**(2023) 01 CHH CK 0079**

**In the Chhattisgarh High Court**

**Case No :** Criminal Appeal No. 3058, 3181 Of 1999

N.K. Verma APPELLANT

Vs

Sate Of Madhya Pradesh( Now Chhattisgarh) RESPONDENT

**Date of Decision :** 23-01-2023

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 437A
Indian Penal Code, 1860 — Section 120B, 161, 162, 163, 164, 165, 165A, 420, 468, 477A
Prevention of Corruption Act, 1947 — Section 2(c), 5(1)(d), 5(2), 5(3)(ii), 6(1)(c), 7, 8, 9, 10, 11, 12
Banking Regulation Act, 1949 — Section 46A

**Citation :** (2023) 01 CHH CK 0079

**Hon'ble Judges :** Narendra Kumar Vyas, J

**Bench :** Single Bench

**Advocate :** B.P. Sharma, Supriya Upasane, Hari Agrawal, Vaibhav A. Goverdhan, B.L. Sahu

**Final Decision :** Partly Allowed

# Judgement

1. Since the above criminal appeals are arising out of the same judgment of conviction & order of sentence dated 12.11.1999 passed by the Special Judge & Additional Sessions Judge, CBI Jabalpur, in Sessions Trial No. 41 of 1985, they are being disposed of by this common judgment.

2. By the impugned judgment, the accused/appellants N.K. Verma and O.P. Singhal have been convicted under Sections 420 r/w section 120-B IPC, 468 r/w section 120-B IPC and 5(1)(D) r/w section 5(2) of Prevention of Corruption Act, 1947. The sentence awarded to them is as under:-

Conviction

Sentence

Conviction

U/s. 420 r/w 120-B IPC

RI for 2 years with fine of Rs. 3,000/-with default stipulation.

U/s. 420 r/w 120-B IPC

U/s. 468 r/w 120-B IPC

RI for 2 years with fine of Rs. 3,000/-with default stipulation.

U/s. 468 r/w 120-B IPC

5(1)(D) read with section 5(2) of Prevention of Corruption Act, 1947

RI for 2 years with fine of Rs. 3,000/-with default stipulation. With a direction all the sentences to run concurrently.

5(1)(D) read with section 5(2) of Prevention of Corruption Act, 1947

3. Case of the prosecution, in brief, is that appellant O.P. Singhal was posted as Branch Manager in Bilaspur Raipur Regional Gramin Bank, Rahoud, District Bilaspur and appellant N.K. Verma was posted as Field Supervisor in the same bank. It is alleged that on 03.12.1982 Rs. 10,900/- was debited in the account of DRDA subsidy, but no corresponding voucher of transfer was prepared by the appellants. It is alleged that the appellants, who abused their position as public servants prepared false and fabricated withdrawal slip of Rs. 10,500/- which was credited in the joint account of Om Prakash Agrawal and Sita Ram Agrawal and received the payment. The appellant N.K. Verma in furtherance of criminal conspiracy has put forged signature of Om Prakash on the withdrawal slip and withdrew the money. The said money of Rs. 10,500/- was received by O.P.Singhal, thus the appellants have committed criminal conspiracy and cheated the bank to the tune of Rs. 10,500/-. On the complaint being made, FIR (Ex.P-7) was registered against the appellants on 01.03.1985 under Crime No. RC 13/85 for the offence punishable under Sections 120-B, 420, 477-A IPC read with Section 5(1)(d), 5(2) of Prevention of Corruption Act.

4. During investigation, the prosecution has seized documents. After completion of the investigation and all the formalities for filing charge sheet, the charge sheet was filed against the appellants for the offence under Section 120-B, 420, 477-A IPC read with section 5(1)(d), 5(2) of Prevention of Corruption Act. The appellants denied the charges and prayed for trial.

5. To bring home the guilt of the Appellants the prosecution has examined as many as 8 witnesses namely Javed Iqbal Saiyad (PW-1), Mahendra Kumar Bhosle (PW-2), Branch Manager of SBI Bank Sarkanda Nand Kumar Sharma (PW-3), Assistant General Manager H.S.L Badvaik (PW-4), Regional Manager Dilip Kumar Soni (PW-5), DSP CBI Dineshchandra Dwivedi (PW-6), Government Examiner D.D. Goyal (PW-7), Om Prakash Agrawal (PW-8). The appellants in their support has examined Sitaram Agrawal (DW-1) and Hiralal (DW-2).

