

[2011] 9 S.C.R. 439

MUNILAL MOCHI

v.

STATE OF BIHAR & ANR.

(Criminal Appeal No.. 1429 of 2011)

JULY 21, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Prevention of Corruption Act, 1947:

ss.5(1),(c)(d), 5(2) and 5(3), proviso – Minimum sentence of one year – Power of Court to reduce the sentence – Conviction by trial court u/ss. 120-B, 420, 467, 468, 471-A IPC r/w ss.5(1)(d), 5(2) of the Prevention of Corruption Act – Upheld by High Court reducing sentence from 2½ years to 1½ years RI – Plea before Supreme Court for reducing the sentence to the period already undergone – HELD: In view of the proviso to s.5(3) of the Prevention of Corruption Act and the facts and circumstances of the case that the accused is 71 years of age and has already undergone 6 months imprisonment, that from the date of occurrence, 29 years have passed and there is no record to show that the accused was involved in any other criminal case, ends of justice would be met by modifying the sentence to the period already undergone – Ordered accordingly – Penal Code, 1860 – ss. 120-B, 420, 467, 468, 471-A IPC – Sentence/Sentencing.

On 14.09.1983, the Dy. S.P. Cabinet (Vigilance) Department, Government of Bihar, Patna, made a written complaint before the Office-in-charge, Vigilance Police Station, Patna, alleging that in six Schemes under National Rural Employment Programme ("NREP") after preliminary enquiry, it was detected that Junior Engineer/agents of Department/Agency concerned misappropriated government money in the said Schemes and committed offences punishable u/ss 120-B, 420, 467,

- A 468, 471(A) IPC and s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act, 1947. On the basis of the said complaint, an FIR was lodged and a Vigilance Case was registered. After investigation, a charge sheet was submitted wherein the name of the appellant figured for the first time as an accused, after more than 5 years of registration of the FIR. The Special Judge (Vigilance) convicted the appellant of the offences charged and sentenced him to rigorous imprisonment for a period of 2½ years and to pay fine of Rs. 15,000/-. On appeal, the High Court upheld the conviction but reduced the sentence from 2½ years to 1½ years.

The instant appeal was confined only to the question of sentence.

- D Partly allowing the appeal, the Court

- HELD: 1.1 The only bar against the appellant insofar as reduction of sentence is, the minimum sentence prescribed in s. 5(3) of the Prevention of Corruption Act. Inasmuch as the appellant was also convicted u/ss 5(1)(c)(d) and 5(2) in the normal circumstance, the court has to impose minimum sentence of 1 year. However, the proviso appended to sub-s. (3) gives power to the court to impose a sentence of imprisonment of less than 1 year for any special reasons recorded in writing. [para 8] [444-C-G-H]

- 1.2 It is not in dispute that the occurrence related to the period 1982-83. The appellant retired from the post of Deputy Collector on 01.10.2003, even before his conviction. He stood convicted by the trial court in 2004, i.e., after a long period of 21 years. The High Court took more than 6 years to dispose of the appeal. The appellant has undergone the ordeal of facing trial in an uncertainty about the nature of conviction for such a long period. As on date, the appellant is 71 years of age and has already

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undergone 6 months imprisonment. From the date of occurrence, 29 years have passed. There is no record to show that the appellant was involved in any other criminal case. In the circumstances, ends of justice would be met by modifying the sentence to the period already undergone. Ordered accordingly. [para 9] [445-A-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1429 of 2011.

From the Judgment & Order dated 28.07.2010 of the High Court of Judicature at Patna in CrI. Appeal (S.J.) No. 600 of 2004.

Nagendra Rai, T. Mahipal for the Appellant.

Gopal Singh, Rituraj Biswas for the Respondents.

The Judgment of the Court was delivered by

P.SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the common final judgment and order dated 28.07.2010 passed by the learned Single Judge of the High Court of Judicature at Patna in Criminal Appeal (SJ) No. 600 of 2004 which was filed by the appellant herein along with Criminal Appeal (SJ) Nos. 576, 595, 609 and 625 of 2004 whereby the High Court dismissed the appeal upholding the order of conviction passed by the trial Court and reduced the sentence from two and a half years to one and a half years.

3. Brief facts:

(a) Several schemes of National Rural Employment Programme (in short "NREP") executed between the years 1982-83 by the officers posted at Piro, District Ara with the assistance of some executing agents/agencies came under the scan of the Vigilance Department. Enquiries including re-measurement of the Schemes/works executed under these

A Schemes revealed that some local officers posted in the Block in connivance with agents appointed for few Schemes fraudulently withdrew and misappropriated the Government funds in relation to those schemes and created official records/ documents to cover up such defalcation.

B (b) On 14.09.1983, one Hem Raj Prasad, Dy. S.P. Cabinet (Vigilance) Department, Government of Bihar, Patna, made a written complaint before the Office-in-charge, Vigilance Police Station, Patna, alleging that in Piro Block of District Ara, under NREP, six Schemes viz., Scheme Nos. 27/1982-83, 28/1982-83, 25/1982-83, 21/1982-83, 22/1982-83 and 14/1982-83 were executed and in those Schemes after preliminary enquiry, it was detected that Junior Engineer/agents of concerned Department/ Agency have misappropriated government money in the said Schemes and as such the persons have committed an offence under Sections 120-B, 420, 467, 468, 471(A) of the Indian Penal Code (hereinafter referred to as "the IPC") and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (hereinafter referred to as "the P.C. Act"). On the basis of the said complaint, police lodged a First Information Report (in short "the FIR") and registered a Vigilance P.S. Case No. 18 of 1983 under the aforesaid sections. According to the appellant, his name was not mentioned in the FIR.

