K.P. Singh vs State (N.C.T) Of Delhi on 28 September, 2015

Author: V.Gopala Gowda

Bench: T.S. Thakur, V. Gopala Gowda

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1264 OF 2015
(ARISING OUT OF SLP (Crl.) NO. 444 OF 2015)

K.P. SINGH .....APPELLANT

Vs.

STATE OF N.C.T. OF DELHI .....RESPONDENT

O R D E R

V.GOPALA GOWDA, J.

Leave granted.

2. The present criminal appeal is directed against the impugned judgment and order dated 31.10.2014 passed by the High Court of Delhi at New Delhi in Crl. A. No. 758 of 2008, wherein it has affirmed the conviction against the appellant for the offence punishable under Section 8 of the Prevention of Corruption Act, 1988 (hereinafter "the P.C. Act") and reduced sentence awarded from 2 years to 1 year retaining Rs.5000/- fine imposed with default sentence of 2 months after re-appreciation of evidence of the prosecution witnesses no.6, 9 and 13 and accepted their evidence as cogent to prove the charge levelled against him in exercise of its appellate jurisdiction. Various legal contentions have been urged by the learned counsel on behalf of the appellant before this Court questioning the correctness of the judgment and order reducing the sentence of imprisonment imposed upon him from 2 years to 1 year with fine amount of Rs.5,000/- and in default sentence as mentioned above. This Court vide its order dated 02.02.2015 has issued notice to the respondent to re-consider the quantum of sentence subject to the condition that the appellant surrender to the Central Jail, Tihar to undergo sentence and file proof thereof within a week. Accordingly, he surrendered to the Central Jail, Tihar on 04.02.2015 in case FIR No. 29 of 1997.

3. Mr. Radha Shyam Jena, learned counsel appearing on behalf of the appellant contends that both the Special Court and the High Court have erred in convicting the appellant despite the fact that the main accused Ms. Manju Mathur has been acquitted for the offence under Sections 7,8, 13(1)(d) read with Section 13(2) of the P.C. Act, on appreciation of evidence on record and that the prosecution failed to prove the guilt against her. She was acquitted from the charges, which order

has attained finality. The learned counsel has further contended that the courts below have erred in recording a finding of guilt on the charge as against the appellant despite the fact that there is no evidence on record to prove the same. The learned counsel has further contended that the High Court has erred in upholding the judgment and order of the Special Judge and did not consider the essential ingredients of Section 8 of the P.C. Act, which are that the accused should accept or agree to accept or even attempt to obtain gratification from someone, the gratification is for himself or for someone else and its motive or reward is to induce a public servant by corrupt or illegal means to do or forebear to do any official act or to show favour or disfavour to someone etc.

4. It is further contended by Mr. Radha Shyam Jena, learned counsel appearing on behalf of the appellant that the prosecution has failed to prove the involvement of someone other than the appellant. Further, it is alternatively contended by him that the appellant had undergone agony and trauma since the litigation has been going on for the last 17 years. In this backdrop, the High Court ought to have imposed the minimum sentence of 6 months as provided under Section 8 of the P.C. Act in exercise of its discretionary power. Hence the present appeal urging various grounds.

5. We have heard the learned counsel for the parties and have carefully examined the concurrent findings and reasons recorded by the appellate court in its judgment after re-appreciation of evidence in exercise of its appellate jurisdiction. The High Court after adverting to the evidence of the prosecution witnesses has concurred with the findings of fact on the charge framed against the appellant under Section 8 of the P.C. Act. While concurring with the findings of fact on conviction of the charge framed against the appellant, the High Court has modified the sentence imposed upon him from 2 years to 1 year with no change in the fine amount and the default sentence as awarded by the learned Special Judge.