6. The prosecution in order to prove its case, during trial has exhibited

documents namely Register Ex.P-1and Ex.P-2, subsidiary account Ex.P-3, current account of Om Prakash Agrawal Ex.P-4, seizure memo Ex.P-4A, Sanction order under Section 6(1) C of PC Act 1947 (ExP-5) dated 12.12.1985, list of document Ex.P-5A and Ex.P-5B, Sanction order under Section 6(1) C of PC Act 1947 Ex.P-6 , List of document Ex.P- 6A, list of witnesses Ex.P6-B, FIR (Ex.P-7), seizure memo Ex.P-8, seizure memo Ex.P-9, leave sanction/ leave letter Ex.P-10 to Ex.P-19, Specimen signature/ hand writing of appellant O.P. Singhal (Ex.P-20 to Ex.P-22), Ex.P-29 to Ex.P-36, Specimen signature/ hand writing of Om Prakash Agrawal (Ex.P-23 to Ex.P-28),Specimen signature of appellant N.K. Verma (Ex.P-37 to Ex.P-49), appointment order of appellant N.K.Verma (Ex.P-50), opinion of hand-writing expert (Ex.P-51-A), Supplementary opinion of hand-writing expert (Ex.P-51 B and C), withdrawal slip (Ex.P-52 and P-53), Letter to Government Examiner of questioned document (Ex.P-54 A -B), detailed opinion (Ex.P-55), film given government examiner question letter (Ex.P-56 and Ex.P-57), specimen signature of Om Prakash Agrawal (Ex.P-58-1, to Ex.P-58-27), withdrawal slip (Ex.P-59 to Ex.P-61).

7. Learned trial Court after considering the evidence and material on record has convicted the appellants under Sections 420 r/w 120-B IPC, 468 r/w 120-B and Section 5(1)(d) of the PC Act, 1947 which is being challenged in this appeal.

8. Learned counsel for the appellants would submit that the prosecution has failed to prove on record that appellant OP Singhal played any active role in the alleged crime and the entire case is based on speculation. He would further submit that prosecution has failed to seize any incriminating material so as to constitute the offence against him. He would further submit that appellant OP Singhal has not received any benefit and no money allegedly embezzled has been received by him. He would further submit that there is no evidence of conspiracy and/or prior meeting of mind the accused person has been brought on record by the prosecution. He would further submit that as per proviso to Section 5(3)(ii) of PC Act, 1947 any Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year. He would further submit that in case the Hon’ble Court finds that the appellants have committed the offence, therefore, as per Section 5(3)(II) of PC Act, 1947, the sentence may be reduced considering (i) old age and health of the appellants (ii) economically wasteful and a liability to State to keep appellant in prison. (iii) Time lapsed from the date of occurrence. (iv) Involvement in any other criminal case. (v) Long Duration of trial/prosecution. (vi) Duration of pendecy of appeal before the Hon’ble High Court.(vii) Non commission of any other offence and non-violation of bail condition. (viii) Suffering immense trauma, mental and anguish. Lastly he would submit that considering the same of the above mentioned mitigating factors/facts of the case therein while enhancing the fine amount to Rs. 10,000/- modified the sentence. In support of his argument, he would rely on the judgment of Hon’ble Supreme Court in the cases of Munilal Mochi vs. State of Bihar 2012(12) SCC 546, V.K. Verma v. Central Bureau of Investigation 9014(3) SCC 485 and Ambi Ram v. State of Uttarakhand 2019(17) SCC 396. He

 

would further submit that the finding recorded by trial Court that sanction to prosecute has wrongly been given for invoking the provision of PC Act, as the appellants are working in the Rural Bank which is not nationalized bank, therefore, prosecution of the appellants under the PC Act, 1947 is illegal and would pray for allowing the appeal and set aside the conviction.

