

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 436 OF 2000

Yogiraj s/o Dattatraya Bharti,
aged 45 years,
occ. Junior Cler, M.S.E.B. Office,
r/o Parli, Tq. Vajinath,
District Beed

...Appellant

VERSUS

The State of Maharashtra

...Respondent

Mr. P.F.Patni, advocate h/f
Shri Satej S. Jadhav, advocate for the Appellant
Mr. S.N.Morampalle, APP for Respondent

CORAM : INDIRA K. JAIN, J.
DATED : 18th APRIL, 2016

ORAL JUDGMENT :

This appeal takes an exception to the judgment and order, dated 10.10.2000, passed by the learned Special Judge, Ambajogai, in Special Case No. 5 of 1998 convicting the appellant of the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the

Prevention of Corruption Act, 1988. By the said judgment and order, appellant was sentenced to rigorous imprisonment for one year and fine of Rs.2,500/- with default clause for each of the offences.

2] Prosecution case, in brief, is as under .

(i) Appellant was working as Lower Division Clerk with Maharashtra State Electricity Board, Beed. The work of issuance of electricity bill was assigned on contract basis. Sambhaji Phad was a consumer of M.S.E.B. He was acquainted with the appellant. Sambhaji was running an oil mill and rice mill. Electricity connection for rice mill was taken in the name of Sambhaji and for oil mill it was in the name of son of Sambhaji. Appellant used to visit the mills of Sambhaji and his family.

(ii) It is the case of prosecution that accused demanded Rs.5,000/- from Anil son of Sambhaji for reducing electricity bill. On 5.1.1996 Anil went to Anti Corruption Office, Beed and lodged report. A trap was arranged. It was successful.

(iii) After completing investigation, charge sheet was submitted to the Special Court.

3] Prosecution examined in all ten witnesses to substantiate the guilt of accused. Accused examined two witnesses in support of his defence. Considering the evidence of prosecution

witnesses and defence raised by accused, Trial Court found the accused guilty and convicted of the offences as stated in para 1 above.

4] Heard Shri P.F.Patni, advocate holding for Shri Satej S. Jadhav, learned counsel for the appellant and Shri S.N.Morampalle, learned A.P.P. for the respondent/State.

5] The learned counsel for appellant submits that incident is of the year 1996. Appellant is now aged 70 and he was on death bed. He is not keeping well. The learned counsel submits that departmental proceedings were initiated against the appellant. He was terminated from the services. Criminal Appeal was filed in the year 2000. Fifteen years have already passed. Considering the special reasons, learned counsel submitted that appellant is ready to pay the reasonable fine if enhanced and prays that appellant be released on the sentence already undergone.

6] In support of submissions learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in V.K.Verma vs Central Bureau of Investigation reported in (2014) 3 SCC 485. Para 8 and 13 of the said judgment read thus :-

“ 8. The long delay before the courts in taking a final decision with regard to the guilt or otherwise of the accused is one of the mitigating factors for the superior courts to take into consideration while taking a decision on the quantum of sentence. As we have noted above, the FIR was registered by the CBI in 1984. The matter came before the sessions court only in 1994. The sessions court took almost ten years to conclude the trial and pronounce the judgment. Before the High Court, it took another ten years. Thus, it is a litigation of almost three decades in a simple trap case and that too involving a petty amount.

13. Accordingly, the appeal is partly allowed. The substantive sentence of imprisonment is reduced to the period already undergone. However, an amount of Rs.50,000/- is imposed as fine. The appellant shall deposit the fine within three months and, if not, he shall undergo imprisonment for a period of six months. On payment of fine, his bail bond will stand cancelled. “

7] Per contra, learned Additional Public Prosecutor submitted that no special reasons exist to reduce the the sentence to undergone. Learned A.P.P. submits that appellant was in jail only for four days and same would not be adequate sentence in view of seriousness of offences.

8] It is a matter of record that incident occurred on 2.1.1996. Appellant was arrested on 6.1.1996. Charge sheet was filed in 1998. Trial Court delivered judgment in 2000. Appeal was preferred before this Court in 2000. Record further indicates that appellant was on death bed. He could not remain present on many

occasions and non-bailable warrants were issued against him which came to be cancelled on the ground of his ill health.

9] It is not in dispute that appellant is now aged 70. He has already undergone mental incarceration for about 20 years. In these circumstances, this Court is of the view that no purpose would be served in keeping the appellant in jail. In view of the special reasons, this Court finds that the following order would serve the ends of justice.

ORDER

(i) Criminal Appeal No. 436 of 2000 is partly allowed.

(ii) The judgment of conviction is maintained.

(iii) The order of sentence is modified and substantive sentence of imprisonment is reduced to the period already undergone. However, an amount of Rs.25,000/- is imposed as fine for each of the offences.

(iv) Appellant shall deposit the fine within six weeks. If fine is not deposited, appellant shall undergo the imprisonment as awarded by the Trial Court.

(v) Bail bonds of the appellant shall stand cancelled.

[INDIRA K. JAIN, J.]

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