

## **CHAPTER-5**

**CRITICAL STUDY OF SENTENCING IN  
CORRUPTION CASES**

## C H A P T E R - 5

### **CRITICAL STUDY OF SENTENCING IN CORRUPTION CASES:**

#### **OVERVIEW:**

The corruption has entered in to every sphere of society as vicious circle. When corruption was sought to be eliminated from the society all possible stringent measure are to be adopted within the boundary of law. One such measure is to provide condign punishment. Parliament measured the parameters for such condign punishment and in that process wanted to fix minimum sentence of imprisonment for giving deterrent impact on other public servants who are prone to corruption. It is the intention of the parliament to meet corruption cases' with strong hand and to give indication of deterrence as most indispensable feature of sentencing corruption cases. It is to be stated in this connection that corruption has become so rampant and global in the country and the offence in corruption case cannot be treated as trivial at all. So, question of lenient view in respect of dealing the matter even in pretty cases should not be encouraged.

#### **A. CRITICAL STUDY OF REDUCTION OF SENTENCE**

##### **a. Due to large family**

Supreme Court in *Sudam Hari Patil v. State of Maharashtra*<sup>1</sup> held for justification of reduction of sentence awarded to the accused due to following observations.

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<sup>1</sup> AIR 1994 SC 1807

As per prosecution, accused being public servant demanded bribe for doing favour of recommending the application of complainant. The offence for which he was convicted under Sec.5(2) read with Sec.5(1) (d) of Prevention of Corruption Act and Sec.161 of Indian Penal Code was committed few years back and accused lost his job and for all these years he has undergone agony of Criminal Proceeding. For all these special reasons, Supreme Court reduced the sentence from 1 year to 6 months as accused has large family to maintain.

It is evident from above order that prosecution, investigating agency and Court are responsible for prolong trial for more than ten years. It has been observed that in most of the cases, Ld.Court requires several years to dispose of Criminal proceeding. In most of the cases relating to corruption tried under Prevention of Corruption Act, if reduction of sentence is granted in the name of special reason, legislative exercise mandated by Parliament would stand defeated. According to my view, sentence awarded by court below should have been upheld by Apex Court.

**b. Due to prolong trial as well as mental agony**

Supreme Court in *Makhan Singh v. State of Punjab*<sup>2</sup> held following direction.

“The occurrence is said to have taken place in the Year 1978 and both the appellants have admittedly lost their jobs and they have

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<sup>2</sup> AIR 1994 SC 266

undergone trial for number of years and until now they have suffered mental agony for having been convicted and the matter being pending here. Taking all those circumstances in to consideration this court while confirming the conviction of the appellants, reduced substantive sentence under each count to three months rigorous imprisonment and the sentence of fine along with default clause is, however, confirmed. Sentences are directed to run concurrently”.

It is seen that Apex Court has observed that accused has suffered mental agony having lost his job. It is natural phenomenon that in every conviction, there is mental agony and in most of the cases criminal proceeding arising out of corruption matters are pending for several years from trial court to Apex Court. Due to improper functioning of prosecution, investigating agency and even court, several years are required to dispose of such cases. I feel that sentences of conviction by court below should have been upheld by Apex Court.

#### **c. Due to age factor**

Supreme Court in *Ram Prakash Singh v. State of Bihar*<sup>3</sup> held following observations.

“Where there was a delay in trial and the convict was around the age of superannuation and already lost his job, the conviction was affirmed but sentence of imprisonment was reduced to six months. Occurrence took place some time in 1974 and the charge sheet was filed in the year 1977. More than 20 years have passed. Besides this, by reason of conviction, the appellant may lose his job and other retirement benefits, if any. From the judgement of

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<sup>3</sup> AIR 1998 SC 296

trial court, it appears that the appellant was then 44 years old. By now, he might have been superannuated or likely to be superannuated. Bearing in mind the passage of time, we are of the opinion that in the facts and circumstances of the case, ends of justice would be met if the sentence awarded to appellant is altered to simple imprisonment of six months on each count for which he was found guilty by the courts below."

It has been observed that charge sheet was filed after three years from the date of occurrence. But Ld. Trial court has not passed any direction against investigating agency due to delay submission of charge sheet. Had the charge sheet been filed within 90 days, proceeding should have been completed within reasonable time. So due to non cooperation of investigating agency and prosecution, trial has been delayed. Parliament fixed minimum sentence of imprisonment of 01 year with the strength of Prevention of Corruption Act 1947 by making an amendment to it in 1958 for language and intention of legislature is clear i.e. shall not be less than 01 year. Moreover in every case, where the order of conviction is passed either by way of imprisonment or by way of fine against public servant, competent authority has to pass order for removal of service. The quantum of sentence or quantum of fine is not the factor for removal of service. So, by reducing the sentence, public servant will not be benefited from such reduction of sentence.

#### **d. Due to over age and prolong trial**

Supreme Court in *Shiv Nandan Dixit v. State of Uttar Pradesh*<sup>4</sup> held following observations.