9. On the other hand, learned counsel for the CBI would submit that the judgment of conviction and order of sentence passed by the learned trial Court against the appellants is legal and justified and does not warrant interference by this Court. He would further submit that the handwriting expert has given the opinion which clearly proved the involvement of the appellants and the learned trial Court after appreciating the evidence has rightly convicted the appellant and would pray for dismissal of the appeal.

10. I have head learned counsel for the parties and perused the record.

11. From the above factual matrix of the case, following point emerged for determination by this Court is (I) Whether the sanction granted by the competent authority for permission to prosecute under Section 5(1)(d) of the PC Act, 1947 is legal and justified (ii) Whether the prosecution by cogent evidence has proved the offence committed by the appellants under Section 420, 468, 120 B IPC.

12. For determination of point No.1, it is not in dispute that Bilaspur Raipur Chhetriya Gramin Bank where the appellants were working is a bank constituted under the Regional Rural Bank Act, 1976, the said bank is a subsidy bank of State Bank of India, as per the Act of 1976. The relevant provision of the Act, 1976 is extracted below:-

(f) "Regional Rural Bank" means a Regional Rural Bank established under sub-section (1) of section 3;

(g) "Sponsor Bank", in relation to a Regional Rural Bank, means a bank by which such Regional Rural Bank has been sponsored; (h) "State Government" means,-- (i) in relation to a Regional Rural Bank established in a Union territory, the Central Government; (ii) in relation to a Regional Rural Bank established in a State, the Government of that State; (i) words and expressions used herein and not defined but defined in the Reserve Bank of India Act, 1934 (2 of 1934), shall have the meanings respectively assigned to them in that Act; (j) words and expressions used herein and not defined either in this Act or in the Reserve Bank of India Act, 1934 (2 of 1934), but defined in the Banking Regulation Act, 1949 (10 of 1949), shall have the meanings respectively assigned to them in the Banking Regulation Act, 1949.

Establishment and incorporation of Regional Rural Banks.

3. Establishment and incorporation of Regional Rural Banks.-

(1) The Central Government may, if requested so to do by a Sponsor Bank, by

 

notification in the Official Gazette, establish in a State or Union territory, one or more Regional Rural Banks with such name as may be specified in the notification and may, by the said or subsequent notification, specify the local limits within which each Regional Rural Bank shall operate.

Section. 6. Issued capital.- 4[(1) The issued capital of each Regional Rural Bank shall, in the first instance, be such as may be fixed by the Central Government in this behalf, but it shall in no case be less than twenty-five lakhs of rupees or exceed one crore of rupees.] (2) Of the capital issued by a Regional Rural Bank under subsection (1), fifty per cent. shall be subscribed by the Central Government; fifteen per cent. by the concerned State Government and thirty-five per cent. by the Sponsor Bank. (3) The Board may, after consultation with the 5*[National Bank] concerned State Government and the Sponsor Bank and with the prior approval of the Central Government, from time to time, increase the issued capital of the Regional Rural Bank; and, where additional capital is issued, such capital shall also be subscribed in the same proportion as is specified in sub-section (2).

13. From perusal of above stated provisions of the Act, it is quite vivid that central Government has to provide 50% of financial assistance to the Rural Bank and 35% by sponsored bank in the present case, State Bank of India being sponsored bank has provided 35% of financial assistance to the Gramin Bank, thus, it is sponsored bank of State Bank of India, therefore, the appellants who are working in Rural Bank are the public servant and as such they are amenable within the Prevention of Corruption Act, if any act tantamounts to misconduct under the PC Act, 1947. The Hon'ble Supreme Court in case of Central Bureau Investigation Bank Security and Fraud Cell vs. Ramesh Gelli 2016 (3) SCC 788 has examined the application of Prevention of Corruption Act 1988 to bank employees and has held as under:-

