

SUPREME COURT OF INDIA

Kiran Chander Asri

Vs.

State of Haryana

Crl.A.No.1230 of 2015

(J.Chelameswar and Abhay Manohar Sapre,JJ.,)

17.09.2015

ORDER

Abhay Manohar Sapre,J.,

S.L.P.(Crl.)No.5747 of 2015)

1. Leave granted.

2. This appeal is directed against the final order dated 28.05.2015 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. CRA-S-1070-SB of 2005 whereby the learned Single Judge of the High Court dismissed the appeal filed by the appellant herein and affirmed the order dated 04.06.2005 passed by the Special Judge, Sonapat in Sessions Case No. 10 of 1999/2005 by which the Special Judge convicted the appellant under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the P.C. Act”) and sentenced him to undergo rigorous imprisonment for a period of two years and a fine of Rs.1000/- under Section 7 and rigorous imprisonment of two years and a fine of Rs.2000/- under Section 13 of the P.C. Act. In default of payment of fine, he shall undergo further rigorous imprisonment of six months. Both the sentences shall run concurrently.

3. In order to appreciate the issue involved in this appeal, it is necessary to state the relevant facts in brief.

4. On 12.08.1978, the appellant joined as Lecturer in English in Education Department, Government of Haryana and was later selected as Block Development and Panchayat Officer and joined as such on 21.04.1993.

5. In the year 1995, the appellant was posted as Block Development and Panchayat Officer Mundlana. By letter dated 26.10.1994, the Director, Development and Panchayats, Haryana issued instructions to all the Deputy Commissioners in the State of Haryana that no auction of village fish ponds should be done without adequate advertisement and secondly, it should

be done under the supervision of the Committee after following the due procedure of reserved price fixation by Fisheries Department.

6. The Gram Panchayat of Mundlana village passed a resolution for auction of fish ponds in the village and sent it for approval to the appellant, who fixed the auction for 15.03.1995. On that day, the appellant did not go to the village but deputed the Panchayat Officer, who auctioned only the Panchayat land and refused to auction the fish ponds. Thereafter the auction of the fish ponds was fixed for 22.03.1995. On that day also due to the absence of the appellant, the auction could not take place. Thereafter when Ranbir Singh – the Sarpanch of the Village (Complainant) met the appellant, he demanded Rs.2000/- as bribe to conduct the auction. The Complainant, however, expressed his inability to pay the bribe amount. The appellant then negotiated the amount of bribe. On 22.03.1995, again the appellant did not go to Mundlana Village and postponed the auction for 06.04.1995 but at that time he clearly told the Complainant that so long as the bribe money is not paid to him, the auction would not be held.

7. On 04.04.1995, the Sarpanch filed an application to the S.P., State Vigilance Bureau (in short “SVB”), Karnal stating therein the aforesaid facts. On receipt of the application, Mr. M.S. Ahlawat, the then S.P., SVB, Karnal (in short “Investigating Officer”) wrote a letter to the Government seeking permission to arrange the raid. On 06.04.1995, he got the permission from the Government to carry out the raid. Thereafter he wrote a letter to the Deputy Commissioner, Sonapat to depute one Gazetted Officer for being joined in the raiding party. As per the direction of the Deputy Commissioner, Mr. Ram Mehar, Xen, Irrigation joined the raiding party.

8. On 07.04.1995, the raiding party went to the office of the appellant. Hari Chand, the Inspector was deputed as a shadow witness and instructed to give a fixed signal by moving his hand over the head after the acceptance of the bribe money by the appellant. The Sarpanch-the Complainant and shadow witness went to the office of the appellant and after 10 minutes, the shadow witness passed the signal upon which the raiding party went inside the office of the appellant and saw him putting something in the drawer. The Investigating Officer gave his introduction to the appellant, who after some persuasion opened the drawer and took out the bribe money and handed over the same to the Investigating Officer. After that, the appellant was taken into custody.

