

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.18 of 1998

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Om Prakash Rajgaria Son Of Shri Keshvdeo Rajgaria Resident Of Ghajipur,
Police Station Ghajipur, District Ghajipur (Uttar Pradesh)

.... Appellant/s

Versus

1. The State Of Bihar
2. C.B.I. Through S.P. , C.B.I., Patna Null Null

.... Respondent/s

with

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Criminal Appeal (SJ) No. 19 of 1998

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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Upendra Prasad Dikshit son of late Jadubansh Prasad Dikshit, R/o Mohalla Baxi
Maidan, P.S. Chwok, District Patna

.... Appellant/s

Versus

1. State of Bihar
2. C.B.I through S.P., CBI

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.18 of 1998)

For the Appellant/s : Mrs. Soni Shrivastava

For the Respondent/s : Mr. Mr. Sanjay Kumar, SC. CBI

(In CR. APP (SJ) No.19 of 1998)

For the Appellant/s : Mr. None

For the Respondent/s : Mr. Bipin Kumar Sinha, SC, CBI

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 02-12-2016

Both these appeals arise out of the same judgment
and order, dated 20.12.1997, passed by the learned Special
Judge, C.B.I. (South), Patna, whereby the appellants have
been convicted and sentenced to undergo imprisonment and
fine. Both the appellants have been held guilty of the offence



punishable under Section 120B read with Section 420 of the Indian Penal Code. Further, the appellant of Criminal Appeal (SJ) 18 of 1998 (Om Prakash Rajgarhia) has, in addition, been convicted of the offence punishable under Section 471 read with Section 465 of the Indian Penal Code, whereas the appellant of Criminal Appeal (SJ) No. 19 of 1998 (Upendra Prasad Dikshit) has been convicted of the offence punishable under Section 5(1) (d) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the Act of 1947) punishable under Section 5(2) of the said Act.

2. The appellant of the first case has been sentenced to undergo one year imprisonment for the proved offence punishable under Section 471 read with Section 465 of the Indian Penal Code. For the proved offence under Section 120B read with Section 420 of the Indian Penal Code, he has been further sentenced to undergo rigorous imprisonment for a period of two years. The appellant in the second case has been sentenced to undergo rigorous imprisonment for two years upon his conviction of the offence punishable under Section 120B read with Section 420 of the Indian Penal Code and for an imprisonment for a period of two years and fine of Rs. 10,000/- (ten thousand) for the proved offence under Section 5(1) (d) of the said Act read with Section 5(2) of the Act. The order of sentence stipulates that in default of



payment of fine, appellant of the second case shall under go rigorous imprisonment for one year more. The sentences are to run concurrently.

3. I have heard Mrs. Soni Shrivastava, learned counsel for the appellants in both the appeals. I have also heard Mr. Sanjay Kumar, learned Standing Counsel C.B.I in Criminal Appeal (SJ) 18 of 1998 and Mr. Bipin Kumar Sinha, learned Standing Counsel C.B.I in Criminal Appeal (SJ) No. 19 of 1998.

4. Considering the nature of the order, which I intend to pass in view of the facts and circumstances of the present appeals, it would be apt to refer briefly, the fact leading to lodging of the criminal case. The criminal prosecution was setin motion with the report of the Inspector of police, Central Bureau of Investigation, Patna with the allegation that the appellant of the second case while working as Branch Manager, State Bank of India, Sheikhpura Branch, during July, 1981 to December, 1981, in conspiracy with one M/s Santosh Textile Agency, Dariapur, had defrauded the Bank to the tune of Rs.87,603/- by fraudulently and dishonestly purchasing demand drafts and crediting the said amount in the current account of M/s Santosh Textile Agency.

5. The appellant of the first case died during the pendency of the appeal on 29.03.2014 as is apparent from the



contents of I.A. No. 1219 of 2014 filed by his son-in-law under Section 394(2) of the Code of Criminal Procedure, 1973. The deponent of the said application is certainly not a near relative within the meaning of the proviso to Section 394 (2) of the Code of Criminal Procedure, 1973. Accordingly, so far appeal of the second case is concerned, same stands abated by operation of Section 394 of the Code of Criminal Procedure, 1973.

6. Coming to the case of appellant of the first case, Mrs. Soni Shrivastava, learned counsel for the appellant has submitted, without entering into the question of legality and propriety of the conviction recorded by the trial Court that this Court may consider modifying the sentence by reducing it to the period the said appellant has remained in custody in connection with the case in hand.

7. She has submitted that from the very beginning, the said appellant had been showing inclination to pay to the Bank, the amount in question with interest.

8. A supplementary affidavit has been filed on behalf of the said appellant, which indicates that an amount of Rs. 1, 90,343/- has been deposited by him in the State Bank of India on 06.08.2015 in the light of an order of this Court, dated 03.08.2015. Mrs. Shrivastava has submitted that the appellant has remained in custody in course of



investigation from 15.09.1983 to 15.11.1983.

9. Taking into account the fact that the appellant does not have any previous conviction and certain amount has been deposited with the Bank as indicated above, under previous order of this Court, dated 03.08.2015, complied with the fact that this appeal has remained pending for nearly 19 years, I am inclined to accept the submission made on behalf of the appellant for reducing the sentence.

10. Accordingly, while not interfering with the conviction of appellant Om Prakash Rajgariya, the period of sentence of rigorous imprisonment for both the offences, viz, offence under Section 120B read with Section 420 of the Indian Penal Code and Section 471 read with Section 465 of the Indian Penal Code is reduced to the period of custody already undergone by him. He accordingly, stands discharged of the liabilities of bail bonds and sureties furnished by him.

11. As regards the appellant of the second case, the sentence of payment of fine, in my opinion, does not require interference.

12. With the above observation and direction, these appeals are disposed of.

ArunKumar/-

(Chakradhari Sharan Singh, J)

AFR/NAFR	NAFR
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