39. By virtue of Section 46A of the BR Act office bearers/employees of a Banking Company (including a Private Banking Company) were "public servants" for the purposes of Chapter IX of the IPC with the enactment of the PC Act offences under Section 161 to 165 A in Chapter IX of Code came to be deleted from the said Chapter IX and engrafted under Sections 7 to 12 the PC Act. With the deletion of the aforesaid provisions from Chapter IX of the IPC and inclusion of the same in the PC Act ought to have been a corresponding insertion in Section 46A of the BR Act with regard to the deeming provision therein being continued in respect of officials of a Banking Company insofar as the offences under Section Sections 7 to 12 the PC Act are concerned. However, the same was not done. The Court need not speculate the reasons therefor, though, perhaps one possible reason could be the wide expanse of the definition of "public servant" as made by Section 2(c0 of the PC Act. Be that as it may, in a situation where the legislative intent behind the enactment of the PC Act, inter alia, to expand the definition of "public servant", the omission to incorporate the relevant provisions of the PC Act Section 46A of the BR Act after deletion of Section 161 to 165 A of

 

the I.P.C. from Chapter IX can be construed to be a wholly unintended legislative omission which the Court can fill up by a process of interpretation.

45.Turing to the case in hand there can be no dispute that before enactment of the PC Act, Section 46A of the BR Act had the effect of treating the concerned employees/office bearers of a Banking Company as public servants for the purposes of Chapter IX of the IPC by virtue of the deeming provision contained therein. The enactment of the PC Act the clear intent to widen the definition of 'public servant' cannot be allowed to have the opposite effect by expressing judicial helplessness to rectify or fill up what is a clear omission in Section 46A of the BR Act. The omission to continue to extend the deeming provisions in Section 46A of the BR Act to the offences under Section 7 to 12 of the PC Act must be understood to be clearly unintended and hence capable of admitting a judicial exercise to fill up the same. The unequivocal legislative intent to widen the definition of "public servant" by enacting the PC Act be allowed to be defeated by interpreting and understanding the omission in Section 46A of the BR Act to be incapable of being filled up by the court.

46.. In the above view of the matter, I also arrive at the same conclusion as my learned Brother Prafulla C. Pant, J. has reached, namely, that the accused respondents are public servants for the purpose of the PC Act by virtue of the provisions of Section 46 A the Banking Regulation Act, 1949 and the prosecutions launched against the accused respondents are maintainable in law. Consequently, the criminal appeals filed by the C.B.I. are allowed and Writ Petition (Criminal) No. 167 of 2015 is dismissed.

14. Thus submission of the learned counsel for the appellants that the appellants are not the public servants cannot be accepted, accordingly it is rejected. It is held that the appellants are the public servants and they are amenable under the PC Act, 1947.

15. Learned trial Court, after considering the evidence of Mahendra Kumar Bhosle (PW-2) who has stated in the evidence that he has worked with the appellants and he is acquainted with signature of the appellants ,considering the report of hand writing expert DD Goyal, who has given the opinion that the questioned document has been written by OP Singhal and there is no cross-examination on this point by the appellants. Learned trial Court considering the provisions of Section 47 of the Evidence Act, the law on the subject and also considering the evidence of Mahendra Kumar Bhosle who has corroborated the opinion given by the hand writing expert ,has held that the entries were made by the appellant OP Singhal.The Learned trial Court has also considered the evidence of Dilip Kumar Soni (PW-5), who has stated that the withdrawal slip (Ex.P-52) has been written by OP Singhal and OP Singhal cleared the same for payment .The Trial Court has also considered the statement of (PW-8) Om Prakash Agrawal, who has stated that in Ex.P-52, his signature is not there which remained unshaken in the cross-examination. This witness has also stated in the cross-examination that Ex.P-61 and Ex.P-52 have not been filled up by him. The

 

Judgment of learned trial Court would show that defence taken by the appellant OP Singhal that subsidy register has not been produced, therefore, adverse inference should have been drawn against the prosecution has not been accepted, as per statement of Bank witnesses, no separate register for subsidy account is being maintained but subsidy account was there and prosecution has produced the subsidy account.

16. Learned trial Court while convicting appellant N.K. Verma has recorded a finding that appellant N.K. Verma was field supervisor in the Bank and his statememt that merely on the basis of direction of any superior authority he can put signature of other person is unbelievable and he was also involved in the similar conspiracy. Learned trial Court has also recorded its finding that appellant N.K. Verma has not produced any document that he has made complaint regarding misdeed of appellant O.P. Singhal, therefore, he is also involved in the criminal conspiracy.

