2025 INSC 654

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
[ARISING OUT OF SLP (Crl.) NO. 13997 OF 2024]

DASHRATH ...APPELLANT

VERSUS

THE STATE OF MAHARASHTRA ...RESPONDENT

JUDGMENT

DIPANKAR DATTA, J.

1. Leave granted.

2. The judgment and order dated 3rd September, 2024[1] of a learned Judge of the High Court of Judicature at Bombay, Bench at Aurangabad, is under challenge in this criminal appeal. By the impugned order, the learned Judge dismissed a criminal appeal[2] carried by the appellant from the judgment of conviction and order on sentence dated 26th April, 2004 of the Special Judge, Parbhani[3] in Special Case No.05/2000. Upon maintaining the

[1] impugned order
[2] Crl. Appeal No. 303 of 2004
[3] Special Court

conviction of the appellant under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988[4], the learned Judge also upheld the punishment of R.I. of two years and fine of Rs.2,000/- for the offence punishable under Section 7, and R.I. of a year and fine of Rs.1,000/- for the offence punishable under Section 13, with default stipulation, imposed on the appellant.

3. The facts giving rise to the incident of the offence, the trap proceedings and other factual details have been noted in details by the Special Court as well as by the High Court. We do not consider it necessary to repeat the same here.

4. The conviction of the appellant as well as the sentence imposed on him are questioned by Ms. Meenakshi Arora, learned senior counsel for the appellant, by raising the following legal contentions:

i. sanction to prosecute was mechanically granted;

ii. investigation was conducted by an Inspector of Police (PW-4), although in terms of the statutory mandate contained in Section 17 of the PC Act, no officer lower in rank than a Deputy Superintendent of Police can investigate the crime;

iii. the demand was not proved and the conviction is indefensible having regard to the law declared by the Constitution Bench of this Court in ***Neeraj Dutta v. State (NCT Delhi)***[5]; and

iv. one of the seizure witnesses was related to the complainant.

[4] PC Act
[5] (2023) 4 SCC 731

5. Ms. Arora, in the alternative, submitted that the incident being more than 25 years old and the appellant by passage of time having become a septuagenarian, the Court may consider altering the sentence, if it were not inclined to disturb the conviction, so that at this age the appellant is not made to suffer any imprisonment.

6. In support of her contention, Ms. Arora referred to an order dated 23rd January, 2025 passed by a coordinate Bench of this Court in ***H.P. Venkatesh v. State of Karnataka***[6] in a case also arising out of a conviction under the PC Act. There, taking into consideration the facts that the appellant was a sexagenarian, that the occurrence took place in 2007 and that he had also been dismissed from service, the coordinate Bench in the peculiar circumstances of the case and in exercise of powers under Article 142 of the Constitution of India, modified the sentence to 15 days imprisonment. She prayed for similar indulgence.

7. *Per contra*, Ms. Rukhmini Bobde, learned counsel for the respondent-State, contended that the findings returned by the Special Court and the High Court are based on the evidence led in the trial and having regard to the answers given by the appellant to the questions in course of his examination under Section 313 of the Code of Criminal Procedure, 1973[7], there could be little doubt that he had demanded and accepted bribe and, therefore, was guilty of the charges. She also submitted that the appellant had not spent a single night in custody and in light of the fact that maximum sentence permitted by law was not imposed, no interference is called for with the

[6] Criminal Appeal No.1466 of 2017
[7] Cr. PC

discretion exercised by the Special Court. She, accordingly, prayed for dismissal of the appeal.

8. We have heard Ms. Arora and Ms. Bobde and perused the materials on record as well as a relevant 'ORDER' of the Government of Maharashtra, referred to in the judgment of the Special Court, on which we have been able to lay our hands through the search processes that are now available.

9. In developing the first contention, exception has been taken by Ms. Arora to the sanctioning authority approving the draft order of grant of sanction without making any changes. From the evidence of the Sub-Divisional Officer, Parbhani (PW-3), being the sanctioning authority, we find a categorical assertion that he did not change the wording of the draft because he did not find it necessary.

10. We find no reason to accept the contention for the reason that follows.

11. There is a legal impediment to prosecute a public servant for corruption, if there be no sanction. Grant of sanction is an administrative function based on the subjective satisfaction of the sanctioning authority after due application of mind to the materials placed before him. Whether sanction should be granted or not is, however, not about mental satisfaction of the truth of the facts placed before the officer competent to grant sanction but all that is necessary for a sanction to be granted is for him to be satisfied about the existence of a *prima facie* case.

