

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEALS NO.737-738 OF 2009

R. SETHU & ANR.

.. APPELLANT(S)

VERSUS

STATE REPRESENTED BY SUB-INSPECTOR

OF POLICE

.. RESPONDENT(S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Madras, Bench at Madurai in Criminal Appeal Nos.1107 and 1108 of 1998, dated 17.06.2008, whereby the High Court has confirmed the order of conviction and sentence passed by the Trial Court.

2. The brief facts are: appellants Nos.1 and 2 were working as the Sub-Registrar and as Assistant respectively in the Sub-Registrar's Office at Shivagiri. The complainant (PW-2) had approached the

appellants for the issuance of an encumbrance certificate. The appellants demanded a sum of Rs.50/- each as illegal gratification in return for issuing the said certificate and PW-2, after an initial refusal, agreed to the same.

3. On 28.04.1993, PW-2 approached the Palayamkotti Anticorruption Department and filed a complaint which was duly registered as Crime No.2/1993. Pre-trap proceedings including the smearing of currency notes produced by PW-1 with phenolphthalein powder were completed. Subsequently, PW-2, together with an independent witness (PW-3), went to the appellants' office and on the same being demanded, handed over the said currency notes to the appellants. On PW-2's signal, the trap team entered the first appellant's office and seized the said currency notes and sodium carbonate test was conducted on which both appellants tested positive.

4. The charge sheet against the appellants was filed before the Trial Court and the charges under

Section 7 and Section 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act") were framed against them for which the appellants pleaded not guilty. Consequently, the case was committed to trial.

5. The Trial Court by order dated 10.12.1998, considered the evidence on record as also the arguments of the parties and concluded that the prosecution had been able to prove its case beyond reasonable doubt. The Trial Court convicted the appellants for offences under Section 7 and Section 13(1) (d) read with 13(2) of the Act and sentenced them to undergo rigorous imprisonment for one year and a fine of Rs.1000/- for the offence under Section 13(1) (d) read with 13(2) of the Act.

6. Aggrieved by the order so passed by the Trial Court, the appellants preferred Criminal Appeals before the High Court. After considering the testimonies of the witnesses as well as material on record the High Court observed that the conviction

and sentence of the appellants had been recorded by the Courts below after due consideration of all oral and documentary evidence and accordingly has dismissed the appeals.

7. Aggrieved by the judgment and order passed by the High Court, the appellants are before us in this appeal.

8. We have heard learned counsel for the parties to the *lis*.

9. Shri Jayanth Muth Raj, learned counsel appearing for the appellants, on instructions, would submit that appellant No. 2-Velmurugan has expired during the pendency of the present appeals.

10. Since the appellant No.2- Velumurgan has expired during the pendency of the appeal, the appeal against him stands abated. However, if it is found that, contrary to the statement made by the learned counsel, the appellant No.2 still lives, learned

counsel is at liberty to make an appropriate application for recalling/ modifying this order.

11. In so far as appellant No. 1- R. Sethu is concerned, this Court vide order dated 17.11.2008, while issuing notice, confined this case to the question of sentence and thereafter, on 09.04.2009, granted leave in the matter.

12. After going through the judgments and orders passed by the High Court and the Trial Court as well as the material available on record, we are of the view that under Section 13(2) of the Act, the minimum mandatory sentence to be imposed for the offence under Section 13(1) (d) of the Act is one year. In the present case, since only the minimum sentence has been imposed on the appellant No.1 by the Courts below, the said sentence cannot be further reduced.

13. The High Court has not done any error whatsoever while passing the impugned judgment and order which would call for our interference.

Accordingly, the appeal *qua* appellant No.1 - R. Sethu is dismissed.

14. We direct the Appellant No.1- R. Sethu to surrender before the Trial Court forthwith to serve out the remaining part of sentence, if any.

Ordered accordingly.

.....CJI.
[H.L. DATTU]

.....J.
[N.V. RAMANA]

.....J.
[ARUN MISHRA]

NEW DELHI,
AUGUST 27, 2015.

ITEM NO.7

COURT NO.1

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 737-738/2009

R.SETHU & ANR.

Appellant(s)

VERSUS

STATE REP. BY SUB-INSPECTOR OF POLICE
(With office report)

Respondent(s)

Date : 27/08/2015 These appeals were called on
for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr. Jayant Muth Raj, Adv.
 Ms. Malavika J., Adv.
 Mr. P.V. Dinesh,Adv.

For Respondent(s) Mr. M. Yogesh Kanna,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Shri Jayanth Muth Raj, learned counsel appearing for the appellants, on instructions, would submit that appellant No. 2-Velmurugan has expired during the pendency of the present appeals.

Since the appellant No.2- Velumurgan has expired during the pendency of the appeal, the appeal against him stands abated. However, if it is found that, contrary to the statement made by the learned counsel, the appellant No.2 still lives, learned counsel is at liberty to make an appropriate application for recalling/ modifying this order.

The appeal qua appellant qua 1-R. Sethu is dismissed

Appellant No.1- R. Sethu is directed to be surrender before the Trial Court forthwith to serve out the remaining part of sentence, if any.

[Charanjeet Kaur]
A.R.-cum-P.S.

[Vinod Kulvi]
Asstt. Registrar

[Signed order is placed on the file]