9. On that basis FIR No. 11 dated 07.04.1995 was registered at Police Station Vigilance Bureau, Karnal against the appellant under Sections 7 & 13 of the P.C. Act.

10. After completion of investigation, challan was submitted against the appellant before the Special Court to face the trial. The prosecution examined ten witnesses and in defence, the appellant examined three witnesses.

11. Vide order dated 04.06.2005 the Special Judge, Sonapat in Sessions Case No. 10 of 1999/2005 convicted the appellant under Sections 7 and 13 of the P.C. Act and sentenced him to undergo rigorous imprisonment for a period of two years and a fine of Rs.1000/-

under Section 7 and rigorous imprisonment of two years and a fine of Rs.2000/- under Section 13 of the P.C. Act. In default of payment of fine, he shall undergo further rigorous imprisonment of six months. Both the sentences shall run concurrently. It was held that the prosecution was able to prove beyond reasonable doubt the demand and acceptance of bribe money of Rs.2000/- by the appellant.

12. Challenging the order of conviction and sentence, the appellant filed an appeal being CRA-S-1070-SB of 2005 before the High Court. By judgment dated 28.05.2005, the learned Single Judge of the High Court concurred with the findings of the Special Judge and finding no merit, dismissed the appeal and upheld the order passed by the Special Judge. Aggrieved by the said judgment, the appellant– accused has filed this appeal by way of special leave.

14. It is pertinent to mention here that by order 27.07.2015 this Court issued notice to the respondent only on the question of quantum of punishment awarded to the appellant.

15. In the light of the order dated 27.07.2015, the only question which arises for consideration in this appeal is whether having regard to the facts and circumstances of the case, any case is made out by the appellant to call for any interference in the quantum of punishment awarded to him by the two courts below and if so, to what extent.

16. In view of this limited question, it is not necessary for this Court to examine the merits of the case insofar as it relates to the issues, which resulted in appellant's conviction for the offences punishable under Sections 7 and 13 of the P.C. Act.

17. Learned counsel for the appellant, confining his submission to the quantum of punishment, submitted that keeping in view the fact that this litigation is pending for the last 20 years because the incident is of the year 1995 (07.04.1995), secondly, the appellant is now quite old and is suffering from various ailments, and further he has lost his job and also undergone few months in jail as under trial and again few days after conviction, and lastly looking to the small amount of bribe involved (Rs.2000/-), this Court should take some lenient view in awarding lesser punishment and reduce it to minimum as prescribed in Sections 7 and 13 of the P.C. Act prior to the amendment in these sections. It is more so as the learned counsel submits when this Court has now finally upheld the appellant's conviction.

18. In contra, learned counsel for the respondent supports the impugned order.

19. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to accept the submission of the learned counsel for the appellant in part.

20. Taking into consideration the totality of the facts and circumstances of the case, such as firstly, the incident is of 1995; secondly, this litigation is pending for the last 20 years; thirdly, the appellant is now quite old and suffering with ailments; fourthly, he has already lost his job, we consider it just and proper, in peculiar facts of this case, to reduce the punishment awarded to the appellant from two years to that of one year.

21. Since at the relevant time when the offence was committed by the appellant, the minimum punishment prescribed in Sections 7 and 13 was six months and one year respectively, which may extend to five years and seven years respectively hence this Court can reduce the punishment of 2 years awarded to the appellant to one year notwithstanding the amendment made in Sections 7 and 13 by Act No. 1 of 2014 (w.e.f.16.01.2014) which, in our view, will not apply to the case of the appellant in the light of Article 20 of the Constitution of India.

22. In view of the foregoing discussion, the appeal succeeds and is hereby allowed in part. Impugned order is modified to the extent that the appellant is awarded one year punishment for the offences punishable under Sections 7 and 13 of the P.C. Act. So far as the fine amount imposed by the Courts below is concerned, it is upheld. If the appellant is on bail, his bail bonds stand cancelled and he be taken into custody forthwith to undergo the remaining period of sentence awarded by this Court.