12. It is no longer *res integra* that requirement of sanction has a salutary object. Provisions requiring sanction to prosecute, either under Section 19, PC Act or Section 197 of the (now repealed) Cr. PC or under Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are intended to protect an

innocent public servant against unwarranted and *mala fide* prosecution. Indubitably, there can be no tolerance to corruption which has the effect of undermining core constitutional values of justice, equality, liberty and fraternity; however, at the same time, the need to prosecute and punish the corrupt is no ground to deny protection to the honest. This is what was held by this Court in its decision in ***Manzoor Ali Khan v. Union of India***[8] while repelling a challenge raised in a Public Interest Litigation to the constitutional validity of Section 19 of the PC Act.

13. Even otherwise, merely because there is any omission, error or irregularity in the matter of granting sanction, that does not affect the validity of the proceedings unless the court records its own satisfaction that such error, omission or irregularity has resulted in a failure of justice.

14. If a draft order is placed before the sanctioning authority and he is satisfied that nothing needs to be added/deleted therefrom, the grant of sanction cannot be faulted merely on the ground of absence of addition of words to/deletion of words from the draft. We have noticed that PW-3 made four minor corrections to ensure that the substance conforms to the form in which the sanction was required to be given, without altering the substance (i.e. the contents). That there has been a complete absence of application of mind by PW-3 is, thus, not proved; also, that there has been a failure of justice, has not been shown. On facts, we are satisfied that there has been no irregularity, far less illegality, in grant of sanction. We are, thus, not even required to invoke provisions of Section 465, Cr. PC.

[8] (2015) 2 SCC 33

15. The first contention, therefore, has no merit.

16. Insofar as the second contention urged by Ms. Arora is concerned, we have noted that the Special Court referred to Government Order dated 19th April, 1969 bearing no. MIS0389/767/CR-140/POL-3, issued in exercise of powers conferred by the 1st proviso to Section 17 of the PC Act authorizing all the police inspectors in the Anti-Corruption Bureau of the State of Maharashtra to investigate any offence punishable thereunder. Considering such legal position, it was held by the Special Court there was no merit in the contention that investigation had not been conducted by an officer competent to do so.

17. Ms. Arora has taken exception by contending that the relevant Government Order was not brought on record in a manner known to law. Significantly, it is not the case of the appellant that the such an order does not at all exist. As referred to above, we have successfully searched for the relevant Government Order. We have found that it does exist, except that the relevant year of issuance thereof was mentioned in the judgment of the Special Court as 1969. We do not know whether the Special Court's judgment does refer to the year as 1969 or the paper book version, which is a typed copy of the judgment of the Special Court, incorrectly mentions so. Whatever be the position on facts, nothing turns on it. The relevant Government Order was issued on 19th April, 1989, close on the heels of enactment of the PC Act. For the sake of satisfaction of the appellant, we quote the same hereunder:

ORDER

Home Department,

Mantralaya, Bombay 400 032

Dated the 19th April 1989

No. MIS/0389/767/CR-140/POL-3. – In exercise of the powers conferred by the first proviso to section 17 of the Prevention of Corruption Act, 1988 (XLIX of 1988), the Government of Maharashtra hereby authorizes all the Inspectors of Police in the Anti-Corruption Bureau, Maharashtra State, to investigate any offence punishable under the said Act and to make arrest therefor without a warrant.

By order and in the name of the
Governor of Maharashtra,

Sd/-
(S.J. Mahajan)
Assistant Secretary to the Government of
Maharashtra

18. Statutory instruments, including rules/regulations/orders are framed/issued through delegated legislative powers within the administrative framework, which mirrors the lawmaking process of the legislature within its framework. The Government Order dated 19th April, 1989 having been issued in terms of authority conferred by the first proviso to Section 17 of the PC Act, it is an order having the force of a statute and is, therefore, law. Section 56 of the Indian Evidence Act, 1872 ordains that a fact judicially noticeable need not be proved. In terms of Section 57 thereof, the courts shall take judicial notice of, *inter alia*, all laws in force in the territory of India. The State Government having authorised by a general order, which is the law for the present case, that a police officer not below the rank of an Inspector of Police may investigate any offence punishable under the PC Act and PW-4 who conducted the investigation being an officer of the rank of Inspector of Police in the Anti-Corruption Branch, it was not

necessary to bring the law on record as evidence in the trial before it could be relied on; on the contrary, it was the duty of the special court to take judicial notice of such law, which it did, and we approve of such approach. In any event, the *vires* of the said Government Order not having been questioned by the appellant on any ground, we affirm the finding of the Special Court in this behalf.