6. We have carefully examined the impugned judgment and order passed by the High Court with a view to ascertain whether the sentence imposed on the appellant by the High Court can be modified to the minimum sentence of 6 months as provided under the provisions of Section 8 of the P.C. Act. It is an undisputed fact that the main accused No. 2 has been acquitted from the charges framed against her by the Special Court. The learned Special Judge, on appreciation of evidence on record has held that the prosecution had failed to prove the charge against the accused No. 2, who is the public servant. Further, pursuant to our order dated 02.02.2015 the appellant surrendered to the Central Jail, Tihar on 04.02.2015 in FIR case No. 29 of 1997. He has served the sentence for more than 7.5 months as per the certificate dated 6.9.2015 issued by the Deputy Superintendent, Central Jail, Tihar and has paid the fine amount awarded by the Special Court which fine amount as sentence is affirmed by the High Court. Having regard to the facts and circumstances of the case, particularly in the light of the fact that the main accused No. 2, against whom the charges were levelled under Sections 7, 8, 13 (1) (d) read with Section 13 (2) of the P.C. Act, was acquitted for want of evidence on record, we are of the view that justice would be met if the period of sentence already undergone by the appellant be treated as the sentence to be imposed for the conviction on the charge framed against him. To that extent the impugned order of sentence imposed by the High Court is modified and we pass the following order :-

This criminal appeal is partly allowed and we modify the order impugned with regard to the period of sentence already undergone by the appellant is treated as sentence imposed upon him for the charge proved against him. To this extent the impugned order of sentence of 1 year imposed by the High Court is modified. In view of the above modified order of sentence, we direct the Superintendent of Central Jail, Tihar to release the appellant forthwith from the custody, if he is not required in any other criminal case.

... ... J. [T.S. THAKUR] .....J. [V. GOPALA GOWDA] New Delhi, September 28, 2015 REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO. 1264 OF 2015 (Arising out of SLP (Crl.) No. 444 of 2015) K.P. Singh ...Appellant Versus State of NCT of Delhi ...Respondent O R D E R T.S. Thakur, J.

1. I have had the advantage of going through the order proposed by my Esteemed Brother Gowda, J. and find myself in complete agreement with the view taken by His Lordship that the sentence awarded to the appellant deserves to be reduced to the period already undergone by him. Not because the reasoning given in support of that view is in any manner deficient, but only to buttress the conclusion arrived at by his Lordship, I propose to add a few lines of my own.

2. The facts to the extent relevant have been elucidated in the order proposed by Gowda, J. It would, therefore, serve no purpose to recapitulate the same over again. What is important is that the principal accused has been acquitted of the charges framed against her while the courts below have concurrently convicted the appellant for the offences punishable under Section 8 of the Prevention of Corruption Act, 1988. In the present appeal we had issued notice limited to the question of quantum of sentence that could be awarded to the appellant in the peculiar facts and circumstances of the case. The Trial Court had, as noticed by Gowda, J., awarded rigorous imprisonment for a period of two years and a fine of Rs. 5,000/- to the appellant herein which has been in appeal reduced by the High Court to one year besides a fine of Rs.5,000/- and a default sentence of imprisonment for a period of two months.

3. Determining the adequacy of sentence to be awarded in a given case is not an easy task, just as evolving a uniform sentencing policy is a tough call. That is because the quantum of sentence that may be awarded depends upon a variety of factors including mitigating circumstances peculiar to a given case. The Courts generally enjoy considerable amount of discretion in the matter of determining the quantum of sentence. In doing so, the courts are influenced in varying degrees by the reformative, deterrent and punitive aspects of punishment, delay in the conclusion of the trial and legal proceedings, the age of the accused, his physical/health condition, the nature of the offence, the weapon used and in the cases of illegal gratification the amount of

bribe, loss of job and family obligations of accused are also some of the considerations that weigh heavily with the Courts while determining the sentence to be awarded. The Courts have not attempted to exhaustively enumerate the considerations that go into determination of the quantum of sentence nor have the Courts attempted to lay down the weight that each one of these considerations carry. That is because any such exercise is neither easy nor advisable given the myriad situations in which the question may fall for determination. Broadly speaking, the courts have recognised the factors mentioned earlier as being relevant to the question of determining the sentence. Decisions of this Court on the subject are a legion. Reference to some only should, however, suffice.

4. In B.G. Goswami v. Delhi Administration (1974) 3 SCC 85, the accused was convicted under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and under Section 161 of I.P.C and was sentenced to undergo rigorous imprisonment for a period of 1 year and 4 months. On appeal, this Court while reducing the punishment to the period already undergone, laid down the general principles that are to be borne in mind by the Courts while determining the quantum of punishment. This Court observed:

"10. As already observed, the appellant's conviction under Section 161, I.P.C. 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 1 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 re-claim 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 sentences 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 7 years of the agony and harassment of these proceedings when he is also going to lose his job and 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."