17. Learned trial court on the basis of evidence, material on record has held that the appellants have committed offence under Sections 420 r/w 120-B IPC, 468 r/w 120-B and Section 5(1)(d) of the PC Act, 1947 and has convicted them. From appreciation of evidence and material on record, it is quite vivid that the finding recorded by the learned trial Court regarding commission of offence by the appellants does not suffer from perversity, illegality which warrants interference by this Court. Thus, conviction of the appellants for commission of aforesaid offence is legal, justified and does not warrant any interference by this Court From appreciation of evidence, material on record it is crystal clear that finding recorded by the learned trial Court with regard to the conviction of the appellants does not suffer from perversity, illegality which can be interfered by this Court exercising Appellate power.

18. The law with regard to interference of the appellate Court is well reasoned finding of trial court convicting the appellants under the criminal law has been well settled by the Hon'ble Supreme Court in the Majjal Vs State of Haryana reported in 2013 (6) SCC 798 wherein the Hon'ble Supreme Court has held at para 7 as under;-

"7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter."

19. As such, finding of conviction based upon proper appreciation of evidence is legal, justified and does not warrant any interference by this Court. The appeals deserve be dismissed. Accordingly, both the appeals are dismissed.

20. Now this Court has to examine whether in the facts and circumstance of the case, there is mitigating factors available on record to reduce the punishment/ sentence awarded to appellants.

21. Learned counsel for the appellants would submit that appellant OP Singhal was aged about 42 years and appellant N.K. Verma was 44 years, the incident took place on 03.12.1982, i.e. more than 40 years, the challan was produced before Special Judge on 27.12.1985 and the appellants are regularly appearing before the trial Court Jabalpur (MP) since 1986, though they are residents of Raigarh and Raipur and the conviction was passed on 12.11.1999, thereafter this Court has granted bail to them on 17.11.1999 directing them to appear before the Special Judge, Jabalpur CBI on 18.02.2000 during pendency of the appeal. It is reported that the appellants are regularly appearing there. At present appellant OP Singhal is aged about 80 years and appellant NK Verma is aged about 78 years and their services were terminated by the Bank on account of conviction passed by the learned Special Court and they are out of employment and undergone the trial for number of years. Since they have been convicted by the trial Court for commission of offence, therefore, they must have not received the pension causing agony and harassment for the proceedings for over 37 years. These circumstances are mitigating factors which can be considered by this Court while reducing the sentence as per proviso of section 5(3)(ii) of the Prevention of Corruption Act, 1947. This issue has come up for consideration before the Hon’ble Supreme Court in the cases of Munilal Mochi vs. State of Bihar 2012(12) SCC 546, V.K. Verma v. Central Bureau of Investigation 9014(3) SCC 485, Ambi Ram v. State of Uttarakhand 2019(17) SCC 396 and T.M. Joseph vs. State of Kerala 1993 Supp.(1) SCC 465.

22. The Hon’ble Supreme Court in case of Munilal Mochi vs. State of Bihar 2012(12) SCC 546, wherein the Hon’ble Supreme Court has held as under:-

13. 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.

14. 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.

23. The Hon'ble Supreme Court in case of V.K. Verma v. Central Bureau of Investigation 9014(3) SCC 485 wherein the Hon'ble Supreme Court has held as under:-

8. The long delay before the courts in taking a final decision with regard to the guilt or otherwise of the accused is one of the mitigating factors for the superior courts to take into consideration while taking a decision on the quantum of sentence. As we have noted above, the FIR was registered by the CBI in 1984. The matter came before the sessions court only in 1994. The sessions court took almost ten years to conclude the trial and pronounce the judgment. Before the High Court, it took another ten years. Thus, it is a litigation of almost three decades in a simple trap case and that too involving a petty amount.

12.The appellant is now aged 76. We are informed that he is otherwise not keeping in good health, having had also cardio vascular problems. The offence is of the year 1984. It is almost three decades now. The accused has already undergone physical incarceration for three months and mental incarceration for about thirty years. Whether at this age and stage, it would not be economically wasteful, and a liability to the State to keep the appellant in prison, is the question we have to address. Having given thoughtful consideration to all the aspects of the matter, we are of the view that the facts mentioned above would certainly be special reasons for reducing the substantive sentence but enhancing the fine, while maintaining the conviction.