F (c) On 14.09.1988, Special Case no. 87 of 1983 was initiated in the Court of Special Judge (Vigilance), Patna. After investigation, charge sheet was submitted wherein the name of the appellant was figured for the first time as an accused, after more than 5 years of registration of the FIR and he was charge sheeted for offences under Sections 120-B, 420, 467, 468 and 477A of the IPC and under Section 5(2) read with Section 5(1)(c)(d) of the P.C. Act. After examining the witnesses, the Special Judge (Vigilance) Patna, by order dated 19.07.2004, convicted the appellant for the offences punishable under the aforesaid Sections and sentenced him rigorous imprisonment for a period of two and a half years and to pay fine of Rs. 15,000/- having default clause.

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(d) Aggrieved by the order passed by the Special Judge, the appellant filed Criminal Appeal No. 600 of 2004 before the High Court of Judicature at Patna. The learned Single Judge of the High Court, by impugned judgment dated 28.07.2010, dismissed the appeal upholding the order of conviction passed by the trial Court but reduced the sentence from two and a half years to one and a half years. A B

(e) Aggrieved by the said judgment, the appellant has preferred this appeal by way of special leave before this Court.

4. Heard Mr. Nagendra Rai, learned senior counsel for the appellant and Mr. Gopal Singh, learned counsel for the respondents. C

5. While ordering notice on 11.04.2001, this Court confined itself only to the question of sentence. In view of the same, there is no need to traverse or discuss the facts leading to his conviction. We have already noted that the appellant was convicted under Sections 409, 420, 467, 468, 471, 477A and 120B of IPC and Section 5(2) read with Section 5(1)(c)(d) of the P.C. Act by the Special Judge (Vigilance), Patna. The High Court modified the sentence alone on appeal filed by the appellant by reducing the substantive sentence imposed on him to undergo RI for two and a half years under Sections 409 and 120B IPC to a period of RI for one and a half years. Similarly, sentence to undergo RI for two and a half years imposed under Sections 467, 468, 471 and 477A of the IPC and Section 5(2) and Section 5(1)(c)(d) of the P.C. Act were reduced to a period of RI for one and a half years. D E F

6. Now, we have to consider whether the appellant has made out a case for further reduction in the quantum of sentence? G

7. Mr. Nagendra Rai, learned senior counsel, by drawing our attention to the fact that the present appellant was not named in the FIR and he was convicted nearly after 25 years from the date of occurrence and as on date he is 71 years of H

- A age submitted that since he had already undergone 6 months imprisonment, the period undergone would be appropriate sentence and prayed for reduction to that extent. On the other hand, Mr. Gopal Singh submitted that it is not a fit case for reduction of sentence. In any event, according to him, in view of sub-Section 3, the imprisonment shall not be less than 1 year, hence it is not a fit case for reduction, even on the sentence.

8. The only bar against the appellant insofar as reduction of sentence is the minimum sentence prescribed in Section 5(3) of the Act. The relevant proviso appended thereto reads as under:-

"5. Criminal misconduct.

(1) XXX

(2) XXX

(3) Whoever habitually commits—

(i) an offence punishable under Section 162 or Section 163 of the Indian Penal Code (45 of 1860), or

(ii) an offence punishable under Section 165A of the Indian Penal Code, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine:

Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.

(4) XXX"

- Inasmuch as, he was also convicted under Section 5(1)(c)(d) and Section 5(2) in the normal circumstance, the court has to impose minimum sentence of 1 year. However, proviso appended to sub-Section 3 gives power to the court to impose a sentence of imprisonment of less than 1 year for any special reasons recorded in writing.

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9. It is not in dispute that the occurrence related to period 1982-83. Even on 01.10.2003, he retired from the post of Deputy Collector, Nalanda and stood convicted by the trial Court as aforesaid only in 2004, i.e., after a long period of 21 years. As rightly pointed out by Mr. Nagendra Rai, he had undergone the ordeal of facing trial anticipating uncertainty about the nature of conviction for such a long period. It is true that the appellant was not named in the FIR. However, after a period of 5 years, when the prosecution filed a chargesheet, he was shown as 3rd accused. As rightly pointed out by Mr. Rai, the appellant had reeled under the threat of being convicted and sentenced for all these 21 years. Even the High Court had taken more than 6 years to dispose of the appeal. As on date, the appellant is 71 years of age and has already undergone 6 months imprisonment. If we consider the date of occurrence, 29 years have been passed now. There is no record to show that the appellant was involved in other criminal case. Considering the case of the prosecution, namely, several illegalities and irregularities in execution of NREP which is a Scheme formulated by the Government of India, the fact that the occurrence relates to the year 1982-83, the trial went for 21 years and ended in conviction in 2004, the appellant retired from service even before conviction and his appeal was kept pending in the High Court for nearly 6 years, taking note of his present age, namely, 71 years and undergone 6 months imprisonment, we feel that ends of justice would be met by modifying the sentence to the period already undergone.

10. In the light of the above discussion, while confirming the conviction imposed on the appellant and having adverted to special circumstances in the case on hand, the sentence alone is modified to the extent, i.e., the period of imprisonment, namely, 6 months undergone in prison as substantive sentence. To this extent, the impugned order of the High Court is modified. The appeal is allowed in part to the extent mentioned above.

R.P.

Appeal Partly allowed.