

SUPREME COURT OF INDIA

Mota Ram

Vs.

State of Haryana

CrI.A.No.1329 of 2003

(Dr. Mukundakam Sharma and Dr. B.S. Chauhan JJ.)

28.05.2009

JUDGEMENT

Dr.B.S.Chauhan, J.

1. This appeal has been preferred against the judgment and order of the High Court of Punjab and Haryana at Chandigarh dated 31.3.2000 by which it dismissed the Criminal Appeal No.115-SB of 1989 against the judgment and order of the Special Judge, Sirsa dated 9.2.1989 and 13.2.1989 convicting the appellant under Section 5(2) of the *Prevention of Corruption Act, 1947* (hereinafter referred to as "the Act") and under Section 165 of the *Indian Penal Code* (hereinafter referred to as "IPC") and sentencing him to undergo rigorous imprisonment for a period of one year and a fine of Rs.500/- or in default to further undergo imprisonment for a period of two months under Section 5(2) of the Act and to undergo rigorous imprisonment for a period of one year under Section 165 IPC. However, it was directed that both the sentences shall run concurrently.

2. The facts and circumstances giving rise to this appeal are that the appellant was employed as Ward Servant in Primary Health Center, Jutawali and he used to visit Village Nohgarh where he came in contact with one Om Parkash, complainant PW.4 who had got himself registered in the Employment Exchange in 1982 and had been invited for an interview for the post of Ward Servant scheduled to be held on 19.10.1987 at Civil Hospital, Sirsa. The appellant gave the impression to Om Parkash, PW.4-complainant that he would be able to help him in selection as a Ward Servant provided he make arrangement of Rs.2,000/-. Accordingly, Om Parkash complainant paid a sum of Rs.2,000/- to the appellant at Bus stand, Dabwali. After 2-4 days, the appellant represented to Om Parkash that he could not get his work done with the said amount of Rs.2,000/- and, therefore, he should arrange a further sum of Rs.4,000/-. After 4-5 days, the complainant Om Parkash paid Rs.4,000/- to the appellant at Civil Hospital, Sirsa. The complainant Om Parkash visited Civil Hospital in order to know the result of the selection and came to know that he was not selected. Thus, he contacted the appellant and asked him to return the amount paid for getting the appointment. The appellant continued prolonging the matter for 3-4 months and during this period the

appellant sometimes gave Rs.100/- to Om Parkash and sometimes Rs.2,00/- and in this way he paid a sum of Rs.4700/- to him.

“Appellant refused to return the balance amount of Rs1300/- to the complainant. Thus, the complainant Om Parkash sent application to the Chief Minister, Haryana, through a registered letter raising his grievance. During this period the appellant paid a sum of Rs.1,000/- and subsequently on 30.8.1988 the remaining balance amount of Rs.300/-. For the payment of balance amount of Rs.300/-, the appellant got a receipt executed by the complainant Om Parkash in presence of several witnesses. Though the amount had been paid, however on the complaint sent by the complainant to the Chief Minister of Haryana, investigation was started and appellant was charged under Section 5(2) of the Act and under Section 165 of the IPC.”

3. During the trial, prosecution examined eight witnesses in support of its case and the appellant/accused took the plea that he had taken the loan from the complainant Om Parkash which he had paid and he had falsely been implicated in the case because of his enmity with one Mani Ram who belonged to Congress Party and was in relation of the then Chief Minister of Haryana. The Trial court after appreciating the evidence reached the following conclusions:-

“i) The complainant Om Parkash was unemployed and got himself registered with the Employment Exchange. He was called for interview for the post of ward servant in which he was not selected.

ii) The complainant had paid initially a sum of Rs.2,000/- and subsequently Rs.4,000/- to the appellant and it could not be a loan for the reason that Om Parkash himself was unemployed and not in a capacity to advance loan to any person.

iii) The amount so advanced to the appellant by the complainant could not be loan and it was an illegal gratification. Sometimes Rs.100/- and sometimes Rs.200/- had been refunded to the complainant by the appellant, though the entire amount had been paid.

iv) Procuring a receipt for a sum of Rs.300/- and endorsing it as a refund of loan in presence of several witnesses was not normal behaviour of the appellant.

v) The question of involving him falsely at the behest of Mani Ram was a false plea and concocted story as no enmity or strained relationship between the appellant and said Shri Mani Ram could be established nor the factum of any good relationship between the said Shri Mani Ram and the complainant could be proved.”

4. In view thereof, the appellant was convicted and sentenced as mentioned hereinabove.

5. Being aggrieved, the appellant preferred an appeal before the High Court which was dismissed after affirming the findings recorded by the trial court. Hence this appeal.

6. Learned counsel for the appellant Mr. Rajesh Sharma submitted that in fact complainant had advanced a loan and it was not an illegal gratification. The same has been returned to the complainant and at the time of paying the balance loan of Rs.300/-, a receipt was signed by the complainant as well as 2-3 witnesses endorsing that this was the payment of outstanding dues of loan advanced by the complainant to the appellant and, therefore, the entire prosecution case is improbable. More so, the punishment of one year rigorous imprisonment and fine of Rs.500/- is disproportionate to the charge proved against him and, therefore, the appeal deserves to be allowed.

7. In spite of service none appeared for the State. Thus, we have gone through the record of the case with the assistance of the learned counsel for the appellant.

8. There is nothing on record on the basis of which it can be held that the findings of facts recorded by the courts below are perverse being based on no evidence or contrary to the record.

“In fact not even a suggestion had been given and made to the complainant Om Parkash that he was in a position to lend money to the appellant. In cross-examination the complainant rather stated that complainant had borrowed the amount from his brother in law - Mohan Lal. Learned counsel for the appellant could not satisfy the court that the complainant was in a position to lend money to the appellant.”

9. The question of having the receipt only for the balance amount of Rs.300/- in presence of several witnesses itself reveal that it was not a normal human behaviour. No explanation could be furnished by learned counsel for the appellant that as if the appellant had not taken the receipt for the amount earlier paid by him to the complainant what was the occasion to get the receipt from him in presence of several witnesses only for a sum of Rs.300/-. Therefore, it is evident that the appellant wanted to create some evidence to show that money so paid to him was a loan and not an illegal gratification.

10. We do not see any infirmity in the concurrent findings recorded by the courts below and the appeal is liable to be dismissed.

11. So far as the issue of sentence is concerned, in view of the provisions of Section 5(2) of the Act, the minimum sentence a court could award is one year and it may extend to 7 years and a fine can also be imposed. None of the grounds submitted by learned counsel for the appellant that it was a very old case; appellant had already served about 6 months in jail; Appellant had refunded the amount taken by him from the complainant; the complainant himself had been abettor and could have been a co-accused for an offence punishable under Section 109 IPC, can be the mitigating circumstance for which the Court may reduce the sentence taking into consideration the proviso to Section 5(2) of the Act. As the courts below have awarded the minimum sentence prescribed under the Act, the facts of the case do not warrant any interference with the quantum of sentence also. The appeal lacks merit and is, accordingly, dismissed.