24. The Hon'ble Supreme Court in case of Ambi Ram v. State of Uttarakhand 2019(17) SCC 396 wherein the Hon'ble Supreme Court has held as under:-

14. Reading of Section 5(2) of the PC Act shows that it provides that any public servant, who commits criminal misconduct, 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. The proviso then empowers the Court to impose sentence of imprisonment of less than one year provided any special reasons are recorded in writing in support of imposing such reduce sentence of less than one year.

15. It is, therefore, clear that the Court is empowered to impose a sentence, which may vary from 1 year to 7 years with fine. However, in a particular case,

 

the Court finds that there are some special reasons in favour of the accused then the Court is empowered to impose imprisonment of less than one year provided those special reasons are set out in writing in support of imposing sentence less than one year. So far as imposing of fine is concerned, it is mandatory while imposing any jail sentence. How much fine should be imposed depend upon the facts of each case.

16. In the case of K.P. Singh Vs. State (NCT of Delhi), (2015) 15 SCC 497, this Court on somewhat similar facts considered the question as to what factors/ circumstances should be taken into consideration for reducing the jail sentence.

17. In his concurring opinion, Justice T.S Thakur (as his Lordship then was and later CJI) in his distinctive style of writing in detail examined this question in the light of law laid down by this Court in earlier cases on the subject and held as under:

"10. Determining the adequacy of sentence to be awarded in a given case is not an easy task, just as evolving a uniform sentencing policy is a tough call. That is because the quantum of sentence that may be awarded depends upon a variety of factors including mitigating circumstances peculiar to a given case. The courts generally enjoy considerable amount of discretion in the matter of determining the quantum of sentence. In doing so, the courts are influenced in varying degrees by the reformative, deterrent and punitive aspects of punishment, delay in the conclusion of the trial and legal proceedings, the age of the accused, his physical/health condition, the nature of the offence, the weapon used and in the cases of illegal gratification the amount of bribe, loss of job and family obligations of the accused are also some of the considerations that weigh heavily with the courts while determining the sentence to be awarded. The courts have not attempted to exhaustively enumerate the considerations that go into determination of the quantum of sentence nor have the courts attempted to lay down the weight that each one of these considerations carry. That is because any such exercise is neither easy nor advisable given the myriad situations in which the question may fall for determination. Broadly speaking, the courts have recognised the factors mentioned earlier as being relevant to the question of determining the sentence. The decisions of this Court on the subject are a legion. Reference to some only should, however, suffice.

19. Given the fact that the trial and appeal proceedings have in the case at hand continued for nearly 17 years by now causing immense trauma, mental incarnation (sic incarceration) and anguish to the appellant and also given the fact that the bribe amount was just about Rs 700 and that the appellant has already undergone 7½ months imprisonment against the statutory minimum of 6 months' imprisonment, the reduction of the sentence as proposed by my esteemed Brother appears to be perfectly in order. I, therefore, concur with the view taken by his Lordship."

18. Keeping in view the aforementioned statement of law laid down by this Court

 

when we examine the facts of the case at hand, we find that Firstly, the incident is of the year 1985; Secondly, this case is pending for the last 34 years; Thirdly, the appellant has now reached to the age of 78 years; Fourthly, he is suffering from heart ailment, as stated by the learned counsel for the appellant, and is also not keeping well; Fifthly, he has so far, during the trial and after suffering conviction, undergone total jail sentence of one month and 10 days; Sixthly, he has been on bail throughout for the last 34 years and did not indulge in any criminal activities nor breached any conditions of the bail granted to him; Seventhly, the bribe amount was Rs.1200/; and lastly, in the last 34 years, he has suffered immense trauma, mental agony and anguish.

19. The aforesaid 8 reasons which, in our view, are the special reasons satisfy the requirements of proviso to Section 5(2) of the PC Act. This Court, therefore, invoke the powers under proviso to Section 5(2) of the PC Act and accordingly alter the jail sentence imposed on the appellant by the two Courts below and reduce it to "what is already undergone by the appellant", i.e., 1 month and 10 days.

25. The Hon’ble Supreme Court in case of T.M. Joseph vs. State of Kerala 1993 Supp.(1) SCC 465 wherein the Hon’ble Supreme Court has held as under:-

4. Now coming to the question of sentence, there are certain circumstances which have to be taken into consideration. The occurrence took place on 6-10-75. It is nearly 16 years ago since then the accused was out of the job and has undergone the trial for number of years. It is also submitted that up till now he has not received his pension and he has a large family to maintain. Further, he is aged about 65 years. In similar circumstances; this Court in B.C. Goswami v. Delhi Administration, has observed that "appellant suffered agony and the harassment of the proceedings for over seven years and that he is also going to lose his job and has to earn for himself and his family members and for those dependent on him and, therefore, to meet the ends of justice the sentence is reduced to the period already undergone."

26. The Hon’ble Supreme Court in case of B.D. Goswami Vs. Delhi Administration 1974 (3) SCC 85 wherein the Hon’ble Supreme Court has held as under:-

As already observed, the appellant's conviction under Section 161 IPC was rightly upheld by the High Court and there is no cogent ground made out for our interference with that conviction. The sentence of imprisonment imposed by the High Court for both these offences 1 year and this sentence is to run concurrently. The only question which arises is that under Section 5(1) (d) read with s.5(2) of the Prevention of Corruption Act the minimum sentence prescribed is rigorous imprisonment for one year and there must also be imposition of fine. The sentence of imprisonment can be for a lesser period but in that event the Court has to assign special reasons which must be recorded in writing. In considering the special reasons the judicial discretion of the Court is as wide as the demand of the cause of substantial justice. Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations, which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act. which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after 7 years of the annoy and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs- 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same.

27. Now coming to the question of sentence, there are certain circumstances which have to be taken into consideration. The occurrence which took place on 25.10.1982, order of conviction was passed on 12.11.1999, which is more than 23 years ago since then the accused/appellants were out of the job and have undergone the trial for number of years, considering that till now appellants O.P. Singhal and N.K. Verma have not received their pension and they have a large family to maintain. Further, appellant OP Singhal is aged about 82 years and appellant N.K. Verma is aged about 80 years and also considering that appellants have suffered agony and the harassment of the proceedings for over 38 years and that have also lost their jobs and have to earn for themselves and their family members and for those dependent on them and, also considering the law laid down in the aforementioned cases, therefore, ends of justice would be served if sentence of fine amount awarded by the trial Court with respect to offence under Section 420 read with section 120-B IPC, 468 read with section 120-B IPC and section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act, 1947 is enhanced from Rs. 50,000/- instead of Rs. 9,000/-each of the appellants while maintaining the conviction. Accordingly I hereby confirm the conviction and reduce the sentence of 2 yeas rigorous imprisonment to till rising of the Court on each count. The sentence of fine, however, is enhanced to the tune of Rs. 50,000/- to be paid by each of the appellants. The sentences shall run concurrently. The appellants are directed to deposit the fine amount within two months from the date of judgment before Learned C.B.I Court Raipur.

 

It is worthwhile to mention here that after reorganization of State of Madhya Pradesh as State of M.P. and State of Chhattisgargh the Jurisdiction of C.BI. Court Jablapur so far as relates to offence cognizable by CBI arising in the territorial of Chhattisgarh is cognizable by CBI Raipur, failing which the appellants have to undergo sentence as awarded by the learned Trial Court.

28. In view of above what has been discussed above and modification of the sentence both the appeals are partly allowed while reducing the sentence of conviction as awarded by the Special Court. The appellants are reported to be on bail. Their bail bonds shall continue in view of Section 437-A of CrPC.

29. In pursuance of the judgment passed by this Court today, the appellant in CRA No. 3058 of 1999 namely N.K. Verma & in CRA No. 3181 of 1999 namely O.P. Singhal are remained present before this Court till 4:30 p.m. for undergoing the imprisonment as awarded to them i.e. till rising of the Court.