

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. A. No. S-1796-SB of 2003

DATE OF DECISION : 24.09.2016

Bajinder Singh

.... APPELLANT

Versus

State of Haryana

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sandeep Ghangas, Advocate,
for the appellant.

Mr. Gaurav Bansal, AAG, Haryana.

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RAMENDRA JAIN, J.

1. The appellant has filed this appeal against the judgment dated 27.08.2003 and the order of sentence dated 29.08.2003 passed by Special Judge, Panipat, whereby the appellant was convicted under Section 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') and sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹ 500/-, in default of payment of fine, to further undergo rigorous imprisonment for one month.

2. It is pertinent to mention here that the appellant was tried in this case along with three other accused, namely Mohinder Singh, Constables Ram Phal and Siri Krishan. However, vide the impugned judgment dated 27.08.2003, while convicting the appellant, his above named co-accused were acquitted of the charges framed against them.

3. The appellant along with his father Mai Ram was named as

accused in another case, i.e. FIR No. 171 dated 19.12.1996 under Section 379 IPC, registered at Police Station Israna, for committing theft of approximately 15 quintals of wood by cutting the trees standing in the Panchayat land. On 24.12.1996, Mai Ram (father of the present appellant) was arrested in that case. On 25.12.1996, Constables Ram Phal and Siri Krishan (co-accused of the appellant in the present case) were deputed to produce accused Mai Ram before the Ilaqa Magistrate at Panipat to secure his judicial remand. After reaching the court complex, Constable Ram Phal, in connivance with the appellant and his counsel, namely Shri Mohinder Singh, Advocate (co-accused of the appellant in the present case), got entered the name of the appellant at Serial No.2 of the original remand paper through Constable Siri Krishan and Constable Ram Phal himself entered the name of the appellant in the middle of the remand paper. Thereafter, accused Mai Ram along with the appellant was produced in the aforesaid theft case, before the Ilaqa Magistrate. Thereupon, Shri Mohinder Singh, Advocate, procured an order of bail of the appellant illegally, due to which hindrance came in the investigation of the theft case, as without effecting arrest of the appellant in the said case, he was released on bail. On 27.12.1996, Smt. Phool Devi Panch went to Police Station Israna and informed that the appellant was claiming in the village that he has been bailed out. Then Constable Krishan disclosed that on 25.12.1996, Constable Ramphal had added the name of the appellant in the remand paper at the instance of Shri Mohinder Singh, Advocate, and produced accused Mai Ram and falsely showed the arrest of the appellant in the theft case. This fact was brought to the notice of Hari Singh (PW.6) SI/SHO of Police

Station Israna, who sent ruqa (Ex.PC) on 29.12.1996 to Superintendent of Police, Panipat, who vide his endorsement dated 30.12.1996 directed the SHO of Police Station Model Town, Panipat, to register a case. Accordingly, formal FIR (Ex.PC/1) was registered against the appellant, Advocate Mohinder Singh, Constables Ram Phal and Siri Krishan. The relevant documents of the theft case were taken into police possession and statements of the witnesses were recorded by the police. Accused were arrested in this case.

4. After completion of investigation, challan was filed. Charge under Section 12 of the Act was framed against the appellant and his co-accused Advocate Mohinder Singh. His co-accused Constables Ram Phal and Siri Krishan were charge sheeted under Sections 218 and 471 IPC. Besides this, Constable Ram Phal was also charge sheeted under Section 13 (1) (d) (ii) of the Act. The appellant and his co-accused did not plead guilty to the charge and claimed trial.

5. In support of its case, the prosecution examined nine witnesses.

6. In their statements recorded under Section 313 Cr.P.C., all the accused denied the incriminating evidence appearing against them in the prosecution evidence, and pleaded their false implication.

