

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: July 12, 2010
Judgment delivered on: July 19, 2010

+ **CRIMINAL APPEAL NO.175/2005**

S.R. VIJ

....APPELLANT

Through: Mr.D.C. Mathur, Sr. Advocate with
Mr.Vikram S. Panwar, Advocate &
Mr.Vishwajeet Singh, Advocate.

Versus

STATE

....RESPONDENT

Through: Mr.Pawan Bahl, APP.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. This appeal is directed against the impugned judgment dated 21st February, 2005 in terms of which the appellant S.R.Vij has been convicted for the offences punishable under Section 161 IPC and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (for short 'P.C. Act') as also the consequent order on sentence dated 24th February, 2005.

2. Briefly stated, case of the prosecution is that the appellant S.R.Vij was employed in the erstwhile New Bank of India, a public sector undertaking as a Manager and was posted at Rana Pratap Bagh Branch in December, 1987. The complainant Kanwaljit Singh had applied for a loan of Rs.21,000/- for financing the purchase of a three wheeler scooter. On 18th December, 1987, when he went to the branch of bank in connection with his loan application, the appellant demanded illegal gratification of Rs. 2000/- from him for clearing his loan. The complainant went to Anti-Corruption Branch, Delhi and lodged a complaint. Pursuant to the complaint, a raid was organized to catch the appellant red handed while accepting the bribe. Two attempts made on 19th December, 1987 and 24th December, 1987 to catch the appellant red handed while accepting the bribe failed because of non-availability of the appellant in the branch on 19th December, 1987 because he had gone to attend some cremation and because of 24th December, 1987, being declared holiday on account of the demise of the then Chief Minister, Tamil Nadu. However, in the third raid organized on 26th December, 1987, the appellant was caught red handed while accepting the demanded amount of Rs. 2000/- from the complainant.

3. On conclusion of formalities of investigation, charge sheet was filed against the appellant and he was charged by the learned Trial Judge for the offences punishable under Section 161 IPC and Section

5(1)(d) read with Section 5(2) of the P.C. Act. The appellant pleaded not guilty to the charges and claimed to be tried.

4. Prosecution examined 10 witnesses including the complainant and the panch witness D.K.Gupta (PW4) to bring home the guilt of the appellant.

5. The appellant was examined under Section 313 Cr.P.C. to afford him an opportunity to explain the incriminating evidence appearing against him. The appellant admitted that he was a public servant, employed as a Branch Manager of Rana Pratap Bagh of New Bank of India and that the complainant had applied for loan for a three wheeler scooter in his branch. He claimed that he had forwarded the loan papers to the Head Office of the bank. He, however denied that he demanded or accepted bribe from the complainant for clearing his request for loan. The appellant did not adduce evidence in defence.

6. The learned Trial Judge, after hearing the parties and on consideration of evidence, found that the prosecution had succeeded in proving the charges and convicted the appellant for the offences punishable under Section 161 IPC and Section 5(1)(d) read with Section 5(2) of the 'P.C. Act' and vide order on sentence dated 24th February, 2005, sentenced the appellant to undergo imprisonment for a period of two years for the offence punishable under Section 161 IPC and also to undergo rigorous imprisonment for a period of 3½ years for the offence punishable under Section 5(1)(d) read with Section 5(2) of the

P.C.Act and also to pay fine of Rs. 2000/-, in default of payment of which, to undergo RI for further period of four months.

7. Learned Sh. D.C.Mathur, Sr. Advocate appearing for the appellant, at the outset, conceded the appellant's challenge to his conviction under Section 161 IPC as well as Section 5(1)(d) read with Section 5(2) of the P.C.Act. He has confined his argument only to the quantum of sentence awarded to the appellant.

8. Learned counsel for the appellant contended that the appellant is an old man aged 65 years and he is no more in the service of the bank. He submitted that this case relates to an incident of 1987 and the appellant has suffered the rigors of a protracted trial, which came to an end after a period of 17 years in February, 2005 and since then, his appeal against the impugned judgment and order on sentence is pending. Learned counsel emphatically argued that keeping in view such a long delay in trial and conclusion of appeal and the fact that the appellant is an old man and has already retired from service, he deserves to be treated leniently and the sentence awarded to him by the learned Trial Judge is too harsh. Learned counsel referred to the judgment of the Supreme Court in the matter of **B.C.Goswami Vs. Delhi Administration, AIR 1973 SC 1457** in support of his plea against the quantum of sentence awarded to the appellant.