19. On the question of demand not being proved and reliance placed by her on the decision in ***Neeraj Dutta*** (supra), which is the third contention advanced by Ms. Arora, we are simply not impressed in view of the evidence tendered by the witnesses for the prosecution, which are on record, as well as the answers given by the appellant in course of his examination under Section 313, Cr. PC. The demand, in our view, has been proved without a doubt. In fact, we appreciate the candour of the appellant while answering the questions when the circumstances appearing in the evidence against him were sought to be explained by the Special Court. He answered them quite frankly. However, the amount of arrears being Rs.5/- + and there being no material produced by the appellant, in defence, to support his claim that the sum of arrears were a little short of Rs.500/-, acceptance of Rs.500/- has not been justified particularly when it was the assertion of the complainant (PW-1) that after bargaining with the appellant, he had reduced the demand from Rs.2,000/- to Rs.500/- for making over the 7/12 extracts. The third contention of Ms. Arora is, therefore, equally without merit.

20. The contention relating to the evidence of the seizure witness (PW-2) has also not impressed us. His evidence need not be discarded, on the facts of

this case, merely because he was related to the complainant, as alleged. The evidence of the said witness had been found creditworthy as his version in-chief was not shaken after thorough cross-examination. Hence, we see no reason to hold that by reason of mere relationship, the conviction would stand vitiated. In any event, even apart from the seizure witness, the other evidence on record do suggest that no error was committed by the Special Court in convicting the appellant and by the High Court in affirming such conviction.

21. All contentions on merit, therefore, fail.

22. Turning to the final contention regarding alteration of sentence, much emphasis has been laid by Ms. Arora on the advanced age of the appellant and the date of the incident and in line with the decision in ***H.P. Venkatesh*** (supra), she has urged us to exercise power under Article 142 of the Constitution to relieve him of the necessity to serve his prison term.

23. At the outset, we may observe that although a proved offence under Section 7 of the PC Act (as it stood on the date of the offence committed by the appellant) carried a minimum punishment of six months and maximum of seven years imprisonment, with fine, and a proved offence under Section 13(1)(d) read with Section 13(2) of the PC Act, at the time of commission of offence by the appellant, carried a minimum sentence of a year and a maximum of seven years' imprisonment, with fine, the appellant was not sentenced to the maximum terms of punishment but R.I. for two years' for each count of offence, to run concurrently. Since the State has not challenged the sentence, we say no more.

24. Before we proceed to consider the prayer for alteration of sentence, which is based on the decision in ***H.P. Venkatesh*** (supra), it would be profitable now to have a look at some of the precedents as to whether Article 142 of the Constitution can be invoked for reducing the term of imprisonment lower than what is prescribed in the statute as the minimum punishment.

25. ***Narendra Champaklal Trivedi v. State of Gujarat***[9] is a decision rendered by a coordinate Bench arising out of a case under the PC Act. The following passage is instructive:

> "**30.** In view of the aforesaid pronouncement of law, where the minimum sentence is provided, we think it would not be at all appropriate to exercise jurisdiction under Article 142 of the Constitution of India to reduce the sentence on the ground of the so-called mitigating factors as that would tantamount to supplanting statutory mandate and further it would amount to ignoring the substantive statutory provision that prescribes minimum sentence for a criminal act relating to demand and acceptance of bribe. The amount may be small but to curb and repress this kind of proclivity the legislature has prescribed the minimum sentence. It should be paramountly borne in mind that corruption at any level does not deserve either sympathy or leniency. In fact, reduction of the sentence would be adding a premium. The law does not so countenance and, rightly so, because corruption corrodes the spine of a nation and in the ultimate eventuality makes the economy sterile."

