

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.752 OF 2010

H.L. KHANNA .. APPELLANT(S)

VERSUS

STATE OF UTTARAKHAND TH. CBI .. RESPONDENT(S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No.1247 of 2001 (Old No.462 of 1990), dated 30.09.2008. By the impugned judgment and order the High Court has affirmed the order of conviction and sentence passed by the learned Special Judge, Anti Corruption U.P. (East), Dehradun for the offence punishable under Section 161 of the Indian Penal Code, 1860 (for short, "the IPC") and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (for short, "the Act").

2. Brief facts of the prosecution case are: the appellant was an Assistant Manager, In-Charge of New India Assurance Company in Dehradun. On 11.05.1985, one V.K Mittal (PW-1) lodged a written complaint with C.B.I., Dehradun alleging that the appellant demanded bribe by way of commission against the survey fee bills and he had been declining to accede to his demand. In his complaint he stated that on 11.05.1985, the appellant telephoned him at his residence asking him to pay a bribe of Rs.250/- towards his commission on the payment received by him since 01.04.1985. He further stated that the appellant told him that if he would pay the said bribe on the same day, he would pay most of his outstanding bills. As per the complaint, no written commission was payable to the Branch Manager on the bills of the surveyor and he had to agree to the demand of the bribe of Rs.250/- as the appellant threatened PW-1 that if he did not pay the said price then the appellant would not pass on any business of survey in future. On the basis of the above written

complaint, a case was registered against the appellant by the C.B.I.

3. Accordingly, a trap was arranged wherein the appellant was caught red-handed while demanding and accepting an illegal gratification of Rs.250/- from PW-1. The said bribe money was recovered from the possession of the appellant. Before framing of the charges the statement of the appellant was recorded wherein he had stated that the money recovered was not bribe money but it was related to the routine give and take between him and PW-1. On 29.07.1986, the learned Special Judge, Anti Corruption, U.P. (East), Dehradun framed charges against the appellant under Section 161 of the IPC and under Section 5(2) read with Section 5(1)(d) to which the appellant pleaded not guilty and the and the case was committed to Trial.

4. The prosecution examined eight witnesses in order to substantiate its case. The statement of the appellant under Section 313 of the Code of Criminal

Procedure, 1973 was recorded wherein he has admitted to the recovery of Rs.250/- and has stated that the said sum of Rs.250/- recovered from him was not bribe money. The appellant filed a written statement wherein he stated that the said sum of Rs.250/- was a temporary loan given by the appellant to PW-1 on 06.05.1985 and the said amount was in fact refunded by PW-1 on 11.05.1985 and a false case was concocted against the appellant showing the said loan money as bribe. For the purpose of the said loan the appellant asked PW-1 for a written receipt which PW-1 after duly signing gave to the appellant.

5. The learned Special Judge after examining the evidence on record reached the conclusion that the appellant is guilty and convicted the appellant for the offence punishable under Section 161 of the IPC and Section 5(2) read with 5(1)(d) of the Act and sentenced him to undergo rigorous imprisonment for a period of one year and fine of Rs.5,000/- and in default of payment of fine to undergo imprisonment

for three months under Section 161 of the IPC. Further under Section 5(2) read with 5(1)(d) of the Act the appellant was sentenced to rigorous imprisonment for a period of one year and a fine of Rs.5,000/- and in default of payment of fine to undergo imprisonment for three months by order dated 21.02.1990. The sentences were ordered to run concurrently.

6. Aggrieved by the said judgment and order passed by the Special Judge, Anti Corruption, the appellant carried the matter in an appeal before the High Court. The High Court after considering the entire evidence on record and submissions of the parties rejected the contention that the sum of Rs.250/- received by the appellant was in fact a refund of the loan extended by the appellant to PW-1. The High Court observed that the independent eye witness (PW-2) and a responsible Police Officer Sri H.C. Bisht, Deputy Superintendent of Police, C.B.I were present at the time of recovery of the money but none

of these witnesses have stated that the appellant had made any statement about the money recovered to be the loan money and not bribe money.

7. Further, the High Court observed that the statement of the appellant was recorded before framing of the charge, however, the appellant in his statement had not stated anything regarding issuance of any receipt to him in lieu of repayment of the said loan, he had made a statement to an effect that the money was related to it the routine give and take between him and PW-1. Thus, the High Court had arrived at the conclusion that the findings recorded by the Trial Court did not suffer from any irregularity or illegality and neither were they based on any perverse findings. Accordingly, the High Court affirmed the judgment and order passed by the Special Judge Anti Corruption, U.P. (East), Dehradun.

8. Aggrieved by the judgment and order so passed by the High Court the appellant is before us in this appeal.

9. We have heard the learned counsels for the parties to the *lis*.

10. After going through the judgment and order passed by the High Court as well as of the Trial Court and the material available on record, we are of the considered opinion that the High Court while passing the impugned order has not committed any error whatsoever which calls for our interference.

11. However, we are informed by the learned counsel for the appellant that the appellant is of 88 years of age and is suffering from various ailments.

12. Although Section 5(2) of the Act provides for a minimum sentence of imprisonment of one year, the proviso to Section 5(2) provides that the Court may, for special reasons recorded in writing, impose a sentence of imprisonment less than one year. In view of the submission so made by learned counsel for the appellant and the proviso to Section 5(2), we are of the considered opinion that the ends of justice will

be met, if, we modify the sentence to the period till the rising of the Court and enhance the fine amount by Rs.5,000/- making the total fine amount Rs.10,000/-.

13. Accordingly, while confirming the conviction of the appellant, we modify the sentence to the period till the rising of the Court and increase the fine amount from Rs.5,000/- to Rs.10,000/-.

14. Accordingly, the appeal is disposed of.

15. The order passed by us shall not be treated as precedent in any other case.

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

.....J.
[ARUN MISHRA]

NEW DELHI,
SEPTEMBER 15, 2015.

ITEM NO.7

COURT NO.1

SECTION II

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. 752/2010

H.L. KHANNA

Appellant(s)

VERSUS

STATE OF UTTARKHAND TH:CBI

Respondent(s)

(With office report)

Date : 15/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr. Basant R., Sr. Adv.
Ms. Anjana Sahani, Adv.
Mr. Vinay Arora, Adv.
Mr. Sanjay Jain, Adv.
Mr. Karthik Ashok, Adv.

For Respondent(s) Mr. K.P.K. Pillai, Sr. Adv.
Mr. T.A. Khan, Adv.
Mr. Mukesh Verma, Adv.
Mr. B.V. Balramdas, Adv.

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

The appeal is disposed of in terms of the signed order. The sentence is modified to the period till the rising of the Court and fine amount is increased from Rs. 5,000/- to Rs. 10,000/-.

The order passed shall not be treated as precedent in any other case.

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

[Vinod Kulvi]
Asstt. Registrar

[Signed order is placed on the file]