9. On the other hand, learned counsel for the State has submitted that the appellant being a senior officer posted as Manager in Rana

Pratap Bagh Branch of New Bank of India has indulged in corrupt practice by demanding and accepting illegal gratification for sanctioning loan, which is a serious offence and deserves to be dealt with a deft hand. He submitted that corruption in public offices has assumed dangerous proportions and it is adversely affecting the economy and progress of the country. Learned counsel for the State has argued that otherwise also, the petitioner cannot be let off with a sentence of imprisonment less than one year because Section 5(2) of the P.C.Act provides for a minimum punishment of one year's imprisonment for the offence of criminal misconduct as defined under Section 5(1)(d) of the P.C.Act.

10. Section 5 of the P.C. Act, 1947 deals with the offence of criminal misconduct by a public servant in discharge of his official duty and it inter alia reads thus:

“5. Criminal misconduct in discharge of official duty.---

(1) A public servant is said to commit the offence of criminal misconduct---

.....

(d) If he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage;

[(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;

11. On perusal of the above referred provision of P.C. Act, 1947, it is apparent that as a general rule, an offence of criminal misconduct, as defined under Section 5(1)(d) of P.C. Act, 1947 invites minimum punishment of one year's imprisonment besides the fine. However, there is an exception to this general rule given in the provision under Section 5(2), P.C. Act, which empowers the Court, in exceptional circumstances, to impose sentence of imprisonment of less than one year for special reasons to be recorded in writing. Thus, it is apparent that in exceptional cases, for special reasons to be recorded, imprisonment of less than one year can be awarded to a public servant guilty of criminal misconduct, as defined under Section 5(1)(d) of the P.C. Act, 1947.

12. In the matter of B. C. Goswami (supra), the Supreme Court, while dealing with a case of a public servant guilty of corruption, who was convicted after a long trial of seven years has inter alia observed thus:

“10. As already observed, the appellant's conviction under Section 161 IPC, was rightly upheld by the High Court and there is no cogent ground made out for our interference with that conviction. The sentence of imprisonment imposed by the High Court for both these offences is one year and this sentence is to run concurrently. The only question which arises is that under Section 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act the minimum sentence prescribed is rigorous imprisonment for one year and there must also be imposition of fine. The sentence of imprisonment can be for a lesser period but in that event the court has to assign special reasons which must be recorded in writing. In considering the special reasons the judicial discretion of the court is as wide as the demand of the cause of substantial justice. Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of

various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated 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. 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 reclaim 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 sentence 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 considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has 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”.

13. In the above referred case, the Supreme Court, after taking into account that the appellant of that case had suffered a protracted trial of almost seven years and the fact that he was no more in service, took a lenient view and reduced the sentence of imprisonment awarded to the appellant in that case to the imprisonment for a period already undergone, which was less than one year. However, the Supreme Court increased the fine imposed by the court below. The facts in this case are almost similar. The appellant has since retired from service and he has undergone the rigors of protracted trial for more than 17 years and thereafter, his appeal against the order of conviction is

pending for the last six years. Therefore, I find force in the plea of learned counsel for the appellant for leniency. As per the nominal roll filed on record, the petitioner has undergone incarceration during pendency of trial for 24 days. His application for suspension of sentence was dismissed by this Court vide order dated 22nd March, 2005. Thereafter, his second application for suspension and grant of bail was allowed on 02nd August, 2005. This imply that during the pendency of the trial, the appellant remained in custody for more than 04 months. If 24 days' period of incarceration during trial is added to it, it is apparent that the petitioner has undergone custody in this case for approximately five months. The appellant is an old man of 65 years and he is no more in service of the bank. Admittedly, he has undergone the rigors of a protracted trial for almost 17 years, which came to end with conviction in February 2005. Even after that, his appeal against the conviction remained pending for almost six years.

14. Keeping in view the aforesaid circumstances, I feel that it is a fit case in which the provision of Section 5(2) of the P.C. Act, 1947 can be resorted to and I am of the view that the interest of justice shall be served in this case if the sentence of imprisonment awarded to the appellant for the offences under Sections 161 IPC as well as under Section 5(2) of P.C.Act, 1947 is reduced to the period of incarceration already undergone by the petitioner during the pendency of trial and appeal and the fine imposed upon him is increased by Rs. 50,000/- over and above the fine of Rs. 2000/- imposed by the

Trial Court. The period of imprisonment in case of default of payment of balance Rs. 50,000/- of fine shall be two years.

15. The appeal is accordingly accepted in part. The appellant is directed to deposit the fine of Rs. 50,000/- with the Trial Court within a week.

16. The appeal is disposed of accordingly.

17. Copy of the order be given dasti to the parties.

(AJIT BHARIHOKE)
JUDGE

JULY 19, 2010
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