SUPREME COURT OF INDIA

Nirmal Dass

Vs.

State of Punjab

Crl.A.No.531 of 2016

(Abhay Manohar Sapre and Ashok Bhushan,JJ.,)

18.05.2016

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(Crl.)No.4278/2016

1. Delay condoned. Leave granted.

2. This appeal is filed against the final judgment and order dated 06.05.2015 passed by the High Court of Punjab and Haryana at Chandigarh in C.R.R. No. 2027 of 2003 whereby the High Court dismissed the revision petition filed by the appellant herein.

3. Facts of the case lie in a narrow compass. They, however, need mention in brief infra.

4. The appellant and his brother Sukhdev were prosecuted and tried for commission of the offences punishable under Sections 465, 468, 471 read with Section 120-B of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") pursuant to FIR No. 74 dated 04.10.1994 filed at Police Station Banga, District Nawanshahr, Punjab in Criminal Case no. 166/2002 in the Court of Judicial Magistrate First Class Nawanshahr.

5. In short, the case of the prosecution was that the appellant along with his brother Sukhdev and father- Saran Das manipulated the revenue records of a land measuring 49 Kanals 9 Marlas comprised in Khewat No. 434 Khatuni No. 653 and 28 Kanals and 14 Marlas in Khewat No. 131/176 situated in the revenue estate of Jagatpur owned by the Gram Panchayat of the area. It was the case of prosecution that father and his two sons did this manipulation only with a view to grab the land for their personal benefits.

6. On coming to know of the manipulation done by these persons in revenue records and using the manipulated documents in the civil proceedings in a suit filed by them in relation to the land for their personal benefits to obtain the decree, the State Authorities (Revenue Department) made inquiries and filed FIR against the appellant and his brother which gave

rise to the filing of charge sheet in the Court of Judicial Magistrate against them for commission of the offences as mentioned above. So far as father-Saran Das was concerned, he died prior to filing of the case.

7. By judgment dated 05.12.2002, the Magistrate, Nawanshahar convicted the appellant and his brother under Sections 465, 468, 471 read with Section 120-B of the IPC and sentenced them to undergo rigorous imprisonment for 2 (two) years with a fine of Rs.1000/- each under Sections 465 and 471 and rigorous imprisonment for three years with a fine of Rs.2000/- each under Section 468 and rigorous imprisonment for six months under Section 120-B and in default of payment of fine to further undergo rigorous imprisonment for six months. All the sentences were to run concurrently. It was held that the prosecution was able to prove the case against the appellants under all the sections under which they were tried.

8. The appellant and his brother, felt aggrieved, filed appeal being RBT No. 23 of 2003 before the Additional Sessions Judge, Nawanshahar. Vide order dated 26.09.2003 the appellate Court partly allowed the appeal but maintained the conviction by holding them guilty under Section 120-B read with Sections 465 and 468 IPC and altered their sentence from three years to two years with a fine of Rs.4000/-.

9. The appellant and his brother pursued the matter further in revision bearing CRR No. 2027 of 2003 before the High Court. By impugned order dated 06.05.2015, the High Court dismissed the revision and upheld the order of the appellate Court.

10. Felt aggrieved, the appellants filed this appeal by way of special leave petition before this Court. On 22.01.2016, when the SLP came up for hearing on the question of admission, learned counsel for the appellants submitted that he confines his submissions to challenge only the quantum of sentence awarded to the appellants. On such submission being made, this Court issued notice to the respondent to examine the issue of quantum of sentence and, if so, whether any case is made out to reduce the quantum of sentence awarded by the Courts below and, if so, to what extent.

11. Heard learned counsel for the parties.

12. Learned counsel for the appellants has urged only one submission. According to him, out of three accused, two have died, namely, father and appellant No. 2 during the pendency of this litigation. That apart, appellant No. 1 is now aged around 75 years and lastly, the fact that appellant No. 1 has already undergone a period of five months in jail, this Court should take a lenient view in the case and reduce the sentence of appellant No. 1 from 2 years to that of what he has already undergone. Learned counsel also urged that appellant No. 1 has not retained any benefits arising out of the land in dispute to him and it was restored to its original owner (Gram Panchayat). It was, therefore, his submission that this is one of the mitigating factors, which this Court should take into consideration while deciding the issue relating to quantum of punishment.

13. In reply, learned counsel for the respondent- State supported the impugned order and contended that no case is made out to interfere in the impugned order and, therefore, it should be upheld.

14. 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 appellant No. 1 in part as, in our opinion, it has some force.

15. First, it is not in dispute that appellant No. 1 is aged around 75 years; Second, out of three accused two have expired; Third, litigation is pending for quite some time; Fourth, appellant No. 1 has undergone five months in jail.

16. We, however, cannot accept the submission of learned counsel that the sentence of appellant No. 1 should be reduced to that of "already undergone" as against his total sentence of 2 years. In our view, it would be too lenient in the facts of the case.

17. We have perused the evidence and the findings of the appellate Court and find that having regard to the totality of the circumstances such as nature of offences committed and findings recorded by the appellate Court, the sentence awarded to appellant No. 1 can be reduced from "two years" to "one year". In other words, we consider it just and proper and in the interest of justice to reduce the sentence of appellant No. 1 to "one year" instead of “two years”.

18. In view of foregoing discussion, the appeal succeeds and is allowed in part. The impugned order is modified insofar as it relates to awarding of the sentence to appellant no. 1. Appellant no. 1 is accordingly awarded rigorous imprisonment for 1 (one) year with a fine amount of Rs.10,000/-. In default of payment of fine, appellant No. 1 will undergo rigorous imprisonment for further three months.

19. Since appellant No. 1 is on bail, his bail is cancelled. He be taken into custody forthwith for undergoing remaining period of sentence awarded by this Court. So far as appellant no. 2 is concerned, appeal against him abates on account of his death.