

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

Judgment delivered on: July 22, 2010

+ **CRIMINAL APPEAL NO.52/2005**

AMAR SINGH

....APPELLANT

Through: Mr. K.B. Andley, Sr. Advocate with
Mr. M.L. Yadav, Advocate & Mr. M.
Shamikh, Advocate.

Versus

C.B.I.

....RESPONDENT

Through: Ms. Sonia Mathur, Advocate.

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.(ORAL)

1. This appeal is directed against the impugned judgment dated 17.12.2004 and consequent order on sentence dated 22.12.2004 of the Special Judge, Delhi in terms of which the appellant Amar Singh was held guilty for the offences punishable under Sections 419, 420, 468, 471, 477A IPC as well as Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (for short "P.C. Act") and convicted accordingly. He was sentenced under Section 419 IPC to undergo imprisonment for a period of one year. For the offence punishable

under Section 420 IPC, he was to undergo RI for the period of one year and also to pay a fine of Rs.1,000/-, in default of payment of fine to undergo SI for the period of two months. For the offence punishable under 468A IPC, the appellant was sentenced to undergo RI for the period of one year and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo SI for the period of two months, for the offence punishable under Section 471 IPC, he was to undergo RI for the period of one year and also fine of Rs.1,000/- and in default of payment of fine, to undergo SI for the period of two months, and for the offence punishable under Section 477A IPC, he was sentenced to RI for the period of one year and for the offence punishable under Section 5(2)(d) of P.C. Act, he was sentenced to undergo imprisonment for one year and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo SI for the period of two months. The learned Special Judge directed that the substantive sentences awarded to the appellant for various offences shall run concurrently. The fine imposed by the learned Trial Court has already been deposited.

2. Briefly stated, case of the prosecution is that the appellant Amar Singh was employed as a Cashier in National Seeds Corporation (hereinafter referred to "NSC"), a public sector undertaking. As a Cashier, it was his duty to prepare DD invoices, receipt of cash and its deposit in the bank, making entry in the bank book, bank reconciliation statement, preparation of cash abstract and collection of DDs from the bank and forwarding the same to the respective sub-units. He, taking

advantage of his official position as a Cashier in NSC, manipulated the DD invoices and the account books by making false entries and derived pecuniary advantage for self by corrupt and illegal means and in order to avoid the detection of his fraud, he also falsified bank and reconciliation statements and other relevant documents. Thus, he committed the offences punishable under Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947 and also the offence punishable under Section 419, 420, 467, 471 and 477A IPC.

3. On conclusion of investigation of the case, appellant was challaned and sent for trial. The learned Special Judge on consideration of the record charged the appellant for the offence punishable under Section 419, 420, 467, 471 and 477A IPC and Section 5(2) read with Section 5(1)(d) of the P.C. Act, 1947. The appellant pleaded not guilty to the charge and claimed to be tried.

4. In order to bring home the guilt of the appellant, prosecution examined as many as 28 witnesses. Statement of the appellant under Section 313 Cr.P.C. was recorded with a view to enable him to explain the evidence appearing against him. In the said statement appellant denied the prosecution case and claimed to be innocent. Initially, the appellant expressed his desire to lead defence evidence, but after availing several opportunities, the appellant closed his defence without leading any evidence.

5. The learned trial Judge on consideration of the submissions made on behalf of the parties and on consideration of the evidence found the appellant guilty of the charges under section 419, 420, 467, 471 and 477A IPC and Section 5(2) read with Section 5(1)(d) of the P.C. Act, 1947 and convicted him accordingly. Vide order dated 22.12.2004, the appellant was awarded sentence with respective offences.

6. At the outset, learned Senior Counsel, on instructions from the appellant, submits that the appellant admits his guilt and he does not wish to press his challenge against his conviction under Sections 419, 420, 467, 471 and 477A IPC as well as Section 5(2)(d) of the Prevention of Corruption Act, 1947. He, however, has confined his submission against the quantum of punishment awarded to the appellant.

