded by the High Court is made out and, therefore, the appeal is liable to be dismissed.

13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and reduce the sentence as indicated below.

14. Section 5 (2) of the PC Act reads as under :

> **"(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."**

15. Reading of Section 5 (2) of the PC Act shows that it provides that 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.

16. The proviso then empowers the Court to impose sentence of imprisonment of less than one year provided any special reasons are recorded in

writing in support of imposing such reduce sentence of less than one year.

17. It is, therefore, clear that the Court is empowered to impose a sentence, which may vary from 1 year to 7 years with fine. However, in a particular case, the Court finds that there are some special reasons in favour of the accused then the Court is empowered to impose imprisonment of less than one year provided those special reasons are set out in writing in support of imposing sentence less than one year. So far as imposing of fine is concerned, it is mandatory while imposing any jail sentence. How much fine should be imposed depend upon the facts of each case.

18. In the case of **K.P. Singh vs State (NCT of Delhi),** (2015) 15 SCC 497, this Court on somewhat similar facts considered the question as to what factors/circumstances should be taken into consideration for reducing the jail sentence.

19. In his concurring opinion, Justice T.S Thakur (as his Lordship then was and later CJI) in his distinctive style of writing in detail examined this question in the light of law laid down by this Court in earlier cases on the subject and held as under:

> **"10. Determining the adequacy of sentence to be awarded in a given case is not an easy task, just as evolving a uniform sentencing policy is a tough call. That is because the quantum of sentence that may be awarded depends upon a variety of factors including mitigating circumstances peculiar to a given case. The courts generally enjoy considerable amount of discretion in the matter of determining the quantum of sentence. In doing so, the courts are influenced in varying degrees by the reformative, deterrent and punitive aspects of punishment, delay in the conclusion of the trial and legal proceedings, the age of the accused, his physical/health condition, the nature of the offence, the weapon used and in the cases of illegal gratification the amount of bribe, loss of job and family obligations of the accused are also some of the considerations that weigh heavily with the courts while determining the sentence to be awarded. The courts have not attempted to exhaustively enumerate the considerations that go into determination of the quantum of sentence nor have the courts attempted to lay down the weight that each one of these considerations carry. That is because any such exercise is neither easy nor**

advisable given the myriad situations in which the question may fall for determination. Broadly speaking, the courts have recognised the factors mentioned earlier as being relevant to the question of determining the sentence. The decisions of this Court on the subject are a legion. Reference to some only should, however, suffice.

19. Given the fact that the trial and appeal proceedings have in the case at hand continued for nearly 17 years by now causing immense trauma, mental incarnation (*sic* incarceration) and anguish to the appellant and also given the fact that the bribe amount was just about Rs 700 and that the appellant has already undergone 7½ months imprisonment against the statutory minimum of 6 months' imprisonment, the reduction of the sentence as proposed by my esteemed Brother appears to be perfectly in order. I, therefore, concur with the view taken by his Lordship."

20. Keeping in view the aforementioned statement of law laid down by this Court when we examine the facts of the case at hand, we find that Firstly, the incident is of the year 1985; Secondly, this case is pending for the last 34 years; Thirdly, the appellant has now reached to the age of 78 years; Fourthly, he is suffering from heart ailment, as stated by the

learned counsel for the appellant, and is also not keeping well; Fifthly, he has so far, during the trial and after suffering conviction, undergone total jail sentence of one month and 10 days; Sixthly, he has been on bail throughout for the last 34 years and did not indulge in any criminal activities nor breached any conditions of the bail granted to him; Seventhly, the bribe amount was Rs.1200/-; and lastly, in the last 34 years, he has suffered immense trauma, mental agony and anguish.

21. The aforesaid 8 reasons which, in our view, are the special reasons satisfy the requirements of proviso to Section 5 (2) the PC Act. This Court, therefore, invoke the powers under proviso to Section 5 (2) of the PC Act and accordingly alter the jail sentence imposed on the appellant by the two Courts below and reduce it to "what is already undergone by the appellant", i.e., 1 month and 10 days.

22. In other words, this Court alter the jail sentence of the appellant and award him "what is already undergone by him" and at the same time enhances the fine amount of Rs.3000/- to Rs.10,000/- to meet the ends of justice.

23. The appellant is, therefore, now not required to undergo any more jail sentence. However, in case he fails to deposit a fine amount of Rs.10,000/- after adjusting the sum of Rs.3000/-, if already paid by the appellant, he will have to undergo simple imprisonment for a period of one month.

24. If the appellant deposits the fine amount of Rs.10,000/- within 3 months from today, he will not be required to undergo any default jail sentence. If he has already deposited Rs.3000/- then he will only deposit Rs.7000/-.

25. In view of the foregoing discussion, the appeal succeeds and is partly allowed. The impugned order is modified to the extent indicated above.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[DINESH MAHESHWARI]

New Delhi;
February 05, 2019