SUPREME COURT OF INDIA

Beena Philipose and Another

Vs

State of Kerala

Appeal (Crl.) 910 of 2006 (Arising Out of Slp (Crl.) No. 3093 of 2006)

(Arijit Pasayat and L. S. Panta, JJ)

04.09.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the Judgment rendered by a Division Bench of the Kerala High Court maintaining the conviction of the appellants while reducing the sentence of imprisonment.

The appellants were tried for commission of offence punishable under Section 420, 471, 120 B read with sections 466 and 468 of Indian Penal Code, 1860 (in short the "Code").

The allegations which led to the trial are essentially to the effect that appellant No.1 secured admission to the Medical College, Thiruvanthapuram on the basis of forged mark-sheet. The appellant No.1 had appeared for the Second year Pre- Degree Examination held by the Kerala University and had secured only a IInd class.

Having secured 513 out of 1000 marks she could not have secured admission to the Medical College. She joined a degree course with Chemistry as the main subject and Physics and Mathematics as subsidiary subjects. After graduation, she continued to nurse the ambition to join the

Medical College. She filed forged mark-sheets by showing that in the Chemistry main examination she had secured 491/600, though she had secured only 287/600. Similarly, for Mathematics subsidiary examination, instead of 92/200 she changed it 162/200 with the forged mark-sheet. She was shown to have scored 787/1000 instead of 513/1000 as has been actually scored by her. It was the case of the prosecution that as a result of conspiracy between first accused, i.e. appellant no. 1, second accused, i.e. father of the girl, appellant no. 2, accused no. 3 an official of the University accused no. 4 a Contractor and accused no.5 who turned approver, the mark sheet was forged.

The forgery was done with the obvious purpose of utilising forged mark-sheet to secure admission. On the basis of compliant lodged, investigation was undertaken and charge sheet was filed. The VIth Addl. (Spl.) Sessions Judge, Thiruvananthapuram found accused guilty and sentenced the accused persons as follows:

"Al is sentenced to undergo Simple Imprisonment for 1 year each for the offences u/s 421 I.P.C, 466 I.P.C., 468 I.P.C. and 471 I.P.C. A2 and A3 each are sentenced to undergo RI for 3 years each for the offence u/s 420 I.P.C., 466 I.P.C., 468 I.P.C. and 471 IP.C. No separate sentence is imposed for the offences U/Ss. 120-B and 465 I.P.C. The sentences shall run concurrently. Set off allowed u/s 428 Cr.P.C."

In appeal, as noted above, the conviction was maintained but the sentences were reduced to three months and six months respectively.

In support of the appeal, learned counsel for the appellants submitted that there is erroneous appreciation of evidence. The appeal was heard on several dates before the High Court and after a lapse of about 14 years finally judgment was delivered. Appellant no.1 is a house-wife and has no job or source of income of her own. She is a heart patient and has undergone two open heart surgeries. Her father, appellant no.2 is a retired Engineer and is presently about 81 years of age and has no income other than his pension. He is also a heart patient and has suffered cardiac arrest. It is pointed out that both the appellants are in custody and have undergone actual imprisonment for about 70 days each as on 01.09.2006.

Notice was issued restricted to the quantum of sentence. Learned counsel for the respondent-State referred to an order passed by this Court in Criminal Appea1 No. 6O8/2006 where the custodial period was reduced to the period already undergone, while the fine was enhanced from Rs.2, 00, 000/- to Rs.500, 000/- with simple imprisonment on default in case of non-payment. Learned counsel for the appellants pointed out that in the said case appellant had undergone only one week of custody. In the instant case, in case of appellant no.1, against the imposed sentence of three months she has already undergone sentence of 70 days. Similarly in case of appellant no.2 in respect of sentence of six months he has already undergone sentence of 70 days. In other words, it is pointed out that a substantial portion of the sentence has already undergone and, therefore, a lenient view should be taken considering the fact that the alleged offence was committed a quarter of century back.

We find no reason to interfere with the analysis of factual position made by the trial Court as

maintained by the High Court to conclude guilt of the appellants.

Coming to the residual plea regarding the sentence, taking note of the peculiar facts and the order passed in Criminal Appeal No. 608/2006, we reduce the sentence of the appellants to the period already undergone. The fine amount imposed, however, shall remain unaltered. The fine amount shall be deposited within a period of two months before the Trial Court failing which the default sentence shall be one year simple imprisonment.

The appeal is disposed of accordingly.