

(2016) 04 BOM CK 0169

In the Bombay High Court

Case No : Criminal Appeal No. 355 of 2010 with criminal appeal Nos. 515, 516, 517 of 2010.

Mahendra S/o. Digamber Deshmukh, Aged about 35 years, R/o. Laghuvetan Colony, District : Amravati (Presently at District Prison, Paithan) - Appellant @HASH The State of Maharashtra, through Anti-Corruption Bureau, Amravati

Date of Decision : 05-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 427(2)
Penal Code, 1860 (IPC) — Section 120B, Section 465, Section 477A

Citation : (2016) ALLMRCri 4748

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : Shri M.P. Khajanchi, Advocate, for the Appellant; Shri S.S. Doifode, A.P.P, for the Respondent/State

Final Decision : Partly Allowed

Judgement

Z.A. Haq, J.(Oral) - Heard Shri M.P. Khajanchi, advocate appointed by the Court to represent the appellant and Shri S.S. Doifode, A.P.P. for the respondent/State.

2. These four appeals are being disposed by a common judgment as the appellant in all the appeals is same and the point involved in the appeals is also same.

3. The appellant is convicted by the Sessions Court by the judgment given in Sessions Trial No.199 of 1998 on 19th January, 2003 for the offence punishable under Section 302 of the Indian Penal Code and the appellant was sentenced to undergo imprisonment for life and to pay fine of Rs. One Thousand and in default of payment of fine, to undergo simple imprisonment for three months. The judgment passed by the Sessions Court was challenged before this Court in Criminal Appeal No. 89 of 2003 which was dismissed by the judgment delivered on 27th September, 2006.

4. The appellant is tried in Special (ACB) Case No. 06/2002 for the offence

punishable under Sections 477-A, 120-B and 465 of the Indian Penal Code and for the offence under Sections 13(1)(c) and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988. The Special Court by the judgment dated 6th February, 2008 convicted the appellant and sentenced to undergo imprisonment as stated in the judgment.

The appellant is tried in Special (ACB) Case No. 09/2002 and is convicted for the offence punishable under Sections 477-A, 120-B and 465 of the Indian Penal Code and for the offence under Sections 13(1)(c), 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 by judgment dated 6th February, 2010 and is sentenced to undergo imprisonment as stated in the judgment.

The appellant is tried in Special (ACB) Case No. 08/2002 and is convicted for the offence punishable under Section 477-A, 120-B and 465 of the Indian Penal code and for the offence under Sections 13(1)(c), 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 by judgment dated 6th February, 2010 and is sentenced to undergo imprisonment as stated in the judgment.

The appellant is tried in Special (ACB) Case No. 07/2002 and is convicted for the offence punishable under Section 477-A, 120-B and 465 of the Indian Penal Code and for the offence under Sections 13(1)(c), 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 by judgment dated 6th February, 2010 and is sentenced to undergo imprisonment as stated in the judgment.

5. Shri M.P.Khajanchi, learned advocate for the appellant has submitted that as the appellant has pleaded guilty, the only submission which is required to be considered is that when the judgments are delivered in Special (ACB) Case No.06 of 2002, Special (ACB) Case No. 09 of 2002, Special (ACB) Case No. 08 of 2002 and Special (ACB) Case No. 07 of 2002, the appellant was undergoing the sentence for life imprisonment in view of the conviction in Sessions Trial No. 199 of 1998 for the offence punishable under Section 302 of the Indian Penal Code and in view of the provisions of Section 427(2) of the Code of Criminal Procedure, 1973, the learned Additional Sessions Judge should have directed that the subsequent sentence imposed on the appellant by the judgment passed in each of the special case shall run concurrently with the previous sentence of imprisonment for life.

It is submitted that in the judgment given in Special (ACB) Case No. 06 of 2002, Special (ACB) Case No. 09 of 2002, Special (ACB) Case No. 08 of 2002 and Special (ACB) Case No. 07 of 2002 the learned Additional Sessions Judge has directed that the sentence in all these cases shall run concurrently in view of provisions of Section 427(1) of the Code of Criminal Procedure. It is pointed out that the judgment in all these four cases is delivered on the same date i.e. on 6th February, 2010. The learned advocate has submitted that the learned Additional Sessions Judge has committed an error in not giving benefit of Section 427(2) of the Code of Criminal Procedure, 1973 to the appellant and has denied

it on the erroneous consideration that the sentence for life imprisonment imposed on the appellant was for another crime arising out of different transaction and the sentence imposed on the appellant in the four cases in which the judgment is delivered on 6th February, 2010, the appellant is convicted for different offences some of which are under the Prevention of Corruption Act, 1988. Relying on the judgment given by the Division Bench of this Court in the case of Rambhau Pandurang v. State of Mah., reported in 2000(1) Mh.L.J. 88, it is submitted that the appellant is entitled for the benefit as per Section 427(2) of the Code of Criminal Procedure, 1973 and the judgment passed in the four cases are required to be modified accordingly.

6. Shri S.S.Doifode, learned A.P.P. for the respondent has not been able to controvert the submissions made on behalf of the appellant.

7. It is undisputed that on 6th February, 2010 when the judgment is delivered in four cases in which the appellant is tried, the appellant was undergoing life imprisonment as per the judgment delivered in Sessions Trial No. 199 of 1998 and maintained by this Court in Criminal Appeal No. 89 of 2003. Considering the provisions of Section 427(2) of the Code of Criminal Procedure and the proposition laid down in the judgment given in the case of Rambhau Pandurang Wankhade, I am of the view that the appellant is entitled for the benefit of Section 427(2) of the Code of Criminal Procedure. The learned Additional Sessions Judge has committed an error by not giving benefit of Section 427(2) of the Code of Criminal Procedure to the appellant/accused.

8. Hence, the following order :

The judgments delivered in Special (ACB) Case No. 06 of 2002, Special (ACB) Case No. 09 of 2002, Special (ACB) Case No. 08 of 2002 and Special (ACB) Case No. 07 of 2002 on 6th January, 2010 are modified and it is directed that the sentence imposed on the appellant by the above judgments shall run concurrently with the previous sentence of imprisonment for life imposed on the appellant in Sessions Trial No. 199 of 1998 and confirmed in Criminal Appeal No. 89 of 2003.

The appeals are partly allowed in the above terms.

The fees of the learned advocate appointed to represent the appellant is quantified at Rs. 5,000/- in all the four appeals, i.e. Rs. 1,250/- per appeal.