5. In Dologovinda Mohanty v. State of Orissa (1979) 4 SCC 557, this Court upon considering the negligible amount of Rs. 138/- alleged to have been received by the accused as illegal gratification, took a lenient view by reducing the sentence of the accused from four months rigorous imprisonment to the period already undergone. The following passage is apposite:

"....It, however, appears that the entire money which was said to have been embezzled by the appellant was recovered by the government by deducting the entire amount from the salary of the appellant. It also appears from the statement of the accused under Section 342 that in view of his domestic circumstances he was mentally disturbed. Having regard to these special circumstances and further having regard to the facts that the sum embezzled is only Rs. 138/- we feel that it would not be proper to send the appellant back to jail. The appellant has already undergone about a week's imprisonment. For these reasons, therefore, we reduce the sentence to the period already served and reduce the fine from Rs. 1,000/- to Rs. 500/- in default one month's rigorous imprisonment. Out of the fine, if deposited already, Rs. 500/- may be refunded to the appellant. With this modification the appeal is dismissed."

6. In light of the long delay in the conclusion of the legal proceedings and the consequential agony and incarceration undergone by the appellant, this Court in M.W. Mohiuddin v. State of Maharashtra (1995) 3 SCC 567 reduced the sentence of six months imposed on the accused by the trial court to the period already undergone:

"10. Now coming to the question of sentence, the offence took place in the year 1981. All these years the appellant has undergone the agony of criminal proceedings until now and he has also lost his job and has a large family to support. It is also stated that he has become sick and infirm. He has been in jail for some time. For all these special reasons, while confirming the conviction of the appellant, we reduce the sentence of imprisonment to the period already undergone. However, we confirm the sentence of fine with default clause. Accordingly, subject to the modification of sentence of imprisonment, the appeal is dismissed."

7. To the same effect is the decision of this Court in Ghulam Din Buch etc. etc. v. State of Jammu and Kashmir (1996) 9 SCC 239 wherein after considering the long delay in the legal proceedings, this Court reduced the punishment of the accused to two months rigorous imprisonment for

offences punishable under the Prevention of Corruption Act, 1947 and the Ranbir Penal Code. This Court said:

> "28. According to us, it would be too harsh to award even the minimum punishment at this length of time keeping in view the hardship already undergone and the amount which the State had ultimately to lose because of the conspiracy - the same being a sum of Rs. 1,62,117.89. As about two decades have passed since the commission of the offence and as during the interregnum the appellants had undoubtedly suffered in body and mind, according to us, it is a fit case where the proviso to Sub-section (2) of Section 5 of the Act should be invoked which states that for special reasons recorded in writing, the court may refrain from imposing a sentence of imprisonment or impose a sentence of imprisonment of less than one year. Though the proviso permits not to impose a sentence of imprisonment at all and confine the sentence to fine only, we do not think if present is a case where the punishment to be awarded should be only fine, as any softness in this regard could produce an undesirable result, namely, encouragement to adoption of corrupt means by public servants which has indeed to be checked, and not allow to be encouraged. Keeping in view all the attending circumstances, we are of the view that a sentence of RI for two months would be adequate sentence, apart from the fine of Rs. 15,000. On failure to pay the fine, each of the appellants would suffer imprisonment for two months."

8. So also, in the case of State of Maharashtra v. Rashid Babubhai Mulani (2006) 1 SCC 407, the accused had allegedly obtained illegal gratification to the tune of Rs. 300/- for which the trial Court had convicted the accused under Section 161 of the I.P.C. and for an offence punishable under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and sentenced him to rigorous imprisonment for a period of one year. This Court reduced the sentence to four months after considering the bribe amount and the long delay. The following observations are, in this regard, relevant:

> "6. In regard to sentence, we find that the incident occurred about 19 years ago. The matter was pending for about 3 years before the Special Judge, and about 8 years before the High Court and, thereafter, for 8 years before this Court. The accused was hardly 32 years old when the incident occurred and now more than 50 years old. The accused was a Talathi coming from a poor background with a family to support. In the circumstances, while restoring the conviction, we reduce the sentence from one year to four months both under Section 161 IPC and Section 5(2) read with Section 5(1)(d) of the Act. Both the sentences to run concurrently. The accused, who is on bail, shall surrender forthwith to serve out the sentence."

