

**Reserved on :-** 11.01.2021

**Delivered on :-** 19.01.2021

**Case :-** CRIMINAL APPEAL No. - 1091 of 2019

**Appellant :-** Virendra Singh @ Prem Singh

**Respondent :-** Central Bureau Of Investigation

**Counsel for Appellant :-** Shalendra Kumar

**Counsel for Respondent :-** Gyan Prakash

**Hon'ble Siddharth,J.**

Heard Sri Yash Tandon, learned counsel for the appellant; Sri Gyan Prakash, learned Senior Counsel assisted by Sri Sanjay Yadav, learned counsels for the C.B.I. and learned A.G.A. for the State.

This criminal appeal is directed against the judgement and order dated 16.11.2017 passed by Sri Rajesh Chaudhary, Special Judge, Anti-Corruption, C.B.I., Court No. 1, Ghaziabad, convicting and sentencing the accused-appellant, Virendra Singh @ Prem Singh, in New Special Case No. 25 of 2011 (C.B.I. Vs. Badri Prasad and Others) in R.C. No. 0072005A0008 under Sections 120-B read with 419, 420, 467, 468, 471 I.P.C., P.S.- SPE/C.B.I., District- Dehradun. The trial court has convicted the appellant for offence under Section 120-B read with Sections 419, 420, 467, 468, 471 I.P.C. for 3 years rigorous imprisonment and Rs. 3,000/- fine and in default of payment of fine to undergo additional imprisonment for 2 months; under Section 419 read with Section 120-B I.P.C., the appellant has been convicted for 2 years rigorous imprisonment and fine of Rs. 2,000/- and in default of payment of fine to undergo additional imprisonment of 2 months; under Section 420 read with Section 120-B I.P.C., the appellant has been convicted for 4 years rigorous imprisonment and fine of Rs. 2,000/- and in default of payment of fine to undergo additional imprisonment of 2 months; under Section 467 read with 120-B I.P.C., the appellant has been convicted for 7 years rigorous

imprisonment and fine of Rs. 7,000/- and in default of payment of fine to undergo additional imprisonment of 5 months; under Section 468 read with 120-B I.P.C., the appellant has been convicted for 4 years rigorous imprisonment and fine of Rs. 2,000/- and in default of payment of fine to undergo additional imprisonment of 2 months and under Section 471 read with 120-B I.P.C., the appellant has been convicted for 2 years rigorous imprisonment and fine of Rs. 2,000/- and in default of payment of fine to undergo additional imprisonment of 2 months. All the sentences are to run concurrently.

The brief facts leading to this criminal appeal is that the accused persons had got employment in the Postal Department by submitting forged and fabricated educational documents of their High School, Intermediate and Graduation and those fabricated documents were prepared by them. The Central Bureau of Investigation has investigated the matter and submitted chargesheet against the present accused and the other co-accused persons. The accused-appellant was tried for the alleged offence and has been convicted by the trial court by the impugned judgement and order.

Sri Sri Yash Tandon, learned counsel for the appellant has submitted that three accused persons were also convicted by the trial court along with present appellant. Their Criminal Appeal Nos. 1290 of 2017 (Ram Bilas Vs. State of U.P. and Another), 1193 of 2017 (Pancham Singh Vs. C.B.I.) and 730 of 2017 (Hari Singh Vs. State of U.P. and Another) have been disposed of by coordinate Bench of this Court and their sentences have been modified. He further submitted that although the trial court has convicted the present appellant on the basis of mere conjectures when he is absolutely innocent.

Learned counsel for the appellant has also submitted that offence was committed in the year 1992 and the accused had been removed from service and when he was removed from service he was a young man; that there is no bread earner in the family of the appellant. He next submitted

that it was the first offence of the appellant and after conviction, he had not indulged in any other criminal activity. He further submitted that on the question of legality of conviction and merits of the case, he is not pressing this appeal and only pressing on the quantum of sentence and he has prayed for taking lenient view considering the age of the appellant. It has been pointed out that the lower court record has been received.

Learned counsel for the appellant has submitted that the accused-appellant is in jail since 16.11.2017. The maximum sentence awarded to the appellant is 7 years and he has already spent more than 3 years in jail. Therefore, he has requested that keeping in view the period spent by the appellant in jail, a lenient view may be taken and his conviction may be converted into sentence undergone.

Learned counsel for the C.B.I. and learned A.G.A. have vehemently opposed the prayer.

I have heard the learned counsel for the parties and perused the entire material available on record and the evidence, as well as judgement of the trial court. It is apparent from the record that the accused had submitted forged and fabricated marksheets/certificates just to get employment in Postal Department.

This Court in the criminal appeals of similarly situated accused persons mentioned above has considered the relevant law of sentencing as follows :-

“In **Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926**, explaining rehabilitary & reformative aspects in sentencing it has been observed by the Supreme Court:

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a

means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

In **Sham Sunder vs Puran, (1990) 4 SCC 731**, where the High Court reduced the sentence for the offence under Section 304 Part-I into undergone, the Supreme Court opined that the sentence needs to be enhanced being inadequate. It was held :

"The court in fixing the punishment for any particular crime should take into consideration the nature of offence, the circumstances in which it was committed, the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of offence."

In **State of MP vs Najab Khan, (2013) 9 SCC 509**, the High Court, while upholding conviction, reduced the sentence of 3 years by already undergone which was only 15 days. The Supreme Court restored the sentence awarded by the trial court. Referring the judgments in **Jameel vs State of UP (2010) 12 SCC 532**, **Guru Basavraj vs State of Karnatak, (2012) 8 SCC 734**, the Court observed as follows :

"In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice dispensation system to undermine the public confidence in the efficacy of law. It is the duty of court to award proper sentence having regard to the nature of offence and the manner in which it was executed or committed. The courts must not only keep in view the rights of victim of the crime but also the society at large while considering the imposition of appropriate punishment."

Earlier, "Proper Sentence" was explained in **Deo Narain Mandal Vs. State of UP (2004) 7 SCC 257** by observing that

sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the court should bear in mind the principle of proportionately. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically.

In subsequent decisions, the Supreme Court has laid emphasis on proportional sentencing by affirming the doctrine of proportionality. In **Shyam Narain vs State (NCT of delhi), (2013) 7 SCC 77**, it was pointed out that sentencing for any offence has a social goal. Sentence is to be imposed with regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is that the society may not suffer again by such crime. The principle of proportionality between the crime committed and the penalty imposed are to be kept in mind. The impact on the society as a whole has to be seen. Similar view has been expressed in **Sumer Singh vs Surajbhan Singh, (2014) 7 SCC 323**, **State of Punjab vs Bawa Singh, (2015) 3 SCC 441**, and **Raj Bala vs State of Haryana, (2016) 1 SCC 463**.

In **Kokaiyabai Yadav vs State of Chhattisgarh(2017) 13 SCC 449**, it has been observed that reforming criminals who understand their wrongdoing, are able to comprehend their acts, have grown and nurtured into citizens with a desire to live a fruitful life in the outside world, have the capacity of humanising the world.

In **Ravada Sasikala vs. State of A.P. AIR 2017 SC 1166**, the Supreme Court referred the judgments in **Jameel vs State of UP (2010) 12 SCC 532**, **Guru Basavraj vs State of Karnatak, (2012) 8 SCC 734**, **Sumer Singh vs Surajbhan Singh, (2014) 7 SCC 323** , **State of Punjab vs Bawa Singh, (2015) 3 SCC 441**, and **Raj Bala vs State of Haryana, (2016) 1 SCC 463** and has reiterated that, in operating the sentencing system, law should adopt corrective machinery or deterrence based on factual matrix. Facts and given circumstances in each case, nature of crime, manner in which it was planned and committed, motive for commission of crime, conduct of accused, nature of weapons used and all other attending circumstances are relevant facts which would enter into area of consideration. Further, undue sympathy in sentencing would do more harm to justice dispensations and would undermine the public confidence in the efficacy of law. It is the duty of every court to

award proper sentence having regard to nature of offence and manner of its commission. The Supreme Court further said that courts must not only keep in view the right of victim of crime but also society at large. While considering imposition of appropriate punishment, the impact of crime on the society as a whole and rule of law needs to be balanced.

The judicial trend in the country has been towards striking a balance between reform and punishment. The protection of society and stamping out criminal proclivity must be the object of law which can be achieved by imposing appropriate sentence on criminals and wrongdoers. Law, as a tool to maintain order and peace, should effectively meet challenges confronting the society, as society could not long endure and develop under serious threats of crime and disharmony. It is therefore, necessary to avoid undue leniency in imposition of sentence. Thus, the criminal justice jurisprudence adopted in the country is not retributive but reformatory and corrective. At the same time, undue harshness should also be avoided keeping in view the reformatory approach underlying in our criminal justice system.

Keeping in view the facts and circumstances of the case and also keeping in view criminal jurisprudence in our country which is reformatory and corrective and not retributive, it believes that no accused person is incapable of being reformed and therefore, all measures should be applied to give them an opportunity of reformation in order to bring them in the social stream.”

In the facts and circumstances of the case, the highest sentence which has been awarded by the learned trial court is of 07 years under Section 467 I.P.C. The remaining sentences are much less in comparison to it, therefore, the sentence awarded under Section 467 I.P.C. if reduced by 02 years against the awarded sentence of 7 years, the ends of the justice will be served. From perusal of the judgement, it appears that the sentence in all other sections have been directed to run concurrently and it has also been directed that the period during which the accused persons were in jail shall be accommodated in their sentence, therefore, there is no necessity for disturbing the sentences which have been awarded in other sections.

So far as quantum of fine is concerned, it appears to be adequate and it is not required to be disturbed. However, the default sentence in lieu of fine may be reduced to some extent to serve the ends of justice.

Accordingly, the conviction by the trial court is upheld. The appeal is finally disposed of with the modification that the sentence of 07 years rigorous imprisonment for the offence under Section 467 read with Section 120-B I.P.C. is reduced by 02 years and the default sentence in lieu of fine under Section 467 read with Section 120-B IPC is reduced from 05 months additional imprisonment to 02 months additional imprisonment; under Section 120-B read with Sections 419, 420, 467, 468, 471 I.P.C., the default sentence in lieu of fine is reduced from 2 months imprisonment to 1 month additional imprisonment; under Section 419 read with Section 120-B I.P.C., the default sentence in lieu of fine is reduced from 2 months imprisonment to 1 month additional imprisonment; under Section 420 read with Section 120-B I.P.C., the default sentence in lieu of fine is reduced from 2 months imprisonment to 1 month additional imprisonment; under Section 468 read with 120-B I.P.C., the default sentence in lieu of fine is reduced from 2 months imprisonment to 1 month additional imprisonment; under Section 471 read with 120-B I.P.C., the default sentence in lieu of fine is reduced from 2 months imprisonment to 1 month additional imprisonment.

The criminal appeal is **partly allowed**.

Office is directed to transmit the lower court record along with copy of this judgment to the learned court below for information and necessary compliance as warranted.

**Order Date :- 19.01.2021**

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