It appears that appellant was involved in bribe receiving case. Ld.Trial Court convicted appellant which was confirmed by High Court on an

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<sup>4</sup> 2003(8)supreme 901: 1(2004)CCR 86(SC):2004(1)crimes 219(SC)

appeal. On appeal, Supreme Court held that the words “obtain for himself” in Sec.5 (1) (d) of Prevention of Corruption Act connote not only receiving bribe personally but receipt of any bribe either directly or indirectly and the evidence disclosed that A2 had received money knowing it to be a bribe for and on behalf of A1 and confirmed the conviction of both the accused under Sec.161 of IPC read with Sec.120/B of IPC. As regards the sentence imposed on both the accused, Supreme Court took into consideration that the incident took place nearly 23 ago but both the appellants lost their jobs and all retrial benefits and they had crossed 60 years of age and reduced the punishment to six months.

It has been observed that in most of the cases, Ld. Trial Court and higher court usually take several years to dispose of criminal proceeding in corruption cases. Much delay in disposal of proceedings by itself would not be any reason to reduce the sentence below the minimum sentence of 01 year. When the corruption was sought to be eliminated from society, all possible stringent measures are to be adopted within bounds of law. One such measure is to provide condign punishment and in that process to fix minimum sentence of imprisonment for giving deterrent impact on other public servants who are prone to corrupt deals. In order to eliminate corruption from the society, no leniency should be shown in respect quantum of punishment to the accused since corrupt public servants have to face serious consequences.

#### e. Due to meager amount.

Supreme Court in *Visnu Nag Nath Deshmukh v. State of Maharashtra*<sup>5</sup> held following observations.

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<sup>5</sup> (2001) 1 SCC 345: 2000(4)crimes 272 (SC) : 2000 (7) Supreme 586 :2000(8) SLT 377

Where the accused was convicted for six months rigorous imprisonment and fine of Rs.600 for having received illegal gratification of Rs.10 for issuing succession certificate to the complainant and his defence that he received the amount towards soldier's welfare fund was rejected and the said conviction was upheld by High Court, the Supreme Court declined to interfere with the conviction. However the sentence was reduced to four months rigorous imprisonment which he had undergone and paid the fine amount.

It has been observed that the Apex Court has not given any substantial reason for reduction of sentence. Since corruption has become so rampant in the entire country, the offence of corruption cannot be considered as trivial and corrupt behaviour of public servant should be dealt with by strong hand and there is no question of deviation from minimum sentence mandated by Parliament.

#### **f. Due to losing job .**

Supreme Court in *B.G.Goswami v. Delhi Administration*<sup>6</sup> held following observations.

The accused head constable accepting money for release of the women whom he has taken away is guilty of misconduct. The officers of police department everyday come in contact with the public. It is the duty of police officer to maintain law and order. It is their duty to protect the people and they are not expected to harass and trouble the people. Considering all these aspects, it is not fit case in which the appellant accused is not made to suffer imprisonment. However, taking into consideration the facts that the appellant would lose his job it would not be unjust if the sentence of two years

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<sup>6</sup> AIR 1973 SC 1457

rigorous is reduced to one year, the minimum provided in Sec. 5 (2) of Prevention of Corruption Act.

It is seen that Supreme Court has observed that appellant would lose his job and it would not be unjust if the sentence of two years is reduced to one year. Even if conviction of appellant is reduced to one year, as per Discipline and Appeal rule, appellant would lose his job. Secondly appellant being a police officer is under obligation to protect the people and also as keeper of law, has special responsibility unlike general people towards society. In such analogy, it would not be prudent to reduce the sentence of imprisonment passed by Ld Trial Court as well as High Court.

**g. Due to imposing fine only instead of imprisonment.**

Supreme Court in *Bhagwan Das v. State of Rajasthan*<sup>7</sup> reduced sentence awarded to the accused less than one year due to following reasons :

“We find that the offences with which Keshwani was charged were committed more than 12 years ago and that he has undergone some rigorous imprisonment also. The cheating with which he was charged was in respect of a petty sum of Rs.31.89. This court has, some time, taken into account the long period for which the sentence imposed may have remained dangling over the head of a convict like the sword of Damocles. Moreover a period of 12 years is a long time in the course of which the conditions of life and the out look of a man may have changed entirely. This case has taken so long to decide finally due to no fault of appellant. Consequently, we reduced the sentences if imprisonment upon Keshwani under Sec.420 Indian Penal

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<sup>7</sup> AIR 1974 SC 898

Code and Sec.5 (1) (d) read with Sec.5 (2) of Prevention of Corruption Act to the period already undergone, but we maintain the fine of Rs.500 impose upon Keshwani".

It has been observed that in most of the cases relating to corruption under Prevention of Corruption Act requires more than 10 years to dispose it of Criminal proceeding commencing from Ld.Trial Court up to Supreme Court. If that be the explanation of Court, reduction of sentence should have been made to every accused involved in corruption matter. Moreover, Ld. Trial Court has not passed any stricture against prosecution for long trial. The question of amount though meager involved in corruption case cannot be taken into account so far accused is involved in corruption case. Restoring fine after reducing imprisonment can also defeat the purpose as corrupt public servant could easily raise fine amount by dubious means.

## **B. CRITICAL STUDY FOR QUASING CONVICTION**

### **a. On the basis of sharing intention with the accused or was acting on his behalf.**

Supreme Court in *Sadashiv Mahadeo v. State of Maharashtra*<sup>8</sup> held following observation in regard to the fact of the case.