9. So also, in the case of Bechaarbhai S. Prajapati v. State of Gujarat (2008) 11 SCC 163, this Court reduced the sentence of one year imprisonment imposed on the accused for the offences under Section 161 of the Indian Penal Code, 1860 and Section 7(2) of the Prevention of Corruption Act, 1988. The Court, in the following words, held that the delay and the sentence undergone by the

accused were mitigating factors in determining the quantum of sentence:

> "8. The alternative submission relates to the harshness of sentence. The occurrence took place nearly seven years back. It is stated that the appellant has suffered custody for more than six months. Taking into account all these aspects, we feel interest of justice would be best served if the sentence is reduced to the period undergone, while maintaining the conviction. It is to be noted that the minimum sentence prescribed under Section 7(2) of the Act is six months."

10. In the recent decision of this Court in V.K. Verma v. CBI (2014) 3 SCC 485, the accused was charged under Section 161 of the Indian Penal Code, 1860 and Section 5(1)(d) read with 5(2) of the Prevention of Corruption Act, 1947 for demand and acceptance of a bribe of Rs.265/- and was sentenced to undergo rigorous imprisonment for a period of one and a half years for each of the offences. This Court, while hearing his appeal limited the quantum of punishment to the period already undergone. The following words are seminal to the issue at hand:

> "10. In imposing a punishment, the concern of the court is with the nature of the act viewed as a crime or breach of the law. The maximum sentence or fine provided in law is an indicator on the gravity of the act. Having regard to the nature and mode of commission of an offence by a person and the mitigating factors, if any, the court has to take a decision as to whether the charge established falls short of the maximum gravity indicated in the statute, and if so, to what extent.

11. 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....

xxx xxx xxx

15. The Appellant is now aged 76. We are informed that he is otherwise not keeping in good health, having had also cardio vascular problems. The offence is of the year 1984. It is almost three decades now. The accused has already undergone physical incarceration for three months and mental incarceration for about thirty years. Whether at this age and stage, it would not be economically wasteful, and a liability to the State to keep the Appellant in prison, is the question we have to address. Having given thoughtful consideration to all the aspects of the matter, we are of the view that the facts mentioned above would certainly be special reasons for reducing the substantive sentence but enhancing the fine, while maintaining the conviction."

11. Similarly, in Gulmahmad Abdulla Dall v. State of Gujarat 2014 (4) Crimes 455 (SC), the appellant was sentenced by the trial court to undergo rigorous imprisonment for a period of one year and a fine of Rs. 2500/- for the offence punishable under Sections 161 and 165(A) of Indian Penal Code and under Section 5(2) of the Prevention of Corruption Act, 1947. While hearing an appeal on the quantum of sentence, this Court reduced the sentence of the accused to the period already undergone on the ground of protracted legal proceedings. The following passage is, in this regard,

apposite:

> "7. The incident, in question, took place as back as on 29/6/1987. Almost 27 years have passed by. All these years, the Appellants must have suffered tremendous mental trauma and anguish. The Appellants have lost their jobs and all retiral benefits. The Appellant - Jujarsinh is, as of today, about 76 years old. We are informed by learned Counsel for the Appellant -

Gulmahmad Abdulla Dall that Gulmahmad is suffering from gangrene and has undergone surgery. Both the Appellants are in jail. We are informed by learned Counsel for the Appellants that the Appellants have undergone about more than two months imprisonment.

8. In the peculiar circumstances of the case, therefore, we are of the opinion that the sentence undergone by them should be treated as substantive sentence for the offences for which they are convicted and fine imposed on them needs to be enhanced".

12. Given the fact that the trial and appeal proceedings have in the case at hand continued for nearly 17 years by now causing immense trauma, mental incarnation and anguish to the appellant and also given the fact that the bribe amount was just about Rs.700/- and that the appellant has already undergone 7½ months against the statutory minimum of 6 months imprisonment, the reduction of the sentence as proposed by my esteemed Brother appears to be perfectly in order. I, therefore, concur with the view taken by His Lordship.

.....J. (T.S. Thakur) New Delhi September 28, 2015