7. Learned Sh. K.B.Andley appearing for the appellant has submitted that charge sheet in this case was filed about 27 years back on 02.04.1983 and the judgment of conviction was delivered after a protracted trial of more than 21 years on 17.12.2004. It is contended that the appeal against conviction is pending for the last 06 years. Learned Senior Counsel submitted that appellant has undergone the rigors of a protracted trial for the last more than two decades and this fact in itself is sufficient to take a lenient view so far as the quantum of sentence is concerned. Learned Counsel submitted that the appellant is an old man of 67 years and the amount misappropriated by the appellant by falsification of record has already been recovered from

him and paid to the department concerned. Under the circumstances, learned Senior Counsel for the appellant has urged emphatically that the sentence of imprisonment awarded to the appellant for various offences may be reduced to the period already undergone in custody because no fruitful purpose would be served by sending him in Jail. Learned Senior Counsel in support of his plea has referred to the judgment of the Supreme Court in the matter of **B.C. Goswami Vs. Delhi Administration, AIR 1973 SC 1457.**

8. 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”.

9. Learned Ms. Sonia Mathur, Advocate appearing for the C.B.I., on the other hand, has argued that the offence committed by the appellant is of a serious nature and the sentence awarded by the learned Special Judge, considering the gravity of offence, is too reasonable, and considering the grave nature of the offence committed, the appellant does not deserve leniency. Learned counsel also drew my attention to Section 5(2) of the P.C. Act, which provides minimum one year imprisonment for the offence of criminal misconduct. She fairly conceded that the proviso to Section 5(2) of P.C. Act, 1947 empowers the court to award punishment lesser than one year in exceptional cases, but submitted that the case of the appellant however, does not fall within the ambit of the proviso to

Section 5 (2) read with Section 5(1) (d) of P.C.Act, 1947. Thus, she has contended that the sentence awarded by the learned Special Judge be maintained.

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 proviso to 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. Coming to the question of sentence, in the instant case, the appellant has been found guilty of abuse of his official position to gain pecuniary advantage for self by manipulating the records and accounts' books of his employer National Seeds Corporation. There can be no doubt that the offence is serious and in ordinary circumstances, calls for a deterrent punishment. On the other hand, this is a peculiar case of prolonged trial which came to an end with conviction of the appellant by the Court below after a span of more than 21 years and the appeal of the petitioner against his conviction and sentence has come up for hearing after six more years. During the intervening period, because of the act committed by him, the appellant has lost his job. The fact that the appellant now is 67 years old and he has suffered the rigors of protracted trial/appeal for almost 27 years by itself is a strong mitigating factor. The above two contradictory circumstances pose a dilemma as to what should be the reasonable quantum of punishment which would satisfy the ends of justice. In criminal jurisprudence, punishment for an offence is meant to achieve three-fold purpose i.e. to punish the offender with a view to make him realise that he has committed a wrongful act, to deter the potential offenders as well as the offender from committing any offence and to reform the offender. In the modern civilized society, the reformatory

aspect is given somewhat greater importance. While deciding on the question of punishment, the Court is under obligation to consider various available factors and come to a reasonable conclusion about the quantum of punishment which creates a fine balance between aforesaid three aspects of punishment, taking into account the interest of society. The punishment should neither be too lenient nor too harsh. In the instant case, taking into account the nature of offence committed by the appellant, and weighing it against the mitigating circumstances i.e. the appellant is now aged 67 years, he has lost his job and he has undergone the agony and anxiety of a protracted trial, I am of the view that no fruitful purpose shall be served by sending the appellant back to jail after almost 27 years of agony and harassment suffered due to pendency of trial and appeal. Considering the overall facts and circumstances of this case, I feel that the ends of justice would be met if the sentence of imprisonment awarded to the appellant is reduced to the period already undergone by him in custody and the sentence of fine is increased by Rs. 1 Lakh over and above the fine of Rs.4000/- imposed by the learned Special Judge. The impugned order of sentence dated 22nd December, 2004 of learned Special Judge is therefore modified accordingly. It is directed that in the event of failure of the appellant to pay the fine of Rs. 1 Lakh, he shall undergo RI for the period of one year.

13. The appeal is accepted in part and the appellant is directed to deposit the fine of Rs. 1 Lakh in the concerned court within two weeks.

14. Appeal is disposed of accordingly.

15. Copy of the judgment be sent to the court of Special Judge concerned for compliance.

(AJIT BHARIHOKE)
JUDGE

JULY 22, 2010
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