"The accused No.1 was a head constable. He was convicted for an offence under Sec.161 Indian Penal Code. Accused No.2 was a constable and was convicted under Sec.165 A of Indian Penal Code read with Sec.5 (1) (d) and (2) of Prevention of Corruption Act. The case of the

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<sup>8</sup> AIR 1990 SC 287

prosecution was that there was an arrangement between accused No.1 and the complainant in which the complainant agreed to pay Rs.100 to accused No.1 to see that case against complainant in the police station should be filed. A trap was laid. It was evident that when the complainant went to the police station along with a party on the fix date, accused No.1 was in the police station and when the complainant offered to pay the amount he asked him to handover the amount to some party standing there and went away in a police van. He did not give the amount as directed but he waited for time till accused No.1 returned. On this occasion also accused No.1 did not accept money but asked him to pay to some tea vendor located there. The complainant did not give to these persons also. After some time it was alleged that the amount was paid to accused No.2 to be paid to accused No.1. The accused were convicted and those were affirmed by the High Court with some modification in respect of accused No.2.

The court held that the lower courts so far as accused No.1 is concerned have drawn an inference from the subsequent conduct of the accused after the trap was laid. Apparently such an inference could not be drawn because if the accused was really involved in the matter after the trap was laid and money was recovered from accused No.2, it will be nothing but failure of trap against accused No.1. To take the application or statement made by the complainant afterwards may be nothing but curiosity and inference drawn could not be justified. Admittedly, there is no evidence at all against accused No.1 except the story given out by complainant. The evidence about the incident only indicates that this accused avoided the complainant whenever he approached him. On this evidence the conviction of the appellant could not be sustained as this does not establish any of the ingredients of the offence. As regards accused No.2 merely because he was guilty of any one of these offences unless it is established that he was a party to arrangement and that the arrangement arrived at was that the money would be handed over to accused No.2 to be given over to the accused No.1. Apparently accused No.2 was not expected to help the complainant. The assurance to the complainant to

settle the matter, accordingly the prosecution own case and the evidence of complainant this arrangement was finally settled and the house of accused No.1. Admittedly accused No.2 was not there nor is it alleged that he had any knowledge about this settlement. Under these circumstances it could not be held that accused No.2 accepted this amount for any purpose. At best the complainant told him to pass this money on to the accused No.1 he accepted it but on that basis it could not be held that he was sharing the intention with accused No.1 or was acting on his behalf. In the circumstances the conclusions of lower courts could not be sustained and the conviction and sentence against both the accused are to be set aside.”

The reason for quashing the conviction by Apex Court is not clear due to following observations.

It is admitted fact that accused No.2 being public servant accepted money on behalf of accused No.1 knowing fully well that it is not legal remuneration. If there is good intention on the part of accused No.2, money so offered by complainant should not have been accepted. The question of knowledge above the settlement does not arise. So far accused No.1 is concerned that he did not accept money and directed complainant to pay money to vendor in tea stall outside police station. It indicates that there is understanding between the vendor and accused No.1. The purpose of handing over money to the vendor is to avoid being caught by police. According to my observations, conviction made by Ld. Trial Court and High Court should have been upheld by Apex Court.

**b. On the basis of presumption**

Supreme Court in *Shantilal v. State of Rajasthan*<sup>9</sup> passed following orders:

“We are, therefore, of the view that evidence led on behalf of the prosecution is wholly insufficient to establish beyond reasonable doubt that the appellant made a demand for bribe through Ram Narain or accepted any bribe from Dhanna Lal for giving early certified copy of the entries in the land record. We must, consequently, set aside the order of conviction and sentence recorded against the appellant and acquits him of the offences charged against him. The bail bonds executed by the appellant will stand cancelled.”

It is stated that the accused was alleged to have demanded bribe through co-accused a peon in his office but there was no evidence that the accused demanded bribe or even made suggestion about it to complainant and the currency notes were not seized from him but from co-accused and there were discrepancies in the evidences, it was held that the evidence was not sufficient to establish that accused demanded bribe from complainant through by his peon.

It appears that currency notes were recovered from his peon co-accused and it has strong presumption that co-accused collected money on his behalf from complainant with a view that the accused may be caught in trap. In view of above analogy conviction made against appellant by the courts below should have been upheld.

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<sup>9</sup> AIR 1976 SC 739

**c. Reduction of fine without setting aside conviction**

Supreme Court in *S.Nataajan v. State of Mysore*<sup>10</sup> held following observations:

“In this appeal by special leave the appellant has been convicted under Sec.409 of Indian Penal Code and sentenced to six months rigorous imprisonment and under Sec.5 (1)© read with Sec.5 (2) of the Prevention of Corruption Act to six months imprisonment. It appears that the appellant was a junior cashier and was disbursing the provident fund of retired officers. A sum of Rs.2196 which was meant to be disbursed to P.W.2 Venogopal Naidu was withheld by the appellant and money was not paid to him on account of some mistake. Venogopal Naidu then made a complaint to the Divisional pay master and the mistake was ultimately detected on 22.05.1971. On 1<sup>st</sup> June 1971 the appellant disbursed the entire amount to Venogopal on account of withdrawal of provident fund. It is therefore merely a case of temporary retention of money for a short while. The accused has already lost his service and in the facts and circumstances of this case we think that no serious notice may be taken of the offence. The appeal itself was confined only to the question of sentence. For these reason we would reduced sentence of the appellant under Sec.409 of Indian Penal Code to the period already served and as regards the conviction under Sec.5(1) © read with Sec.5(2)of Prevention of Corruption Act we suspend the sentence and release the appellant under Sec.360 of the code of Criminal Procedure and maintain the sentence of fine and direct him to execute a personal bond of Rs.2000/- for a period of 1 Year and maintain good period of 01 year and maintain good behaviour during this period, failing which he will have to receive the remaining portion of his sentence. The sentence of fine is maintained. With this modification the appeal is disposed of.”

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<sup>10</sup> AIR 1980 SC 639

It appears that appellant has been convicted under Sec.409 of Indian Penal Code and Sec.5(1)© read with Sec.5(2) of Prevention of Corruption Act due to reason that sum of Rs.2196/- was withheld. It is stated that the above money was not paid to P.W.2 Mr.Venugopal Naidu due to mistake and subsequently the mistake was detected. If there is a bonafide mistake on the part of appellant and having no intention of taking bribery, conviction made by Ld.Trial Court should have been quashed. It is not understood as to why Apex Court has not focused attention to the above aspect. We know that it is the cardinal principal of criminal jurisprudence that let several guilty be released rather than punishing an innocent person.

**d. On the basis of explanation of police officer beyond reasonable doubt.**

Supreme Court in *State of Madhya Pradesh v. J.B.Singh*<sup>11</sup> held following observations:

“The Respondent was charged under Sec.161 of Indian Penal Code and Sec.5(1) (d) of the Prevention of Corruption Act on the allegation that he made a demand for a sum of Rs.270/- from Mithailal and pursuant to the said demand, the money was paid which was recovered from the rest room at the police station. The accused happens to be a police officer. The special judge convicted the accused – Respondent of the charge under Sec.5 (1) (d) of the Prevention of Corruption Act. But on appeal the High Court has set aside the conviction and recorded an order of acquittal.

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<sup>11</sup> AIR 2000 SC 3562

"On examining the material on record, the High court came to the conclusion that the prosecution has failed to establish either the demand made by the accused or even the payment by the complainant and therefore, the offence cannot be said to have been established beyond reasonable doubt. Mithalal the complainant who was examined as PW-9 did not support the prosecution case during trial and, therefore, he was permitted to be cross-examined by the prosecution counsel.

Mr.Shukla Ld. Senior Council appearing for the state, contented that notwithstanding the fact that the complainant himself turned hostile and did not support the prosecution case but the fact of demand could be established by the evidence of Badri Prasad (PW1). Mr.Badri Prasad appears to be a person who was known to Mithalal and according to his evidence he went to police station on being requested by father of Mithalal to find out as to how the Mithalal was being detained at the police station.

We have been taken through the evidence of said Badri Prasad (PW1) and his evidence by no stretch of imagination can be held to have established the fact that the accused made any demand from Mithalal. The only statement made by Badri Prasad is that the Sub-Inspector had told him that the accused should pay some money for being released the statement cannot be held to be statement to established that the accused made the demand to Mithalal. So far as the payment is concerned, once Mithalal himself did not support the prosecution case, there is no material also to establish the alleged payment said to have been made by Mithalal to the accused pursuant to the alleged demand. Therefore, all the necessary ingredients of the offence under Sec.5 (1) (d) of Prevention of Corruption Act as well as under Sec.161 of Indian Penal Code not having been established, the order of acquittal is wholly justified and cannot be interfered with."

It appears that respondent was charged under Sec.161 of Indian Penal Code and Sec.5(1)(d) of Prevention of Corruption Act and Ld. Special judge convicted him under Sec.5 (1) (d) of Prevention of Corruption Act but High Court and Supreme Court set aside conviction. It is observe that respondent was a police officer who being a keeper of society has special responsibility and duty towards society. Though complainant turned hostile and contradicted by the party calling him cannot as matter of law be treated as washed of the record all together. If judge finds that in the process, the credit of witness has not been completely shaken he may after reading and considering the evidence of witness as a whole with due care accept the other evidence. Moreover, appellant being police officer cannot escape responsibility against whom there is serious allegation of illegal detention of the complainant. So lenient view taken by High Court and Apex Court would afford incentive and impetus to public servant who is susceptible to corruption and to indulge such nefarious practices with immunity. So in my consider view, conviction made by Ld. Trial Court should have been upheld by Apex Court.

**e. On the basis of benefit of doubt**

Supreme Court in *Om Prakash v. State of Haryana*<sup>12</sup> made following observations.

“The fact of the case was that the appellant with co-accused suspected to be involved in murder case offered bribe of Rs.10,000/- to the Police Inspector investigating the case. The Inspector refused to accept the money but later accepted on insistence and prepared a memo, sealed the money in presence of Head Constable and got FIR recorded. The defence of the accused was that in connection with murder case some of their relatives

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<sup>12</sup> AIR 2006 SC 894

who were accused came to court with more than Rs.10,000/- and the Inspector snatched the amount from their hands. When threatened that if the amount is not received by them, the matter would be reported to the higher authority, a false case was thrust upon them by the Inspector. Both the accused were convicted under Sec.12 of Prevention of Corruption Act by Ld. Trial Court and High Court upheld the same.

On appeal, Supreme Court after assessing the evidence held that the defence story set up by the appellant cannot be said to be wholly improbable in view of the delay in lodging FIR and discrepancies in the prosecution witnesses. Supreme Court further held that when the demand has not been proved, Sec.20 of Prevention of Corruption Act 1988 will have no application and set aside the conviction, by giving benefit of doubt.

It appears that the two persons offered bribe to Police Inspector and Head Constable investigating the case. It has been observed that defence in the support of version did not adduce any evidence and in that circumstances the version of prosecution witnesses cannot be thrown away merely on the ground that they are official witness and no independent witness was associated. So, there is probability in support of prosecution case. It has further been observed that accused has been acquitted in the name of benefit of doubt. So while acquitting the accused, strict interpretation of benefit of doubt should have been made otherwise corrupt person will engulf the society as octopus.

**f. Possession of disproportionate properties to the known source of income.**

Supreme Court held following observations in *DSP Chennai v. K.Inbasagaran*<sup>13</sup>

The fact of above case is that a Senior I.A.S. Officer was convicted by special judge, Chennai for possession of disproportionate assets, on appeal preferred by him against conviction, High Court held that the wife of the accused had all the money recovered from her house was her black money from her business and cash, gold and F.D.R which were recovered during an income tax raid were also assessed by the income tax authorities and therefore the accused had satisfactorily accounted for the recovery that unaccounted money did not belong to him and further the premises in question was jointly shared by the wife and husband and acquitted the accused. The state filed the appeal before the Supreme Court against the order of High Court. Supreme Court upheld the order of Madras High Court holding that the prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused. In case of joint possession it is very difficult when one of the persons accepted the entire responsibility. The wife of the accused has not been prosecuted in view of the explanation given by the husband and when it has been substantiated by the evidence of wife and the other witnesses who have been produced on behalf of the accused coupled with the fact that the entire money has been treated in the hands of wife and she has owned it and has been assessed by income tax department, it will not be proper to hold the accused guilty under Prevention of Corruption Act, as his explanation appears to be plausible and justifiable. Initial burden is on prosecution to establish that the accused had acquired property disproportionate to his known source of income and then it shifts on accused to offer plausible explanation. In this case, there are no complaining circumstances to reverse the order of acquittal recorded by the High Court.

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<sup>13</sup> AIR 2006 SC 552

It appears that in above case a senior I.A.S Officer has been convicted by special judge for possession disproportionate assets. On appeal High Court reversed the order of conviction and passed order for acquittal which was upheld by Apex Court. The interpretation of High Court is that it is very difficult to segregate that how much of wealth belonged to husband and how much belonged to wife. Prosecution has tried his best to lead evidence to show that all monies belong to accused. Here wife of accused took burden in order to save her husband from conviction. Since respondent is I.A.S Officer and salaried person, his wealth can be determined. Moreover, accused in order to save from conviction, operated joint account with his wife. In such analogy, conviction made by Ld. Special Judge should have been restored and upheld by Apex Court.

**g. On the basis of sanction of prosecution issued by incompetent person.**

Supreme Court in *State Inspector of Police, Vishakapatnam v. Surya Sankaram Kurri*<sup>14</sup> held following observations:

In a case decided by Supreme Court, a Railway Officer was convicted by the special judge for possession of disproportionate assets. In appeal, High Court set aside the conviction holding that if a reasonable margin of 10% is accorded, the accused cannot be said to have failed to have proved in showing means for acquiring assets held and possessed by him as also by his wife.

Supreme Court also held that Sec 17 of Prevention of Corruption Act makes investigation only by police officer of the rank specified therein to be imperative in character and in this case the investigating

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<sup>14</sup> (2006) 7 SCC 172

officer did not produce any record to show that he had been show authorized. The special judge was enjoined with duty to draw and adverse inference.

Supreme Court further held that the person who accorded sanction for the prosecution of the accused under Sec 19 of Prevention of Corruption Act 1988 was not competent to accord sanction of prosecution under the rules as he was not competent authority to remove respondent from service. Though the sanctioning authority claimed to have been delegated with power, the purported delegation of power has never been produced and proved. The Supreme Court held that acquittal called for no interference.

It has been observed that Supreme Court held that acquittal order passed by High Court by reversing the order of conviction made by Ld. Special Judge called for no interference.

Supreme Court upheld the order of acquittal passed by High Court with the interpretation that the person who accorded sanction was not competent to accord sanction for prosecution and it has been stated that the sanctioning authority has not shown any documents in support of that. It has been observed that the authority of Railway might have intention to save its officer from being prosecuted. High Court and Supreme Court instead of acquitting the accused should have remanded the matter to Ld. Trial Court after directing competent authority to produce sanction of prosecution. Due to technical flaw, accused has been acquitted though there was a strong allegation and evidence in respect of possession of disproportionate assets by the accused.

**h. Due to non availability of sanction of prosecution from competent authority.**

Supreme Court held following observations in *Monoranjan Prasad Chowdhury v. State of Bihar*<sup>15</sup>

The fact of the case is that the proceeding under Prevention of Corruption Act against the petitioner was assailed and an application for discharge was filed by the petitioner – accused on the ground that the appropriate authority has not accorded sanction under Sec.19 of Prevention of Corruption Act. The said application having been rejected, the petitioner moved before High Court under Sec.482 of the Code of Criminal Procedure and High Court having dismissed the same, the petitioner has approached Supreme Court.

The sole question that arises for consideration is whether sanction has been accorded by the competent under Sec. 19 (1) © of Prevention of Corruption Act. 1988. The authority competent to remove him from the office is the authority to accord sanction and admittedly, the said authority is the Managing Director of the Company, as contended by the counsel for the petitioner and conceded by Mr. B.B.Singh Ld. Counsel appearing on behalf of State of Bihar. In that view of the matter, since there is no sanction of the competent authority, the proceeding is vitiated. Apex Court set aside the impugned order and quashed the proceeding.

Needless to mention, if appropriate sanction is received from competent authority, the matter can be proceeded against.

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<sup>15</sup> (2002)10 SCC 688

It appears that Supreme Court quashed the proceeding since there is no sanction from competent authority. It is further directed that if appropriate sanction is received, the matter can be proceeded against. It means if sanction is not received, the matter cannot be proceeded. It is further observed that due to non availability of sanction from competent authority, the accused has been acquitted. Instead of quashing the proceeding, matter should have been remanded to court below after directing competent authority to accord sanction for prosecution. In view of the legal flaw the, it would not be proper to acquit the accused.

**i. Due to non acceptance of evidence of pancha witness.**

Supreme Court in *Ganapathi Sanya Naik v. State of Karnataka*<sup>16</sup> held following observations:

According to prosecution appellant village accountant demanded bribe money for effecting mutation entries in revenue records – trap laid- currency notes smeared with phenolphthalein powder were put on office table of appellant as asked by him and appellant then placed some files on the currency notes – police office waiting outside then rushed in and recovered the notes from the table – Trial Court held that evidence of pancha witness and complainant with regard to recovery of cash was not believable and that defence version that money had been put under the files on the table surreptitiously without knowledge of appellant appeared more plausible and worthy of acceptance and accordingly, it acquitted the appellant. But High Court on state's appeal against acquittal convicted the appellant on the finding that complainant's evidence was corroborated by the pancha, an independent witness and that prosecution case could not be doubted merely because currency notes had not been touched by the appellant. High Court also refused

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<sup>16</sup> AIR 2007 SC 3213

to accept the defence plea that there was no occasion for demand of money as necessary documents had already been prepared, on ground that possibility of documents having been prepared in anticipation of receipt of money could not be ruled out. It was held that finding of fact arrived at by Trial Court on appreciation of evidence was a possible view and therefore, High Court on appeal against acquittal was not justified in interfering there with on ground that a different view was possible.

It has been observed that the Ld. Trial Court held that defence version that money had been put under the files on the table without knowledge of appellant appeared more plausible.

It is common practice that in some department of State Government, the bribe has to be paid to get the work done. Appellant being clever person did not touch the money with the view that he may be trapped. That does not mean that prosecution case could not be doubted merely because currency notes had not been touched by the appellant. Moreover, there is no hard and fast rule that bribe money should be touched by the accused. Secondly complainant's evidence was corroborated by independent witness. Thirdly possibility of documents having been prepared with a view to get extra money in future could not be ruled out.

In view of above analogy, High Court's order of conviction by reversing the order of acquittal should have been restored and upheld by Apex Court.

**j. On the basis of evidence of interested witness.**

Supreme Court in *Girja Prasad (Dead) by LRs v. State of Madhya Pradesh*<sup>17</sup> held following observations:

Once it is proved that amount has been received by the accused, presumption under Sec.4 of Prevention of Corruption Act would get attracted. In such a case, it would be wholly immaterial whether the said acceptance of amount was for him or for some one else. It would also be immaterial whether the accused was or was not in a position to oblige the complainant. However, the said presumption is not absolute. Accused can rebut the said presumption by leading evidence. In the present case, there was evidence as to acceptance of amount by the accused. Hence, presumption under Sec. 4 of Prevention of Corruption Act 1947 got attracted. Accused failed to rebut the said presumption as he did not adduce any evidence whatsoever in that regard. Therefore, High Court was justified in reversing its acquittal and convicting him under Prevention of Corruption Act 1947 and Sec.161 of Indian Penal Code (since repealed).

Where no evidence was adduced by accused to rebut the presumption raised under the law and he merely took the defence of total denial and false implication, held, the doctrine of preponderance of probability had no application.

In an appeal against acquittal, the appellate court has every power to reappreciate, review and reconsider the evidence as a whole before it. It is, no doubt, true that there is presumption of innocence in favour

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<sup>17</sup> (2007) 7 SCC 625

of the accused and that presumption is reinforced by an order of acquittal recorded by Ld. Trial Court. But that is not the end of the matter. It is for the appellate court to keep in view the relevant principles of law, to reappreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence in consonance with the principle of criminal jurisprudence.

It was further held that credibility of a witness has to be tested on the touchstone of truthfulness and trustworthiness. Rejection of evidence of a witness by Trial Court merely on the ground that they were interested witness was not justified.

It is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police official even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

Contention that if conviction of deceased appellant was confirmed by Supreme Court, he would not be entitled to pensionary and other benefits was a mere consequence thereof which could not be helped. Argument of sympathy liable to be rejected.

It has been observed that during pendency of appeal, appellant Girja Prasad died. So in absence of appellant since died, order of acquittal passed by Ld. Trial Court should have been restored on the ground of natural justice. Secondly Divisional Ayurvedic Chikitsa Adhikary Mr.

Ramnarayan Rajoria prosecution witness no.4 who was main culprit and on whose behalf appellant was alleged to have received the amount of Rs.200/-, should have been prosecuted. Thirdly appellant being a pretty clerk was not in position to oblige complainant by not placing him under suspension. Mr. Rajoria holding higher post forced the appellant to accept money on his behalf with a view that he may be caught in trap. Here the evidence of both panch witnesses did not support prosecution and were treated as hostile. Regarding evidence of PW1 Anup Kumar PW10 S.K.Tewary Inspector of special police establishment, they were interested witnesses.

In view of above analogy, acquittal order passed by Ld. Trial Court should have been restored and upheld by Apex Court.

**k. On the basis of role of appellant as conduit for the purpose of payment of bribe.**

Supreme Court in *K.Subba Reddy v. State of Andhra Pradesh*<sup>18</sup> held following observations:

Challenge in this appeal is to the judgement rendered by Ld. Single judge of Andhra Pradesh High Court upholding the conviction of the appellant punishable under Sec.7 of Prevention of Corruption Act 1988. The appellant had faced trial along with another accused and for the sake of convenience he is described as A-2 hereinafter. Both the accused person were convicted for the offence punishable under Sec.7 of the above Act and sentenced to undergo rigorous imprisonment of one year each and to pay fine of Rs.1000/- with default stipulation. They were however acquitted on other charges.

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<sup>18</sup> (2007) 8 SCC 246

Money handed over to appellant home guard for passing on to excise inspector who had allegedly demanded the same by way of bribe for return of stock register of complainant wines shop. Appellant stated that money was given to him for handing over to one S for the purpose of remitting the same to Government Treasury. Evidence showed that S used to do such work on behalf of shop owners. Appellant had no role of play in the return of the stock register. It was held that material is not sufficient to hold the appellant guilty. His conviction is accordingly set aside.

It has been observed that the appellant along with another accused were convicted for offence punishable under Sec.7 of Prevention of Corruption Act 1988 and sentenced to one year imprisonment along with fine by Ld. Trial Court which was upheld by High Court. But Supreme Court passed order with a view that appellant had no role of play in return of stock register. Apex Court believed version of appellant that money was given to him for handing over to one Sri Subbarayubu for the purpose remitting the same to Government Treasury. It is not understood as to how Supreme Court believed such story that practice of giving money to some boys working in shops or some places to remit the money to the Government Treasury at different places. It is further observed that boys working in shops had no authority to accept money to deposit in Government Treasury. It is common clever practice of the accused that he had no knowledge with a view that the money was being paid as bribe. So High Court observations regarding role of appellant as a conduit for the purpose of payment of bribe to another accused was correct and justified. Moreover, Supreme Court observations was that if any body wants to remit money to the Government Treasury, one has to go out to different places does not hold good. It is evident from above discussion that appellant had knowledge that money was being paid to him to another accused as bribe. Besides, it is the common practice of public servant alleged to have been involved in corruption case, tries to make different story in a view to avoid conviction.

In view of above analogy, conviction order passed by Ld. Trial Court which was upheld by High Court should have been restored and upheld by Apex Court.

#### **I. On the basis of evidence of complainant which is untrustworthy**

Supreme Court in *V.Venkata Subbarao v. State represented by Inspector of Police, Andhra Pradesh*<sup>19</sup> held following observations:

In a trap case, a surveyor in Mandal Revenue Office was acquitted by the special judge holding that evidence of the complainant was holly untrustworthy and the trap proceedings under taken by ACB were not reliable. In appeal, High Court relying on the provisions of Sec.20 of Prevention of Corruption Act held that tinted money was recovered from the surveyor and since the bribe was meant to be given to Mandal Revenue Officer, the surveyor abetted the offence and set aside the acquittal judgment. However, Supreme Court held

- i. the delay in lodging complaint after 15 days not explained by prosecution
- ii. since the purpose for the alleged demand of bribe was achieved, question of any demand being persistent would not arise
- iii. only finger of right hand rendered positive result when dropped in sodium carbonate solution as against the deposition of PW-2

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<sup>19</sup> 1(2007) CCR 206 (SC)

- iv. investigating officer interpolated documents
- v. in absence of proof of demand, question of raising presumption would not arise and
- vi. burden on accused does not have to meet same standard of proof as required by prosecution and upheld acquittal recorded by special judge.

It has been observed that tainted money was recovered from surveyor and since bribe was meant to be given to Mondal Revenue Officer, the surveyor abetted. Secondly finger of right hand of accused rendered positive result. Thirdly there was no proof that there is any animosity between investigating officer an appellant. Fourthly, possibility of fulfilling demand with a view to get extra money in future would not be ruled out.

In view of above analogy, conviction order passed by High Court should have been restored and upheld by Supreme Court since corruption has spread its tentacles in every sphere of life.

**m. On the basis of beyond reasonable doubt.**

Supreme Court in *T.Subramanian v. State of Tamil Nadu*<sup>20</sup> held following observations:

The fact of the case is that the accused Executive Officer of a Temple in Tamil Nadu was prosecuted for demanding and accepting illegal gratification from the complainant for securing a patta in his favour in respect of the Temple Land.

The special judge considered the evidence in detail and held that the appellant had given a reasonable and satisfactory explanation for receiving Rs.200/- from PW-1 in the presence of PW-2, by stating that amount had been tendered by PW-1 as having been sent by PW-6 towards his lease rant arrears. The court further held that the prosecution had failed to establish beyond reasonable doubt the three essential ingredients, namely, the demand, delivery and acceptance of sum of Rs.200/- by the appellant as illegal gratification and acquitted the accused.

On appeal High Court allowed the appeal and held that prosecution had proved that the accused has received sum of Rs.200/- from PW-1 and that the evidence of PWs-1,2,3 & 13 established that said amount was received as illegal gratification.

On appeal by the accused appellant against the order of High Court, Supreme Court held that High Court did not consider the explanation offered by the appellant for the receipt of money, nor the previous

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<sup>20</sup> AIR 2006 SC 836

enmity harboured by PW-1,PW-2 & PW-6 towards the appellant. Nor did it hold that the decisions of Trial Court were erroneous or perverse. Re-appreciating the very evidence on which the Trial Court had the conclusion that the payment was not by way of illegal gratification but was towards lease rent due by PW-6 and paid through PW-1, the High Court relying on the evidence of PW-1, PW-2 & PW-6 concluded that payment was by way of illegal gratification. In particular, it relied on the denial by PW-6 that he had sent any amount through PW-1. But the mere denial by PW-6 that he had sent the money through PW-1 cannot be ground to hold the appellant guilty. Naturally PW-6 would denied having sent the amount though PW-1 the explanation given by the appellant immediately after the incident clearly explains all the circumstances and raises not only a reasonable but very serious doubt about the amount having been received by him as illegal gratification.

The evidence shows out a clear alternative that the accused was falsely implicated and the instance of PWs 1,2 & 6. If two views were possible from the very same evidence, it can not be said that the prosecution had proved beyond reasonable doubt that the appellant had received the sum of Rs.200/- as illegal gratification. Supreme Court therefore held that the Trial Court was right in holding that the charged against the appellant was not proved and the High Court was not justified in interfering with the same.

It has been observed that High Court relying on the evidence of PW-1,PW-2 & PW-6, convicted appellant after reversing the order of acquittal passed by Ld.Trial Court. Since there is no animosity in between prosecution witnesses and appellant, the question of conspiracy by involving the appellant in criminal case does not arise. Secondly explanation given by the appellant after the incident raises serious doubt regarding the veracity of statement of appellant. Thirdly question of making story towards lease rent due has no meaningful basis. Fourthly High Court relied on the denial of PW-6 that he had sent any amount through PW-1.

In view of above analogy, conviction order passed by High Court should have been restored and upheld by Apex Court.

**SUM UP:**

It has been observed that in number of cases, Supreme Court had been pleased to reduce sentence of imprisonment against the order of conviction passed by court below with a view that the matters were pending for long time and also observed that accused might have lost job and suffered mental agony. How could the mere fact that the matter was pending for long time be considered for reduction of imprisonment? Because this is the usual feature in almost all cases under Prevention of Corruption Act and it is not the special case. It is the defect inherent in implementation of the system that longevity of the cases tried under Prevention of Corruption Act is too lengthy. If that is to be treated as sufficient reason for reducing the sentence mandated by Parliament, the legislative exercise would be defeated. Secondly in every conviction, there is mental agony of the accused. Thirdly Apex Court should have fixed time limit to dispose of the matter triable under Prevention of Corruption Act. Fourthly Apex Court had considered age of public servant who was convicted under Prevention of Corruption Act and reduced period of imprisonment by raising fine. By increasing the quantum of fine after reducing the period of imprisonment to normal period can also defeat the purpose as corrupt public servant could easily raise fine through dubious means. Fifthly Apex Court had quashed the order of conviction in some cases passed by court below with the following observations that bribe money was not received by the accused since there was no demand but in number of cases it has been observed that bribe money was collected by lower staff on behalf of main accused with a view to avoid trap and conviction thereafter. In such cases, main accused had been acquitted. Such type of practice should have been discouraged. Sixthly it has been observed that in some cases Apex Court did not give cognizance on the version of prosecution witnesses since they are official witnesses. So, the version of prosecution witnesses cannot be thrown

away merely on the ground that they are official witnesses and no independent witness was associated. Last but not the least that Apex Court in some cases acquitted the accused on the ground of benefit of doubt and preponderance of probability. So while acquitting the accused, strict interpretation of benefit of doubt and preponderance of probability should have been made otherwise corrupt person in the event of acquittal will engulf the entire society.