
(2015) 09 SC CK 0214

In the Supreme Court Of India

Case No : Criminal Appeal No. 30 of 2009

N. Srimannarayana

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (2016) 1 CCR 154 : (2016) 1 JCC 111 : (2015) 4 RCR(Criminal) 355

Hon'ble Judges : H.L. Dattu, C.J.I., V. Gopala Gowda and Amitava Roy, JJ.

Bench : Full Bench

Advocate : Y. Raja Gopala Rao, Advocate, for the Appellant; Krishna Kumar Singh and S. Udaya Kumar Sagar, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and order passed by the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1471 of 2001, dated 04.03.2008. By the impugned judgment and order, the High Court has confirmed the judgment of conviction but modified the sentence passed by the Trial Court for the offence punishable Under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947 (for short, "the Act"). The brief facts of the prosecution case are that on 03.05.1957 the Appellant joined Government service as Junior Engineer, Irrigation Department, Andhra Pradesh. Subsequently, he was promoted as Assistant Engineer and thereafter as Executive Engineer in the R & B Department. On credible information that the Appellant had acquired assets disproportionate to his known sources of income through corrupt practices, a case was registered against him on 28.02.1987. After due verification and authorization, investigation was conducted. It was found that the Appellant was in possession of assets of the value of Rs. 12,73,714.91/- disproportionate to his known sources of income and had failed to provide a satisfactory explanation for possession of disproportionate assets. Upon the completion of investigation, a charge sheet was filed before the Trial

Court.

2. Thereafter, the Appellant appeared before the Trial Court and after both sides were heard, charges were framed against the Appellant for the offence punishable Under Section 5(1)(e) read with Section 5(2) of the Act. The charges were read over and explained to the Appellant who pleaded not guilty. Accordingly, the case was committed to Trial.

3. In order to substantiate the charges framed against the Appellant, the prosecution examined 76 witnesses and presented 137 documents. After the completion of prosecution evidence, the statement of the accused was recorded Under Section 313 of the Code of Criminal Procedure (for short, "the Code") and thereafter 24 witnesses were examined and 31 documents were produced in defense evidence.

4. The Appellant would submit before the Trial Court that his wife and he belonged to wealthy agricultural families having large areas of fertile land and also various assets including large amounts of gold. He would contend that the assets received by him and his wife at the time of their marriage, and subsequently through inheritance would explain his possession of assets disproportionate to his known sources of income. He would further contend that assets acquired by him after the check period considered by the investigative agencies were wrongly included, and that his assets were wrongly valued by the investigative agencies.

5. Upon considering the evidence on record as also the arguments of the parties, the Trial Court found that the Appellant possessed assets of the value of Rs. 1,92,465.78/- disproportionate to his known sources of income. The burden to provide a satisfactory explanation for the possession of disproportionate assets lies on the Appellant, and the Trial Court held that he had failed to discharge this burden. Accordingly, the Trial Court found the Appellant to be guilty beyond reasonable doubt for the offence punishable Under Section 5(1)(e) read with Section 5(2) of the Act and sentenced him to undergo rigorous imprisonment for a period of three years, along with payment of fine of Rs. 50,000/-, and in default to undergo rigorous imprisonment for two years.

6. Being aggrieved by the said judgment and order passed by the Trial Court, the Appellant carried the matter in appeal before the High Court. The High Court considered the entire evidence on record and the submissions of the parties, and confirmed the judgment of conviction of the Trial Court. However, taking into consideration the facts and circumstances of the case, the High Court modified the sentence to rigorous imprisonment for one year, and left the quantum of fine and default sentence undisturbed.

7. Being aggrieved by the said judgment and order passed by the High Court, the Appellant is before us in this appeal.

8. We have heard the learned Counsels appearing for the parties to the lis.

9. Mr. Y. Raja Gopala Rao, the learned Counsel for the Appellant, would assail the judgment and order passed by the High Court and submit that the High Court failed to consider the evidence on record and the material contentions urged by the parties before it. Apart from arguing on merits of the case, learned Counsel for the Appellant would submit that the Appellant is now about 85 years of age and suffering from various ailments including coronary artery disease, and in that view of the matter the sentence ought to be reduced.

10. Per contra, the learned Counsel appearing for the Respondent-State would support the order of conviction passed by the High Court. However, the learned Counsel appearing for the Respondent-State would not seriously dispute the submissions of the learned Counsel for the Appellant relating to the reduction of sentence.

11. Section 5(2) of the Act provides a minimum sentence of imprisonment of one year, however the proviso to Section 5(2) provides that the Court may, for special reasons recorded in writing, impose a sentence of imprisonment less than one year. In the instant case, the Appellant is now about 85 years of age and is suffering from various serious ailments. Keeping these aspects of the matter in view, while confirming the conviction for the offence punishable Under Section 5(1)(e) read with Section 5(2) of the Act, we modify the sentence to the period already undergone.

12. The appeal is disposed of accordingly.

13. If the Appellant has furnished any bail bonds, the same are discharged. It is needless to say that the order passed by us shall not be treated as binding precedent.

Ordered accordingly.