26. Further, in ***Mohd. Hashim v. State of Uttar Pradesh***[10], a further coordinate Bench of this Court made the following pertinent observations:

> "**19.** … We may further elaborate that when the legislature has prescribed minimum sentence without discretion, the same cannot be reduced by the courts. In such cases, imposition of minimum sentence, be it imprisonment or fine, is mandatory and leaves no discretion to the court. However, sometimes the legislation prescribes a minimum sentence but grants discretion and the courts, for reasons to be recorded in writing, may award a lower sentence or not award a sentence of imprisonment. Such discretion includes the discretion not to send the accused to prison. Minimum sentence means a sentence which must be imposed without leaving any discretion to the court. It means a quantum of punishment which cannot be reduced below the period fixed. If the sentence can be reduced to nil, then the statute does not prescribe a minimum sentence. A provision that gives discretion to the court not to award minimum sentence cannot be

[9] (2012) 7 SCC 80
[10] (2017) 2 SCC 198

> equated with a provision which prescribes minimum sentence. The two provisions, therefore, are not identical and have different implications …"

27. In ***State of Madhya Pradesh v. Vikram Das***[11], another coordinate Bench of this Court after referring, *inter alia*, to the aforesaid decisions held:

> "**8.** In view of the aforesaid judgments that where minimum sentence is provided for, the court cannot impose less than the minimum sentence. It is also held that the provisions of Article 142 of the Constitution cannot be resorted to, to impose sentence less than the minimum sentence."

28. Law is, thus, well-settled that exercise of power conferred by Article 142, in a case such as the present where a minimum sentence is prescribed by the statute, cannot be tinkered, for, the same would amount to legislation by the Court; and, prescription of a term of sentence quite contrary to what the Parliament has legislated would be legally impermissible. The statutory prescription in relation to punishment for a minimum period, unless challenged, cannot be reduced by this Court even in exercise of powers under Article 142 of the Constitution.

29. In any event, offences under the PC Act stand on a completely different footing. Obviously, no court, far less this Court, ought to tolerate corruption by public servants while discharging official duty attracting provisions of the PC Act. In exceptional cases, while exercising appellate jurisdiction, a court may, in judicious exercise of discretion and for reasons to be recorded, alter the sentence to serve justice for both the society and the offender. However, to reduce the sentence to a term of imprisonment which is not provided in the statute and below the minimum period, as prescribed, could be seen as usurpation of the function of the legislature by this Court.

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[11] (2019) 4 SCC 125

30. At the same time, we are of the view that it is only rarely, and in extraordinary cases, that this Court may, in the exercise of its plenary power to temper justice with mercy grant a convict a prison-term waiver. As and by way of illustration, a convict (on bail) who is too ill to understand why he needs to be sent to prison or too ill to be taken to prison or the like, could qualify for grant of extreme leniency by this Court but only on production of unimpeachable evidence to that effect.

31. This is not such a rare or extraordinary case where justice calls for being tempered with mercy and hence, we express our inability to follow ***H.P. Venkatesh*** (supra).

32. The statutory provisions contained in the PC Act, relating to prison terms that could be imposed by way of sentence at the time the appellant indulged in committing the offences, have been noted.

33. While affirming the conviction of the appellant under Section 7 and Section 13(1)(d) read with Section 13(2), PC Act, but having regard to the date of the incident of offence, the advanced age of the appellant, the mental anxiety and continued stress that he must have experienced all these years induced by the pendency of proceedings, we are of the considered opinion that imposition of sentence of prison term for the minimum period would sufficiently serve the interests of justice. Accordingly, we alter the sentence of 2 years R. I. for the offence under Section 7 to a term of S.I. for a year without, however, altering the sentence of imprisonment ordered for the offence under Section 13(1)(d). Both sentences shall run concurrently. This would be in addition to the fine that has been imposed by the Special Court. Ordered accordingly.

34. The appellant shall surrender within 6 (six) weeks from date to serve his sentence. If not paid, the amount of fine may also be paid within such time as indicated above. In the event, the appellant fails to surrender and or make payment of the fine amount, this order of alteration of sentence shall stand recalled and he shall be under obligation to serve the sentence imposed by the trial court, i.e., term of 2 years R.I.

35. The appeal, accordingly, stands partly allowed.

36. Connected applications, if any, stand closed.

..... J.
(DIPANKAR DATTA)

..... J.
(MANMOHAN)

NEW DELHI;
APRIL 24, 2025.