7. In their defence, the accused did not examine any witness.

8. After hearing learned Public Prosecutor for the State and learned defence counsel, vide the impugned judgment, learned trial court acquitted co-accused Advocate Mohinder Singh, Constables Ram Phal and Siri Krishan, giving them benefit of doubt. However, while observing that the appellant was the beneficiary by adding his name in the remand papers

of the theft case by giving illegal gratification to the person, who caused the addition, the appellant was convicted and sentenced under Section 12 of the Act.

9. On 10.08.2016, when this appeal was taken up for regular hearing, learned counsel for the appellant prayed for reduction of sentence by submitting that the appellant has already faced a protracted trial of 20 years. In support of his arguments, he placed reliance upon two judgments of this court in Om Parkash Vs. State of Haryana, 2005 (4) RCR (Criminal) 895 and Rajinder Kumar and others Vs. State of Punjab, 2010 (4) RCR (Criminal) 890; and one judgment of Delhi High Court in K. Lal Vs. C.B.I., 2013 (4) RCR (Criminal) 155. He submitted that he was not aware of the period, for which the appellant has already undergone out of two years of imprisonment awarded to him by the learned trial court. Learned State counsel had sought time to ascertain this fact and furnish the details in this regard.

10. Today, learned State counsel has filed custody certificate of the applicant, which is taken on record. According to this certificate, the appellant has undergone 1 month and 18 days of actual sentence in this case.

11. While praying for a lenient view in the matter of sentence, learned counsel for the appellant submitted that the appellant is a poor person. He has already suffered a lot and has faced protracted trial of about 20 years. Out of the sentence of 2 years imprisonment, he has already undergone 1 month and 18 days of actual sentence. Thus, the sentence of imprisonment awarded to the appellant may be reduced to the period already

undergone.

12. On the other hand, learned State counsel argued that keeping in view the serious nature of offence committed by the appellant, and the fact that he is also involved in another case, as is evident from the perusal of the custody certificate, no leniency can be shown to him.

13. The appellant in this case has been convicted under Section 12 of the Act, as it has been proved that with illegal gratification, he got his name added at Serial No.2 and in the middle of the remand papers of a theft case (FIR No. 171 dated 19.12.1996 under Section 379 IPC, registered at Police Station Israna) against him and his father, and secured bail from the court, without having been arrested. The nature of offence committed by the appellant is of serious nature. Further, a perusal of the custody certificate produced by learned State counsel reveals that the appellant is also involved in another case, i.e. FIR No. 163 dated 30.06.2013 under Sections 323/324/341 IPC, registered at Police Station Urlana, District Paniapat. Hence, it is evident that the appellant is a habitual offender. In these circumstances, and keeping in view the fact that the learned trial court has already taken a lenient view while awarding sentence to the appellant, I am of the considered opinion that the sentence awarded by learned trial court does not require any modification. So far as the judgments relied upon by learned counsel for the appellant are concerned, the facts and circumstances of those cases are not identical to the facts of the instant case. Hence, no benefit of the same can be given to the appellant. In **Om Parkash's case (supra)**, age of the appellant was 85 years, who was suffering from old age ailments and was at the fag end of his life. In that case, sentence of

imprisonment awarded to the appellant was reduced to six months. The other two cases, i.e. **Rajinder Kumar's case** and **K.Lal's case** (supra) relate to simple bribery, whereas in the instant case, the appellant is such a dare devil person that he by bribing the police personnel got interpolation in the police record to commit fraud with the court and obtained bail order illegally and fraudulently. This conduct of the appellant coupled with the fact that he is also involved in other criminal cases shows that he is a man of great criminal ilk. Hence, considering the gravity of the offence committed by the appellant, in the considered opinion of this court, he is not entitled for any leniency in the matter of sentence.

14. Consequently, the instant appeal is dismissed.

15. The appellant is on bail in this case. His bail/surety bonds are cancelled, and he is directed to surrender before the jail authorities immediately for serving the remaining period of his sentence, failing which the concerned Chief Judicial Magistrate shall proceed against him in accordance with law.

September 24, 2016
ndj

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes